

By Senator King

8-1532-00

See HB 1799

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 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Employees of Flagler County Sheriff;
24 applicability of act; permanent status of employees;
25 administration.--

26 (1) APPLICABILITY.--The provisions of this act shall
27 apply to all commissioned and noncommissioned persons in the
28 employ of the Office of the Flagler County Sheriff, including
29 deputy sheriffs. The provisions of this act shall not apply to
30 the Sheriff or to special deputy sheriffs appointed pursuant
31 to section 30.09(4), Florida Statutes, members of the

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

11 (2) PERMANENT STATUS; CAUSE FOR SUSPENSION OR
12 DISMISSAL.--

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

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

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

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

1 another position for which the employee is qualified within
2 the Office of the Sheriff. Actions taken pursuant to this
3 subsection affecting the Chief Deputy, Legal Advisor,
4 Director, and Administrative Assistant positions shall not be
5 appealable under Section 2.

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

12 Section 2. Career Service Appeals Boards; creation;
13 membership; duties.--

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

27 (2) MEMBERSHIP OF BOARDS.--When needed upon the call
28 of the Sheriff, or upon the filing of an appeal, an ad hoc
29 Career Service Appeals Board shall be appointed. The
30 membership of each such Board shall consist of five law
31 enforcement officers who are assigned within Flagler County.

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

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

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

23 (b) A Career Service Appeals Board shall be selected
24 and must meet for purposes of hearing the appeal no later than
25 30 working days after receipt of an appeal by the Sheriff.

26 (c) During any hearing, the employee filing the appeal
27 shall have the right to be heard publicly, to be represented
28 by a person of his or her choice, and to present any
29 evidential facts in his or her behalf, and during such
30 hearings the technical rules of evidence shall not apply. The
31 Board shall, in the conduct of such hearings, have the power

1 to administer oaths, issue subpoenas, compel the attendance of
2 witnesses, and require the production of books, records,
3 accounts, papers, documents, and testimony. In case of refusal
4 of any person to comply with an order of the Board or a
5 subpoena issued by the Board, or upon the refusal of a witness
6 to testify on any matter regarding which that witness may be
7 lawfully interrogated, a County Judge of the county in which
8 the person refusing to comply or testify resides, upon the
9 application of a member of the Board, shall compel obedience
10 by proceeding as for contempt. Each witness who appears in
11 obedience to a subpoena before the Board shall receive
12 compensation for attendance fees and mileage as provided for
13 witnesses in civil cases in the courts of this state. Such
14 payment shall be made by the party calling the witness; except
15 that, with respect to any witnesses called by the Board,
16 payments shall be made by the Sheriff upon presentation of
17 proper vouchers and approval by three members of the Board.

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

29 (e) The decision of the Board shall be final and
30 binding on the employee and the Sheriff, however, this shall
31 not limit or circumvent the right of the Sheriff or

1 sheriff-appointee to further proceedings in a court of
2 competent jurisdiction.

3 Section 3. Complaints.--

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

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

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

15 (a) Unconstitutional;

16 (b) Unlawful; or

17 (c) A violation of policy/procedure.

18 (4) PROCEDURE.--

19
20 Complaints

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

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

27 Criminal complaints will be forwarded to the Division
28 Commander immediately. The Chief Deputy and the Sheriff will
29 be advised and an investigator will be assigned. This will be
30 an internal investigation.

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

5 Receiving Complaints

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

13
14 Harassment of Complainants

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

19
20 Duty Status of Deputy/Employee

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

24
25 Duty to Reply/Cooperate

26 Deputies and employees of the Flagler County Sheriff's
27 Office will answer fully all questions which a supervisor may
28 ask regarding performance of official duties and will
29 cooperate with any internal investigation. Before an interview
30 with a deputy or employee is conducted, the "Garrity Rule"

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1 will be read to the deputy/employee. The deputy/employee will
2 sign the sheet containing the "Garrity Rule" that was read.

3
4 GARRITY RULE

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

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

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

30
31 Complaints of Criminal Activity

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

6
7 Initial Complaint Non-Criminal

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

23
24 Confidentiality

25 Section 112.533(3), Florida Statutes, states that any
26 person who is a participant in an internal investigation
27 including the complainant, the subject of the investigation,
28 the investigator conducting the investigation, and any
29 witnesses in the investigation, who willfully discloses any
30 information obtained pursuant to the agency's investigation,
31 including, but not limited, to the identity of the employee

1 under investigation, the nature of the questions asked,
2 information revealed or documents furnished in connection with
3 a confidential internal investigation of an agency, before
4 such complaint, document, action, or proceeding becomes a
5 public record, as provided in the section is guilty of a
6 misdemeanor of the first degree, punishable as provided in
7 section 775.082, Florida Statutes.

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

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

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

17
18 Internal Investigations

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

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

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

29 At the time an internal investigation is initiated, a
30 complainant notification form will be completed and given or
31 mailed to the complainants.

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

9
10 Final Disposition

11 The Chief Deputy shall submit to the Sheriff a written
12 summary of the internal investigation and include one of the
13 following recommendations:

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

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

23 a. NOT INVOLVED.--The investigation disclosed that the
24 named employee was not involved.

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

29 c. FALSE.--The allegation is false; the alleged
30 incident never took place.

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

5
6 Upon conclusion of the investigation and final disposition
7 rendered, the affected employee will be given a memo informing
8 him or her of the disposition of the case.

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

12
13 CJSTC-78 FORM

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

21 Section 4. Promotional testing.--Promotional
22 eligibility tests will be held as needed.

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

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

30 (3) Each member/appointee who has applied to go before
31 an oral review board will be required to have taken a written

1 examination and met the minimum passing score of 75 percent to
2 be eligible for an interview.

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

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

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

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

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

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

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

28 Section 7. Promotional oral review board.--All
29 eligible members/appointees applying for the position shall
30 have the right to attend an oral review board on the date and
31 at the time selected by the board.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) One Captain to be selected by the Sheriff.
2 (b) One Lieutenant to be selected from any other
3 division by the majority organization of the department.
4 (c) These two members will select a Sergeant from the
5 division in which the vacancy occurs.
6 (d) These three members will select a member/appointee
7 from any rank from any division.
8 (e) These four members will select an individual from
9 a list of qualified persons furnished by the Sheriff.
10 (3) All new ranks shall attend an oral review board as
11 outlined in this act, with proper rank selections determined
12 in the same manner as for Sergeant or Lieutenant.
13 Section 9. Final selection for promotion.--The final
14 selection for the promotion will be made by the Sheriff from
15 the top three applicants recommended by the oral review board.
16 Section 10. Promotional eligibility list.--
17 (1) Individuals who have passed the written portion of
18 the examination will remain on the promotional eligibility
19 list for a period of 2 years. During this time, they will not
20 be required to pass another written examination.
21 (2) Individuals who have been placed on the "top
22 three" list by an oral review board, but not selected for
23 promotion, will remain eligible for similar promotion for a
24 period of 3 months.
25 Section 11. Minimum requirements for
26 promotion.--Minimum requirements for ranks currently
27 established in accordance with the Career Service Act are as
28 follows:
29 (1) To be eligible for promotion to the rank of
30 Sergeant, an applicant:
31

1 (a) Shall be certified by minimum state law
2 requirements, if applicable, in the field in which the vacancy
3 occurs.

4 (b) Shall meet departmental guidelines for specialized
5 functions.

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

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

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

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

17 (a) Shall have held the minimum rank of Sergeant for
18 12 months after probation.

19 (b) Shall be certified by minimum state law
20 requirements, if applicable, in the field in which the vacancy
21 occurs and shall meet agency guidelines for specialized
22 functions.

23 (c) If the position is certified, the applicant must
24 have met qualification standards on the firearms range within
25 the previous 12 months.

26 (d) In the event an insufficient number of eligible
27 persons meet the guidelines set forth in paragraphs (a)-(c),
28 the applications may be opened up to next lower rank
29 requirements.

30 Section 12. All commissioned and noncommissioned
31 persons in the employ of the Office of the Sheriff of Flagler

1 County on the effective date of this act who have served for a
2 period of 1 calendar year or more as of such date shall be
3 permanent employees subject to the provisions of this act. All
4 other employees shall become permanent employees subject to
5 the provisions of this act upon reaching their 1-calendar-year
6 service anniversary date.

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

13 Section 14. This act shall take effect upon becoming a
14 law.

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