

1 A bill to be entitled
2 An act relating to Flagler County; providing a
3 career services act for Flagler County
4 deputies; providing for applicability;
5 providing for status of employees and
6 administration; creating a Career Service
7 Appeals Board; providing for membership and
8 duties; providing procedures and forms for
9 complaints; providing for promotional testing;
10 providing for notice of opportunity; providing
11 application for promotion; providing for a
12 promotional oral review board; providing for
13 selection; providing for final selection for
14 promotion; providing for a promotional
15 eligibility list; providing minimum
16 requirements; providing that certain employees
17 are permanent employees; providing that certain
18 employees shall be deemed public employees;
19 repealing Chapter 90-450, Laws of Florida;
20 relating to a career services act for the
21 Flagler County Sheriff's Office; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Employees of Flagler County Sheriff;
27 applicability of act; permanent status of employees;
28 administration.--

29 (1) APPLICABILITY.--The provisions of this act shall
30 apply to all commissioned and noncommissioned persons in the
31 employ of the Office of the Flagler County Sheriff, including

1 deputy sheriffs. The provisions of this act shall not apply to
 2 the Sheriff or to special deputy sheriffs appointed pursuant
 3 to section 30.09(4), Florida Statutes, members of the
 4 Sheriff's Posse or Reserve Unit, and individuals appointed as
 5 part-time deputy sheriffs, as defined by the Criminal Justice
 6 Standards and Training Commission, unless any such person is
 7 also employed full time by the Office of the Sheriff. As used
 8 in this act, the terms "employee," "employ," and "employment"
 9 shall refer to all persons, whether employed or appointed, to
 10 whom the act applies. It is the express intent of this act to
 11 grant the right of public employee status to persons in the
 12 employ of the Office of the Flagler County Sheriff who do not
 13 otherwise have that right pursuant to law.

14 (2) PERMANENT STATUS; CAUSE FOR SUSPENSION OR
 15 DISMISSAL.--

16 (a) After an employee of the Sheriff to whom the
 17 provisions of this act apply has served in such employment for
 18 a period of one (1) calendar year, such employee shall have
 19 attained permanent status in the Office of the Sheriff;
 20 provided that, if an employee is terminated and rehired at a
 21 later date, said employee shall be required to complete 1
 22 calendar year of service from the date of the action before
 23 being granted the right of appeal provided in Section 2. Any
 24 employee who is required to serve a probationary period
 25 attendant to a promotion shall retain permanent status in the
 26 Office of the Sheriff, but may be demoted to his prior rank
 27 during such probationary period without the right of appeal as
 28 provided in Section 2.

29 (b) Any employee who has achieved permanent status in
 30 the Office of the Sheriff may only be suspended or dismissed
 31 for just cause, provided that prior to such action the

1 employee must be furnished written notice of the proposed
 2 action and offered an opportunity to respond to the reasons
 3 for the suspension or dismissal. However, in extraordinary
 4 situations, such as when delay could result in damage or
 5 injury, an employee may be suspended or dismissed for cause
 6 immediately and provided notice thereof and reasons therefor
 7 within 24 hours afterwards. Cause for suspension or dismissal
 8 shall include, but not be limited to, negligence, inefficiency
 9 or inability to perform assigned duties, insubordination,
 10 willful violation of the provisions of law or office rules,
 11 conduct unbecoming a public employee, misconduct, illegal drug
 12 use, or drug abuse. Cause for suspension or dismissal shall
 13 also include adjudication of guilt by a court of competent
 14 jurisdiction, a plea of guilty or of nolo contendere, or a
 15 jury verdict of guilty when adjudication of guilt is withheld
 16 and the accused is placed on probation, with respect to any
 17 felony, misdemeanor, or major traffic infraction. The filing
 18 of felony, misdemeanor, or major traffic infraction charges
 19 against an employee shall constitute cause for suspension.

20 (3) TRANSITION OF EMPLOYEES.--When a newly elected or
 21 appointed Sheriff assumes office, the new Sheriff shall
 22 continue the employment of all currently employed permanent
 23 personnel unless cause for dismissal, as provided herein,
 24 exists. However, the incoming Sheriff shall have the option of
 25 maintaining the current personnel assigned to the positions of
 26 Administrative Assistant, Chief Deputy, Legal Advisor, and
 27 Director. If the incoming Sheriff fills the above positions
 28 with new personnel, the current occupants of those positions,
 29 if certified law enforcement officers, shall be reduced to the
 30 rank of Captain, which rank shall be permanent unless later
 31 reduced by disciplinary demotion, and their salaries may be

1 reduced accordingly. If the incoming Sheriff fills the
2 Administrative Assistant position with a new employee, the
3 current occupant of the position shall be transferred to
4 another position for which the employee is qualified within
5 the Office of the Sheriff. Actions taken pursuant to this
6 subsection affecting the Chief Deputy, Legal Advisor,
7 Director, and Administrative Assistant positions shall not be
8 appealable under Section 2.

9 (4) ADMINISTRATION.--The Sheriff shall have the
10 authority to adopt such rules and regulations as are necessary
11 for the implementation and administration of this act;
12 however, nothing in this act shall be construed as affecting
13 the budget-making powers of the Board of County Commissioners
14 of Flagler County.

15 Section 2. Career Service Appeals Boards; creation;
16 membership; duties.--

17 (1) FUNCTION OF BOARDS.--Ad hoc Career Service Appeals
18 Boards shall be appointed as provided herein for the purpose
19 of hearing appeals of permanent employees arising from
20 personnel actions brought under office rules or policies which
21 result in dismissal, suspension, demotion, or reduction in
22 pay; provided that reprimands, oral or written, and
23 suspensions of two (2) working days or less shall not be
24 appealable to a Board; provided, however, that no more than
25 one such action of suspension may occur within 1 calendar year
26 without the right to appeal. Any such Board may also provide
27 assistance and advice to the Sheriff in matters concerning the
28 disciplinary actions, and may take any other action authorized
29 by the Sheriff.

30 (2) MEMBERSHIP OF BOARDS.--When needed upon the call
31 of the Sheriff, or upon the filing of an appeal, an ad hoc

1 Career Service Appeals Board shall be appointed. The
2 membership of each such Board shall consist of five law
3 enforcement officers who are assigned within Flagler County.
4 Two members shall be selected by the Sheriff, two members
5 shall be selected by the employee filing the appeal, and the
6 fifth member, who shall serve as Chair of the Board, shall be
7 selected by the four members, with the concurrence of the
8 Sheriff and the employee requesting the hearing. The ranking
9 officer in charge of personnel shall serve as an ex officio
10 member of the Board, but shall have no vote. Any person shall
11 have the right to decline to serve as a member of a Board, and
12 persons selected to serve on a Board shall serve without
13 additional compensation or overtime compensation with respect
14 to such service; however, such service shall be considered to
15 be a regular work day for those persons serving. Once selected
16 to a Board, the members thereof shall serve until final action
17 is taken by the Board with respect to the purpose for which
18 the Board was selected, at which time the Board shall be
19 dissolved.

20 (3) PROCEDURE WITH RESPECT TO APPEALS.--

21 (a) An appeal of an action specified in subsection (1)
22 shall be made to the Sheriff in writing, and must be received
23 by the Sheriff no later than 15 working days after the
24 employee is notified of the action on which the appeal is
25 based.

26 (b) A Career Service Appeals Board shall be selected
27 and must meet for purposes of hearing the appeal no later than
28 30 working days after receipt of an appeal by the Sheriff.

29 (c) During any hearing, the employee filing the appeal
30 shall have the right to be heard publicly, to be represented
31 by a person of his or her choice, and to present any

1 evidential facts in his or her behalf, and during such
 2 hearings the technical rules of evidence shall not apply. The
 3 Board shall, in the conduct of such hearings, have the power
 4 to administer oaths, issue subpoenas, compel the attendance of
 5 witnesses, and require the production of books, records,
 6 accounts, papers, documents, and testimony. In case of refusal
 7 of any person to comply with an order of the Board or a
 8 subpoena issued by the Board, or upon the refusal of a witness
 9 to testify on any matter regarding which that witness may be
 10 lawfully interrogated, a County Judge of the county in which
 11 the person refusing to comply or testify resides, upon the
 12 application of a member of the Board, shall compel obedience
 13 by proceeding as for contempt. Each witness who appears in
 14 obedience to a subpoena before the Board shall receive
 15 compensation for attendance fees and mileage as provided for
 16 witnesses in civil cases in the courts of this state. Such
 17 payment shall be made by the party calling the witness; except
 18 that, with respect to any witnesses called by the Board,
 19 payments shall be made by the Sheriff upon presentation of
 20 proper vouchers and approval by three members of the Board.

21 (d) A Board shall by majority vote dispose of the
 22 appeal for which it was appointed by making findings of fact
 23 and issuing a written decision. Such decision shall either
 24 sustain or not sustain the action being appealed. If an action
 25 by the Sheriff is not sustained by a Board, the Board shall
 26 order such remedial action as is appropriate, which may
 27 include reinstatement with back pay, and may modify any
 28 personnel action which was the subject of the appeal. No Board
 29 shall have the authority to impose on any employee any penalty
 30 which is more severe than that which formed the basis of the
 31 appeal.

1 (e) The decision of the Board shall be final and
2 binding on the employee and the Sheriff, however, this shall
3 not limit or circumvent the right of the Sheriff or
4 sheriff-appointee to further proceedings in a court of
5 competent jurisdiction.

6 Section 3. Complaints.--

7 (1) PURPOSE.--To provide a systematic, objective, and
8 impartial method of investigating complaints of alleged
9 inappropriate behavior by any personnel of the Flagler County
10 Sheriff's Office.

11 (2) POLICY.--The Flagler County Sheriff's Office will
12 respond to all complaints concerning any employee's behavior
13 and/or performance, and will conduct a thorough investigation
14 of all allegations.

15 (3) DEFINITIONS.--For the purpose of this policy,
16 "complaint" shall be defined as any expression of
17 dissatisfaction or any allegation of conduct that is:

18 (a) Unconstitutional;

19 (b) Unlawful; or

20 (c) A violation of policy/procedure.

21 (4) PROCEDURE.--

22
23 Complaints

24 All complaints will be placed into one of three
25 categories: administrative, criminal, or possible criminal.

26 Administrative complaints will follow the chain of
27 command, when possible, starting with the immediate
28 supervisor. At the discretion of the Sheriff, an internal
29 investigation may be conducted.

30 Criminal complaints will be forwarded to the Division
31 Commander immediately. The Chief Deputy and the Sheriff will

1 be advised and an investigator will be assigned. This will be
2 an internal investigation.

3 Possible criminal complaints will be forwarded to the
4 Division Commander immediately. The Division Commander will
5 determine if the complaint will be investigated as a
6 administrative or criminal complaint.

7 Receiving Complaints

8 Supervisors receiving or otherwise having knowledge of
9 a complaint will conduct the initial investigation, and will
10 obtain and document all available and related information
11 about the allegations. He or she will notify the Division
12 Commander immediately if such allegations amount to criminal
13 conduct. The complaint form will be completed on all
14 complaints.

15
16 Harassment of Complainants

17 No deputy or other employee will ignore, harass,
18 verbally abuse, belittle, or threaten any citizen or employee
19 who files a complaint against a deputy or employee of the
20 Flagler County Sheriff's Office.

21
22 Duty Status of Deputy/Employee

23 At the discretion of the Sheriff, deputies or employees
24 may be relieved of active duty status (with or without pay)
25 pending the outcome of the investigation.

26
27 Duty to Reply/Cooperate

28 Deputies and employees of the Flagler County Sheriff's
29 Office will answer fully all questions which a supervisor may
30 ask regarding performance of official duties and will
31 cooperate with any internal investigation. Before an interview

1 with a deputy or employee is conducted, the "Garrity Rule"
2 will be read to the deputy/employee. The deputy/employee will
3 sign the sheet containing the "Garrity Rule" that was read.

4
5 GARRITY RULE

6 I wish to advise you that you are being questioned as part of
7 an official investigation of the Sheriff's Office. You will be
8 asked questions specifically directed and narrowly related to
9 the performance of your official duties or fitness for office.

10 You are entitled to all rights and privileges guaranteed by
11 the laws and Constitution of this State and the Constitution
12 of the United States, including the right not to be compelled
13 to incriminate yourself. I further wish to advise you that if
14 you refuse to testify or to answer questions relating to the
15 performance of your official duties or fitness for duty, you
16 will be subject to Sheriff's Office charges which could result
17 in your dismissal from the Sheriff's Office. If you do answer,
18 neither your statements nor any information or evidence which
19 is gained by reason of such statements can be used against you
20 in any subsequent criminal proceeding. However, these
21 statements may be used against you in relation to subsequent
22 Sheriff's Office charges.

23 NOTE: No employee can be disciplined for refusal (on fifth
24 amendment rules) to make a statement or prepare a report
25 unless he or she has been given the Garrity Admonition. An
26 employee can be disciplined for refusal (without Garrity)
27 unless it was reasonable to believe the statement would
28 implicate the employee in a violation of the law.

29 BASED ON GARRITY VS NEW JERSEY 1967 AND GARDNER VS BRODERICK
30 1968

1 Complaints of Criminal Activity

2 Complaints against deputies/employees of the Flagler
3 County Sheriff's Office which involve facts to support
4 criminal conduct will be grounds for criminal charges. This
5 action will not serve to prevent the internal investigative
6 process from dealing with the same matters.

7
8 Initial Complaint Non-Criminal

9 Upon learning or receiving a complaint of inappropriate
10 behavior, the deputy or employee receiving such information
11 shall immediately direct the complaints to the on-duty shift
12 supervisor or the supervisor of the employee involved in the
13 complaint. Supervisors receiving or otherwise having knowledge
14 of a complaint will conduct the initial investigation, follow
15 through as much as practical, and obtain and document all
16 available and related information about the allegations. The
17 supervisor should make every attempt to resolve the complaint
18 if unable to do so, the chain of command will be followed. Any
19 complaints received through communications or at the reception
20 desk will be directed to the on-duty supervisor whenever
21 possible. All complaints received will be forwarded to the
22 Division Commander whether resolved or not. The complaint form
23 will be completed on all complaints.

24
25 Confidentiality

26 Section 112.533(3), Florida Statutes, states that any
27 person who is a participant in an internal investigation
28 including the complainant, the subject of the investigation,
29 the investigator conducting the investigation, and any
30 witnesses in the investigation, who willfully discloses any
31 information obtained pursuant to the agency's investigation,

1 including, but not limited, to the identity of the employee
2 under investigation, the nature of the questions asked,
3 information revealed or documents furnished in connection with
4 a confidential internal investigation of an agency, before
5 such complaint, document, action, or proceeding becomes a
6 public record, as provided in the section is guilty of a
7 misdemeanor of the first degree, punishable as provided in
8 section 775.082, Florida Statutes.

9 The investigator, which includes the person receiving
10 the initial complaint, will ensure confidentiality of the
11 investigation until the final disposition has been made.

12 1. Supervisors/Investigators will not leave reports,
13 notes, or related documents where they would be accessible to
14 unauthorized persons.

15 2. No portion of the internal investigation reports
16 shall be copied or reproduced in any manner without
17 authorization of the Sheriff.

18
19 Internal Investigations

20 When an internal investigation has been initiated, the
21 employees under investigation shall be notified, in writing,
22 of the allegations and the names of the complainants. This
23 will be on the employee notification form, complaint received.

24 1. In cases where advance notice would jeopardize the
25 investigation, said notification may be given just prior to
26 the interview of the employees under investigation.

27 2. The subject employee may review the complaint and
28 all written statements made by the complainant and witnesses
29 prior to the beginning of the investigative interview.

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1 At the time an internal investigation is initiated, a
2 complainant notification form will be completed and given or
3 mailed to the complainants.

4 The internal investigation checklist will be
5 maintained, and appropriate entries made until the
6 investigation is completed. The internal investigation shall
7 be completed within 45 days, unless an extension is granted by
8 the Sheriff because of extenuating circumstances. Upon
9 completion of any internal investigation, a copy of the entire
10 report shall be forwarded to the Sheriff for review, as listed
11 below.

12
13 Final Disposition

14 The Chief Deputy shall submit to the Sheriff a written
15 summary of the internal investigation and include one of the
16 following recommendations:

17 1. SUSTAINED.--The investigation disclosed sufficient
18 evidence to prove the allegations made in the complaint. The
19 Chief Deputy's summary will reflect all violations of
20 Sheriff's Office Policy and Procedures, as well as all
21 violations of local, state, and federal laws.

22 2. NOT SUSTAINED.--The investigation did not disclose
23 sufficient evidence to prove the allegations made in the
24 complaint. If the case is not sustained, the Chief Deputy's
25 summary will reflect one of the following:

26 a. NOT INVOLVED.--The investigation disclosed that the
27 named employee was not involved.

28 b. EXONERATED.--That acts which provided the basis for
29 the complaint or allegation occurred, however, investigation
30 revealed they were justified, lawful, and within accepted
31 policy and procedure.

1 c. FALSE.--The allegation is false; the alleged
2 incident never took place.

3 d. MISCONDUCT NOT BASED ON ORIGINAL COMPLAINT,
4 SUSTAINED.--New substantiated misconduct not mentioned in the
5 initial allegation was disclosed by the investigation and is
6 sustained.

7
8 Upon conclusion of the investigation and final disposition
9 rendered, the affected employee will be given a memo informing
10 him or her of the disposition of the case.

11 The complainants will receive a form letter advising of
12 the final disposition of the case, in addition to a telephone
13 notification, if appropriate.

14
15 CJSTC-78 FORM

16 Use the CJSTC-78 Form to report any sustained
17 allegations of non-compliance with section 943.13(4) or (7),
18 Florida Statutes, which does not result in the termination of
19 the deputy. The form must be submitted within 45 days of the
20 date the allegation has been sustained. Refer to the back side
21 of the CJSTC-78 Form for additional information and
22 instructions.

23 Section 4. Promotional testing.--Promotional
24 eligibility tests will be held as needed.

25 (1) Notice of this test will be distributed throughout
26 all divisions of the department by bulletin board a minimum of
27 30 days in advance of the date of the test.

28 (2) Each member/appointee wishing to take the test
29 must apply to his or her division director through the chain
30 of command and must have been with this agency in a full-time
31 capacity for a minimum of 2 years.

1 (3) Each member/appointee who has applied to go before
2 an oral review board will be required to have taken a written
3 examination and met the minimum passing score of 75 percent to
4 be eligible for an interview.

5 (4) Promotional examinations shall be given on an as
6 needed basis and the passing of such examination shall be
7 valid for a period of 2 years.

8 Section 5. Notice of opportunity.--Whenever an
9 opportunity for promotion is available within the Sheriff's
10 office, a notice to all members will be published by the
11 Sheriff's office.

12 (1) This notice will be distributed throughout all
13 divisions of the agency by bulletin board a minimum of 15 days
14 in advance of the date of the oral review board.

15 (2) The responsibility of the publication and posting
16 of said notice shall be initiated by the Sheriff to the
17 director of the division in which the vacancy occurs.

18 Section 6. Applications for promotion.--Upon posting
19 of a notice of opportunity, each member requesting
20 consideration must apply by memorandum through the chain of
21 command to the director of the division of which he or she is
22 a member/appointee.

23 (1) The division director of the applicant will either
24 approve or disapprove the application based on the
25 member/appointee's eligibility as specified in this act.

26 (2) If the vacancy is in a division other than that of
27 the applying member/appointee and the application is approved,
28 the division director will submit the application to the
29 director of the division in which the vacancy occurs.

30 Section 7. Promotional oral review board.--All
31 eligible members/appointees applying for the position shall

1 have the right to attend an oral review board on the date and
2 at the time selected by the board.

3 (1) The oral review board shall have access to each
4 applicant's personnel file.

5 (2) The oral review board shall make a written
6 recommendation to the Sheriff of the top three applicants,
7 chosen by majority vote of the board, within 3 calendar days
8 after the interviews.

9 (3) The list will be in alphabetical order and signed
10 by all five board members.

11 Section 8. Oral review board membership
12 selection.--Each oral review board shall be comprised of five
13 members as follows:

14 (1) SERGEANT'S PROMOTIONAL BOARD.--

15 (a) One Lieutenant selected by the Sheriff from the
16 division in which the vacancy occurs.

17 (b) One Sergeant from any other division selected by
18 the majority organization of agency members/appointees such as
19 the Fraternal Order of Police or the Police Benevolent
20 Association. It shall be the responsibility of the
21 representative organization to provide the Sheriff with
22 documentary proof of such majority.

23 (c) These two members will select a nonranking
24 member/appointee from the division in which the vacancy
25 occurs.

26 (d) These three members will select a member/appointee
27 from any rank from any division.

28 (e) These four members will select an individual from
29 a list of qualified persons furnished by the Sheriff.

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1 (f) The board chair is to be elected by a majority
2 vote of the board members. All board members will have equal
3 vote in all actions of the board.

4 (2) LIEUTENANT'S PROMOTIONAL BOARD.--

5 (a) One Captain to be selected by the Sheriff.

6 (b) One Lieutenant to be selected from any other
7 division by the majority organization of the department.

8 (c) These two members will select a Sergeant from the
9 division in which the vacancy occurs.

10 (d) These three members will select a member/appointee
11 from any rank from any division.

12 (e) These four members will select an individual from
13 a list of qualified persons furnished by the Sheriff.

14 (3) All new ranks shall attend an oral review board as
15 outlined in this act, with proper rank selections determined
16 in the same manner as for Sergeant or Lieutenant.

17 Section 9. Final selection for promotion.--The final
18 selection for the promotion will be made by the Sheriff from
19 the top three applicants recommended by the oral review board.

20 Section 10. Promotional eligibility list.--

21 (1) Individuals who have passed the written portion of
22 the examination will remain on the promotional eligibility
23 list for a period of 2 years. During this time, they will not
24 be required to pass another written examination.

25 (2) Individuals who have been placed on the "top
26 three" list by an oral review board, but not selected for
27 promotion, will remain eligible for similar promotion for a
28 period of 3 months.

29 Section 11. Minimum requirements for
30 promotion.--Minimum requirements for ranks currently

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1 established in accordance with the Career Service Act are as
2 follows:

3 (1) To be eligible for promotion to the rank of
4 Sergeant, an applicant:

5 (a) Shall be certified by minimum state law
6 requirements, if applicable, in the field in which the vacancy
7 occurs.

8 (b) Shall meet departmental guidelines for specialized
9 functions.

10 (c) Shall have completed a minimum 3 years' service
11 with the Sheriff's office prior to filing application for
12 promotion.

13 (d) In the event there are less than three eligible
14 persons for the rank of Sergeant, persons with 2 years'
15 service to the department may apply.

16 (e) If the position is certified, the applicant shall
17 have met qualification standards on the firearms range within
18 the previous 12 months.

19 (2) To be eligible for promotion to the rank of
20 Lieutenant, an applicant:

21 (a) Shall have held the minimum rank of Sergeant for
22 12 months after probation.

23 (b) Shall be certified by minimum state law
24 requirements, if applicable, in the field in which the vacancy
25 occurs and shall meet agency guidelines for specialized
26 functions.

27 (c) If the position is certified, the applicant must
28 have met qualification standards on the firearms range within
29 the previous 12 months.

30 (d) In the event an insufficient number of eligible
31 persons meet the guidelines set forth in paragraphs (a)-(c),

1 the applications may be opened up to next lower rank
2 requirements.

3 Section 12. All commissioned and noncommissioned
4 persons in the employ of the Office of the Sheriff of Flagler
5 County on the effective date of this act who have served for a
6 period of 1 calendar year or more as of such date shall be
7 permanent employees subject to the provisions of this act. All
8 other employees shall become permanent employees subject to
9 the provisions of this act upon reaching their 1-calendar-year
10 service anniversary date.

11 Section 13. All full-time deputy sheriffs employed by
12 Flagler County shall be deemed public employees and shall
13 enjoy all rights granted public employees by law, including
14 the protection granted public employees by law, including the
15 protection afforded by part VII of chapter 112, Florida
16 Statutes.

17 Section 14. Chapter 90-450, Laws of Florida, is
18 repealed.

19 Section 15. This act shall take effect upon becoming a
20 law.

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