

By Representative Atwater

1 A bill to be entitled
2 An act relating to Palm Beach County; amending
3 chapter 93-367, Laws of Florida, as amended;
4 revising procedures for appeal of disciplinary
5 actions and complaints against employees of the
6 Sheriff of Palm Beach County; revising
7 provisions for the appointment of boards to
8 hear appeals and procedures with respect
9 thereto; revising provisions relating to
10 monetary emoluments based on performance;
11 extending collective bargaining status to
12 deputy sheriffs; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Section 2 of chapter 93-367, Laws of
17 Florida, as amended by chapter 98-517, Laws of Florida, is
18 amended to read:

19 Section 2. Hearing review boards; functions;
20 membership; procedures.--

21 (1) FUNCTION OF BOARDS.--Ad hoc hearing review boards
22 shall be appointed as provided herein for the purpose of
23 hearing appeals of career service employees arising from
24 personnel actions brought under the rules, regulations, or
25 policies of the Office of Sheriff which result in dismissal,
26 suspension, demotion, or reduction in pay. Lateral transfers,
27 shift changes, reprimands, oral or written, and suspensions of
28 2 working days or less shall not be applicable to the board;
29 however, no more than one such action of suspension may occur
30 within 1 calendar year without the right to appeal. The scope
31 of the review board is limited to disciplinary proceedings and

1 termination actions. Review boards have the authority to
2 conduct hearings and make findings of fact and recommendations
3 to the Sheriff. The Sheriff shall ~~not~~ be bound by the findings
4 or recommendations of the majority vote of the board ~~such~~
5 ~~boards, but will consider them in making his final decision.~~
6 There shall be no further appeals ~~Except in the case of~~
7 ~~termination, the decision of the Sheriff is final and not~~
8 ~~appealable within the office.~~

9 (2) MEMBERSHIP AND RESPONSIBILITY OF BOARD.--

10 (a) There shall be a fixed pool of 20 board members
11 and 6 alternate members mutually agreed upon by the Sheriff
12 and any labor organization representing the employees of the
13 office of the Sheriff. If any group of employees has a
14 certified bargaining agent, the pool of hearing review board
15 members and six alternates for that certified bargaining unit
16 shall be mutually agreed upon by the Sheriff and the
17 collective bargaining representative for said bargaining unit.
18 The pool of board members shall be selected as follows: the
19 Sheriff shall produce a list of 30 potential board members for
20 the law-enforcement discipline, 30 potential board members for
21 the corrections discipline, and 30 potential board members for
22 the administrative employees. The bargaining agent/labor
23 organization shall produce a list of 30 potential board
24 members for the law-enforcement discipline, 30 potential board
25 members for the corrections discipline, and 30 potential board
26 members for the administrative employees. In addition, the
27 Sheriff and the bargaining agent shall each produce a list of
28 eight potential chairpersons above the rank of Lieutenant (or
29 sworn equivalent), but no higher than Major (or sworn
30 equivalent), or the civilian/nonsworn equivalent, for each
31 employee discipline as stated herein. Both the Sheriff and the

1 certified bargaining agents of the employees/appointees shall
2 then strike from the other's list 20 names with which they do
3 not concur, in order to arrive at the appropriate hearing
4 review board number of 20. Both the Sheriff and the bargaining
5 agent shall then strike four names from the other's list of
6 eight potential chairpersons, arriving at a final list of
7 eight. The Sheriff and the bargaining agent shall then each
8 add three names to the list of hearing review board members,
9 from the stricken names, who shall serve as the six
10 alternates. All those chosen as board members, chairpersons,
11 and alternates shall serve a term of 3 years; however, this
12 does not prevent their being reappointed to the board for
13 consecutive terms. If for any reason the hearing review board
14 member pool should be reduced to 18, the Sheriff and the
15 employee bargaining agent shall each choose a replacement
16 member from the list of alternates. If for any reason the list
17 of chairpersons should be reduced to six, the Sheriff and the
18 bargaining agent shall each choose one person from the other's
19 list of those stricken from the original pool of names. Those
20 two persons shall then assume the vacant chairperson
21 positions.~~The Hearing Review Board shall consist of five~~
22 ~~members of the Office of the Sheriff. The Sheriff shall~~
23 ~~select two members, with at least one member above the rank of~~
24 ~~Lieutenant to serve as the board chairperson. Two members~~
25 ~~shall be selected by the employee requesting the hearing. The~~
26 ~~fifth member shall be selected by the other four members.~~
27 ~~Each selected member shall have the right to decline to serve.~~
28 (b) The hearing review board shall consist of five
29 members from the same discipline as the aggrieved employee.
30 The Sheriff shall select 2 members of the board, 1 from the
31 established list of the 20 mutually agreed-upon hearing review

1 board members and 1 from the established list of 8
2 chairpersons. The employee requesting the hearing shall select
3 2 members from the established list of 20 hearing review board
4 members. The four selected board members shall then select the
5 fifth board member from the existing mutually agreed-upon
6 list. If the four selected board members cannot agree upon the
7 fifth person, one name from the existing list shall be
8 randomly selected by computer.

9
10 At no time shall any member of a hearing review board sit on a
11 consecutive hearing review board.

12 (c) All members of the hearing review board shall be
13 selected on the basis of fairness, objectivity, and
14 impartiality. To be named as a potential hearing review board
15 member, an employee must have at least 3 years' experience
16 with the office of the Sheriff, must have received at least
17 average evaluations for the previous 2 years, and must have no
18 discipline above an informal educational counseling form.
19 Written reprimands or higher levels of discipline occurring
20 within the prior 2 years shall disqualify an employee from
21 consideration as a hearing review board pool member. Every
22 employee of the office of Sheriff shall have the right to
23 decline to be named as a potential pool member designee. The
24 Sheriff shall notify the certified bargaining agent of the
25 approved employee pool members as outlined in the
26 above-referenced selection process.

27 (d) No member of the board shall be above the rank of
28 Major or its civilian equivalent, nor shall any member of the
29 board be on probationary status.

30 (e) The board shall have no investigative powers and
31 shall function in the capacity of a fact finder in an effort

1 to arrive at a fair and equitable recommendation in all
2 matters brought before it. Selected members shall have no
3 involvement with the issues under consideration. Membership
4 on of the board is not mandatory ~~voluntary and without~~
5 ~~remuneration.~~ However, all members shall serve on an on-duty
6 status. ~~Members shall will~~ not discuss matters to be heard
7 before the board until the board convenes.

8 ~~(f)(c)~~ The hearing review board chairperson shall have
9 the responsibility to:

10 1. Chair all meetings utilizing parliamentary rules of
11 order.

12 2. Convene an organizational meeting of the board to
13 select a fifth member.

14 3. Request that the employee provide the names of any
15 witnesses and a short statement about what that witness is
16 expected to testify.

17 4. Schedule and provide written notification of all
18 meetings to the Internal Affairs Bureau, witnesses, board
19 members, and employees.

20 5. Provide copies of all charges to board members.

21 6. Ensure compliance with hearing procedures.

22 7. Request that the employee furnish copies of all
23 exhibits to be introduced in the hearing.

24 (3) PROCEDURE WITH RESPECT TO HEARINGS.--

25 (a) Any career service employee may request a hearing
26 before any ~~the~~ hearing review board for any appealable
27 disciplinary action of his or her superiors which adversely
28 affects his or her employment.

29 (b) Requests for a hearing shall be made in writing to
30 the employee's immediate supervisor within 10 working days
31 after ~~of~~ notice of appealable disciplinary action. The

1 request shall contain a brief statement of the matters to be
2 considered by the board and the names of the two employees
3 selected to be members of the board.

4 (c) The immediate supervisor shall forward the hearing
5 request to the Sheriff and the appropriate division commander
6 without delay. The hearing review board shall ~~will~~ be
7 impaneled and a hearing date shall ~~will~~ be scheduled by the
8 Sheriff within 10 working days after ~~of~~ receipt of the hearing
9 request.

10 (d) Legal questions or case law must be submitted to
11 the chairperson 10 days before the board convenes.

12 (e) The employee or his or her representative has the
13 right to be present, to present his or her case, to explain or
14 defend, and to cross-examine all witnesses and complainants,
15 provided that neither the employee nor his or her
16 representative shall disrupt the proceedings.

17 (f) The employee has the right to be represented
18 during the hearing by counsel or other representative of
19 choice, who shall serve as an observer and advisor to the
20 employee. ~~The representative may not actively participate in~~
21 the proceedings.

22 (g) The employee shall not discuss the circumstances
23 of the matter being brought before the board except through
24 the chairperson.

25 (h) All witnesses shall be notified in writing by the
26 chairperson of the board of the date and time of the hearing.
27 Employee witnesses shall be notified through the appropriate
28 chain of command. All employee witnesses notified by the
29 chairperson of the board shall be required to appear to
30 testify before the board. ~~Review Board through the appropriate~~
31 ~~chain of command by the chairperson of the board. Written~~

1 ~~statements from nonemployee witnesses should be used in lieu~~
2 ~~of personal appearance. Nonemployee witnesses should only be~~
3 ~~called to appear before the board at the request of the board.~~

4 (4) CONDUCT OF HEARING.--

5 (a) Hearing review boards are designed to determine
6 the truth while maintaining an atmosphere of fundamental
7 fairness and shall not be controlled by civil or criminal
8 rules of procedure.

9 (b) Board members are authorized to receive verbal or
10 written testimony concerning any matter considered relevant by
11 the board. The board may review any record, including, but
12 not limited to, performance evaluations and disciplinary
13 files.

14 (c) Employees and their representatives shall have an
15 opportunity to present evidence, conduct cross-examination,
16 and submit rebuttal evidence.

17 (5) FINDINGS AND RECOMMENDATIONS OF THE REVIEW
18 BOARD.--

19 (a) Each complaint shall receive a separate finding
20 and recommendation by the majority of the board. Each finding
21 shall consider the seriousness of the complaint, any
22 extenuating circumstances, the tenure of the employee, and the
23 employee's past conduct record. The board shall submit to the
24 Sheriff its written findings of fact and recommendations
25 within 5 days after the hearing.

26 (b) The board may place before the Sheriff any
27 recommended disposition of the charges before it that the
28 board believes may be of benefit to the office of the Sheriff,
29 including, but not limited to: no disciplinary action;oral
30 or verbal reprimand; suspension; reduction of rank;
31 termination of employment; sustaining or reversing the

1 original policy violation charged ~~decision~~; or recommending a
2 more severe disposition.

3 ~~(c) The Sheriff will review the findings and~~
4 ~~recommendations of the board and may either approve or~~
5 ~~disapprove them. The Sheriff has the sole discretion to~~
6 ~~overrule the findings of the board.~~

7 ~~(c)(d)~~ The Sheriff shall ~~will~~ notify the employee of
8 the final results of the hearing review board and the reasons
9 therefor.

10 ~~(d)(e)~~ In the event the employee's discipline is
11 reduced, the employee shall be returned to work ~~employee is~~
12 ~~exonerated, the employee shall be reinstated~~ without prejudice
13 or penalty.

14 ~~(e)(f)~~ When summary discipline is imposed by any
15 supervisor, the Sheriff may order a board to convene and
16 review the action of the supervisor.

17 ~~(g) Except for termination, there shall be no further~~
18 ~~appeals within the Office of the Sheriff. Terminations may be~~
19 ~~appealed to the Termination Review Board.~~

20 ~~(f)(h)~~ All proceedings of the board shall be recorded
21 and retained by the Internal Affairs Bureau. Rest periods
22 shall be duly noted and there shall be no unrecorded questions
23 or statements by any parties or witnesses. Recordings shall
24 be properly marked and identified prior to filing.

25 ~~(g)(i)~~ All associated reports, paperwork, and
26 personnel action taken as a result of the hearing review board
27 shall be retained by the Internal Affairs Bureau.

28 (6) CRIMINAL CHARGES ~~TERMINATION REVIEW BOARD~~.--

29 ~~(a) In the event of termination, the employee may~~
30 ~~request that the termination decision be resubmitted to the~~
31

1 ~~board which originally heard the appeal within 10 days of~~
2 ~~notice of termination.~~

3 ~~(b) Upon review of their original recommendation and~~
4 ~~the Sheriff's rationale for termination, the board may uphold~~
5 ~~or reverse the decision of the Sheriff, provided that any~~
6 ~~reversal shall require at least four members of the board~~
7 ~~voting to reverse. The reversal shall be binding upon the~~
8 ~~Sheriff.~~

9 ~~(c)~~ In the event the termination is based upon
10 criminal charges, the charges must be disposed of prior to a
11 determination by the hearing ~~Termination~~ review board.

12 Section 2. Section 3 of chapter 93-367, Laws of
13 Florida, as amended by chapters 96-450, 97-325, and 98-517,
14 Laws of Florida, is amended to read:

15 Section 3. Preservation of employment benefits and
16 emoluments.--

17 (1) The provisions of this section shall apply to all
18 certified and noncertified persons in the employ of the
19 Sheriff of Palm Beach County, including deputy sheriffs, as
20 specified in section 1(2)(a) of chapter 93-367, Laws of
21 Florida, except that this section shall not apply to those
22 employees beyond the rank of Captain or its civilian
23 equivalent.

24 (2) Existing employer-paid benefits and emoluments
25 with regard to the pay plan, longevity plan,
26 tuition-reimbursement plan, career-path program, health
27 insurance, life insurance, and disability benefits may not be
28 substantially reduced, except in the case of exigent
29 operational necessity, ~~except all moneys which would have been~~
30 ~~allocated to longevity pay for those at the rank of captain or~~
31 ~~its civilian equivalent shall be disbursed in accordance with~~

1 ~~objective performance related criteria. The objective~~
2 ~~performance related criteria shall take into consideration~~
3 ~~input from a committee including those at the rank of captain~~
4 ~~or its civilian equivalent.~~

5 (3) Nothing in this act shall preclude the Sheriff
6 from enhancing those benefit and emoluments for employees ~~and~~
7 ~~appointees~~ of the Palm Beach County Sheriff's Office.

8 (4) Nothing in this act shall be construed as
9 affecting the budget-making authority and power of the Palm
10 Beach County Board of County Commissioners. Any contractual
11 obligations entered into by the Sheriff's office as a result
12 of the right to collectively bargain shall not be used in any
13 appeal or challenge by the Sheriff against the yearly lump sum
14 budget allocation approved by the board of county
15 commissioners for the Sheriff's total annual budget.

16 Section 3. Section 4 is added to chapter 93-367, Laws
17 of Florida, to read:

18 Section 4. Collective bargaining status.--

19 (1) It is the intent of this act that all full-time
20 deputy sheriffs, as defined in this act, shall be deemed
21 "public employees" as defined in part II of chapter 447,
22 Florida Statutes.

23 (2) Deputy sheriffs, in their status as public
24 employees, shall be entitled to all rights, privileges, and
25 obligations granted by law, including the right to organize
26 and collectively bargain, pursuant to part II of chapter 447,
27 Florida Statutes.

28 Section 4. This act shall take effect upon becoming a
29 law.

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