

Council Substitute for House Bill No. 1547

An act relating to the Wakulla County Sheriff's Office; providing permanent status for certain employees of the Sheriff; specifying rights of employees; providing procedures for appeal of disciplinary actions and complaints against employees; providing for transition between sheriffs; providing for the appointment of career service appeals boards to hear appeals and procedures with respect thereto; providing for complaints against employees; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Employees of Wakulla County Sheriff; applicability of act; permanent status of employees; administration.—

(1) APPLICABILITY.—The provisions of this act shall apply to all sworn and nonsworn persons in the employ of the Office of the Wakulla County Sheriff, including deputy sheriffs. The provisions of this act shall not apply to the Sheriff, to special deputy sheriffs appointed pursuant to section 30.09(4), Florida Statutes, to members of the Sheriff's Posse or Reserve Unit, or to individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission, unless any such person is also employed full-time by the Office of the Sheriff. As used in this act, the terms "employee," "employ," and "employment" shall refer to all persons, whether employed or appointed, to whom the act applies. It is not, however, the intent of this act to grant the right of collective bargaining to persons in the employ of the Office of the Sheriff who do not otherwise have that right pursuant to law.

(2) PERMANENT STATUS; CAUSE FOR SUSPENSION OR DISMISSAL.—

(a) After an employee of the Sheriff to whom the provisions of this act apply has served in such employment for a period of 1 calendar year, such employee shall have attained permanent status in the Office of the Sheriff; provided, that if an employee is placed on disciplinary probation for a period of 6 months or more or is terminated and rehired at a later date, said employee shall be required to complete 1 calendar year of service from the date of the action before being granted the right of appeal provided in section 2. An employee who is promoted to a higher rank or position shall serve a probationary period of 6 months. A promoted employee shall retain permanent status, but may be demoted to his or her prior rank or position during such probationary period without the right of appeal pursuant to this act.

(b) Any employee who has achieved permanent status in the Office of the Sheriff may only be suspended or dismissed for cause, provided that prior to such disciplinary action the employee must be furnished written notice of the proposed action and offered an opportunity to respond to the reasons for the suspension or dismissal. However, in extraordinary situations such

as when delay could result in damage or injury, an employee may be suspended or dismissed for cause immediately and provided notice thereof and reasons therefor within 24 hours. Cause for suspension or dismissal shall include, but not be limited to, negligence, inefficiency, or inability to perform assigned duties, insubordination, violation of the provisions of law or office rules, conduct unbecoming a public employee, misconduct, or habitual drug abuse. Cause for suspension or dismissal shall also include adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation, with respect to any felony, misdemeanor, or major traffic infraction. The filing of felony, misdemeanor, or major traffic infraction charges against an employee shall constitute cause for suspension.

(3) TRANSITION OF EMPLOYEES.—When a newly elected or appointed Sheriff assumes office, the new Sheriff shall continue the employment of all currently employed permanent status personnel unless cause for dismissal, as provided herein, exists. However, the incoming Sheriff shall have the option of replacing the current personnel assigned to the positions of Sheriff's Executive Secretary, Chief Deputy, and Major. If the incoming Sheriff fills the Chief Deputy or Major positions with new personnel, the current occupants of those positions shall not be reduced lower than the rank of Captain, which rank shall be permanent unless later reduced by disciplinary demotion, and their salaries may be reduced accordingly. If the new Sheriff fills the Sheriff's Executive Secretary position with a new employee, the current occupant of the position shall be transferred to another position for which the employee is qualified within the Office of the Sheriff. Actions taken pursuant to this subsection shall not be appealable under section 2.

(4) ADMINISTRATION.—

(a) The Sheriff shall have the authority to adopt such rules and regulations as are necessary for the implementation and administration of this act; however, nothing in this act shall be construed as affecting the budgetmaking powers of the Board of Commissioners of Wakulla County.

(b) Dismissals or demotions pursuant to across-the-board actions directed by the Board of Commissioners of Wakulla County resulting from county fiscal impacts shall not be appealable under section 2.

Section 2. Career Service Appeals Boards; creation; membership; duties.—

(1) FUNCTION OF CAREER SERVICE APPEALS BOARD.—An ad hoc Career Service Appeals Board shall be appointed as provided herein for the purpose of hearing appeals of permanent status employees arising from personnel actions brought under agency rules or policies which result in dismissal, suspension, demotion, or reduction in pay, provided that reprimands, oral or written, and suspension of 5 working days or less shall not be appealable to a Career Service Appeals Board. Any such board may also provide assistance and advice to the Sheriff in matters concerning disciplinary actions and may take any other action authorized by the Sheriff.

(2) MEMBERSHIP AND SELECTION OF CAREER SERVICE APPEALS BOARD.—

(a) An ad hoc Career Service Appeals Board shall be appointed upon the call of the Sheriff or upon the filing of an appeal. The membership of each such board shall consist of five law enforcement officers or correctional officers, or a combination thereof, all of whom shall be employees of the Office of the Sheriff. The Sheriff shall select two members, the employee filing the appeal shall select two members, and the fifth member, who shall serve as chair of the board, shall be selected by the other four members.

(b) The five-member board shall select an alternate board member who shall sit for the appeal hearing proceedings. If at the conclusion of the hearing, the original five board members remain, the alternate member shall be excused and shall have no authority to vote or participate in the deliberations. However, if at any time during the hearing or prior to deliberations, any original board member is unable to continue to serve for any reason, the alternate member shall replace that original board member. The alternate member who replaces an original board member shall then have voting authority and shall participate in the deliberations.

(c) The ranking officer in charge of personnel, or his or her designee, shall serve as an ex officio member of the board, but shall have no vote. Any employee shall have the right to decline to serve as a member of a board. Any employee selected to serve on a board shall serve without additional compensation or overtime compensation with respect to such service. Once selected to a board, the members thereof shall serve until final action is taken by the board with respect to the purpose for which the board was selected, at which time the board shall be dissolved.

(3) PROCEDURE WITH RESPECT TO CAREER SERVICE APPEALS.—

(a) An appeal of an action specified in subsection (1) shall be made to the Sheriff in writing and must be received by the Sheriff no later than 3 working days after the employee is notified of the action on which the appeal is based.

(b) A Career Service Appeals Board shall be selected and must meet for purposes of hearing the appeal no later than 20 working days after receipt of an appeal by the Sheriff, unless the employee requesting the hearing waives the time period, in writing.

(c) During any hearing, the employee filing the appeal shall have the right to be heard publicly, to be represented by a person of his or her choice, and to present any evidential facts in his or her behalf, and during such hearings the technical rules of evidence shall not apply. The board shall, in the conduct of such hearings, have the power to administer oaths, issue subpoenas, compel the attendance of witnesses, and require the production of books, records, accounts, papers, documents, and testimony. In case of the failure of any person to obey an order of the board or a subpoena issued by the board, or upon the refusal of a witness to testify on any matter regarding which he or she may be lawfully interrogated, the chair of the board may

request a county judge of the county in which a person resides, to compel compliance by proceeding as for contempt. Each witness who appears in obedience to a subpoena before the board shall receive compensation for attendance fees and mileage as provided for witnesses in civil cases in the courts of this state. Such payments shall be made by the party calling the witness, except that with respect to any witnesses called by the board, payments shall be made by the Sheriff upon presentation of proper vouchers.

(d) Employees who have requested a Career Service Hearing may be represented by an attorney or other qualified representative, or the employee may represent himself or herself. The standard required to prove misconduct is a preponderance of the evidence and the procedure for closing arguments shall be that, if the employee offers no testimony or other evidence, the Sheriff shall have the first closing argument and the employee shall follow the Sheriff. Should the employee offer any witness testimony, including the employee's testimony, or any other evidence, the employee shall have the first closing argument and the Sheriff shall follow the employee.

(e) A board shall, by majority vote, dispose of the appeal for which it was appointed by making findings of fact and issuing a written decision. Such decision shall either sustain or not sustain the finding of cause. If a finding of cause is not sustained by a board, the board shall order such remedial action as is appropriate with regard to discipline, which may include reinstatement with back pay, and may modify any personnel action which was the subject of the appeal. If the board sustains the finding by the Sheriff, it shall also determine the appropriateness of the discipline imposed by the Sheriff. No board shall have the authority to impose on any employee any discipline that is harsher than that which formed the basis of the appeal. Under no circumstance shall the board have the authority to circumvent, modify, alter, or otherwise change the rules or policy of the Sheriff.

(f) The decision of the board shall be final and binding on the employee and the Sheriff, unless a state court's jurisdiction is invoked by appeal or certiorari to review the board's action. If the court accepts jurisdiction, the board's order shall be stayed pending completion of the court proceedings.

Section 3. Complaints against employees; procedure.—

(1) COMPLAINTS AGAINST EMPLOYEES.—A complaint receipt and processing procedure shall be established by the Office of the Sheriff in order to provide adequately for the prompt receipt, investigation, and disposition of complaints against its employees.

(2) PROCEDURE WITH RESPECT TO RECEIVING COMPLAINTS AGAINST EMPLOYEES.—

(a) Any supervisor of the Office of the Wakulla County Sheriff is authorized to receive a complaint against any other employee of the Sheriff. All complaints shall be reduced to writing and shall be resolved as provided herein.

(b) If a complaint is received by a supervisor during normal working hours, the complaint shall be referred to the supervisor of the employee against whom the complaint was received. The supervisor may conduct an investigation to determine if immediate action is needed to preserve the integrity of the Office of Sheriff or the supervisor may refer the complaint to Internal Affairs or to the appropriate investigating unit within the agency.

(c) If a complaint is received after normal working hours, it shall be referred to the shift supervisor. The shift supervisor may conduct an investigation to determine if immediate action is needed to preserve the integrity of the Office of Sheriff. If immediate action is not required, the complaint may be referred to Internal Affairs or to the appropriate investigating unit within the agency at the beginning of the next working day, or sooner if required.

(d) Upon completion of the investigation, the complaint shall be reviewed by the Sheriff or by his or her designee. If the Sheriff finds that a complaint is well founded and that a violation has occurred, the Sheriff shall decide upon appropriate disciplinary action, and the employee shall be notified of the proposed disciplinary action as provided in section 1.

(e) If a nonsworn employee is dissatisfied with the decision of the Sheriff regarding disciplinary action resulting from a complaint, he or she may appeal the action to a Career Service Appeals Board.

(f) If an employee who is subject to the provisions of section 112.532, Florida Statutes, is dissatisfied with the decision of the Sheriff regarding disciplinary action resulting from a complaint, he or she may appeal the action to a Career Service Appeals Board.

Section 4. All sworn and nonsworn persons in the employ of the Office of the Sheriff who have served for a period of 1 calendar year or more as of the effective date of this act, shall be permanent status employees subject to the provisions of this act. All other employees shall become permanent employees subject to the provisions of this act upon reaching their 1 calendar year service anniversary date.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.