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A bill to be entitled

An act relating to Palm Beach County; amending chapter 93-367, Laws of Florida, as amended; revising provisions relating to employees of the Palm Beach County Sheriff; revising the definition of "career service employee" and providing restrictions for reduction in rank of certain employees; providing applicability; specifying rights of such employees; revising procedures for appeal of disciplinary actions and complaints against employees; revising provisions for the appointment of boards to hear appeals and procedures with respect thereto; revising provisions relating to monetary emoluments based on performance; providing an effective date.

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

Section 1. Chapter 93-367, Laws of Florida, as amended, is amended to read:

Section 1. Employees of the Palm Beach County Sheriff; applicability of act; permanent status of employees; transition; administration.--

(1) CAREER SERVICE EMPLOYEES.--The term "career service employee" as used in this act shall mean those employees hired at the entry level (nonsupervisory, nonmanagement position) who have successfully completed their probationary period. Employees who are hired directly into supervisory or management positions below the rank of Major, or its civilian equivalent, must complete 10 years of full-time service to be considered a career service employee. Colonels, Majors, Directors, or their

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30 executive staff equivalents promoted through the ranks (hired at
 31 entry level and successfully completed probationary period as a
 32 nonsupervisory, nonmanagement employee, and successfully
 33 completed the probationary period in all successive promotions
 34 through ranks in which the employee served) shall be considered
 35 career service employees, and during any transition may only be
 36 reduced to the rank of Captain or its civilian equivalent. The
 37 sworn officer status and Florida Retirement System Special Risk
 38 status of sworn staff may not be affected through actions taken
 39 pursuant to this section. Colonels, Majors, Directors, Assistant
 40 Directors, or their executive staff equivalents directly
 41 appointed by the Sheriff laterally to those ranks must have
 42 completed 10 years of service in the appointed rank to be
 43 considered career service employees. The Undersheriff shall at
 44 no time be considered a career service employee. Career service
 45 employees below the rank of Major or its civilian equivalent
 46 shall not be subject to dismissal or demotion without just
 47 cause.

48 (2) APPLICABILITY.--

49 (a) The provisions of this act shall apply to all
 50 certified and noncertified persons in the employ of the Sheriff
 51 of Palm Beach County, including deputy sheriffs. The provisions
 52 of this act do not apply to the Sheriff, Undersheriff, special
 53 deputies appointed pursuant to s. 30.09(4), Florida Statutes,
 54 members of the Sheriff's posse, reserve units or persons
 55 appointed as part-time deputy sheriffs, as defined by the
 56 Criminal Justice Standards and Training Commission, unless any
 57 such person is also employed full time by the Office of the
 58 Sheriff. As used in this act, the terms "employee," "employ,"

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59 and "employment" refer to all persons, whether employed or
60 appointed, to whom the act applies.

61 (b) Nothing in this act shall be construed as affecting
62 the budget-making authority and power of the Palm Beach County
63 Board of County Commissioners.

64 (c) Approved and authorized reductions in staff shall be
65 accomplished on a seniority basis within the Office of the
66 Sheriff.

67 (3) CAREER SERVICE STATUS; CAUSE FOR SUSPENSION OR
68 DISMISSAL.--

69 (a) When an employee of the Sheriff to whom the provisions
70 of this act apply has served in such employment for a period of
71 1 calendar year from the date the employee first enters the
72 Sheriff's orientation program or the beginning of field
73 training, whichever comes first, such employee shall have
74 attained career service status in the Office of the Sheriff;
75 however, if an employee is placed on disciplinary probation for
76 a period of 6 months or more or is terminated and rehired at a
77 later date, the employee shall be required to complete 1
78 calendar year of service from the date of the disciplinary
79 action before being granted the right to appeal as provided in
80 section 2. Any employee who is required to serve a probationary
81 period attendant to a promotion shall retain permanent status in
82 the Office of the Sheriff, but may be returned to his or her
83 prior rank during such probationary period without the right of
84 appeal as provided in section 2. For the purpose of determining
85 career service status as defined by the provisions of this act,
86 all time in the employment of the Office of the Sheriff while in
87 the police academy or other comparable training for

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88 certification as a sworn officer or deputy sheriff shall not be
89 counted or considered in any manner in determining whether the
90 employee has attained 1 calendar year of minimum service for
91 career service protection.

92 (b) Any employee who has achieved career service status in
93 the Office of the Sheriff may only be suspended or dismissed for
94 cause, provided that, prior to such action, the employee has
95 been furnished written notice of the proposed action and has
96 been offered an opportunity to respond to the reasons for the
97 suspension or dismissal. In extraordinary situations, however,
98 such as when delay could result in damage or injury, an employee
99 may be suspended or dismissed immediately and then provided
100 notice thereof and reasons therefor within 48 hours, or as soon
101 as is practical if circumstances surrounding such extraordinary
102 situation makes notice within 48 hours impractical. Cause for
103 suspension or dismissal includes, but is not limited to,
104 negligence, inefficiency, or inability to perform assigned
105 duties, insubordination, violation of provisions of law or
106 office rules, conduct unbecoming a public employee, misconduct,
107 proof of alcohol abuse, proof of abuse of prescription drugs, or
108 proof of use of illegal drugs. Cause for suspension or dismissal
109 also includes, but is not limited to, adjudication of guilt by a
110 court of competent jurisdiction, a plea of guilty or of nolo
111 contendere, or a verdict of guilty when adjudication of guilt is
112 withheld and the accused is placed on probation, with respect to
113 any felony, misdemeanor, or major traffic infraction. The filing
114 by a law enforcement agency of felony, misdemeanor, or major
115 traffic infraction charges against an employee or an arrest of

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116 an employee for such infractions constitutes cause for
 117 suspension.

118 (4) TRANSITION OF EMPLOYEES.--

119 (a) When a newly elected or appointed Sheriff assumes
 120 office, the new Sheriff shall continue the employment of all
 121 currently employed career service personnel unless cause for
 122 dismissal, as provided herein, exists. The incoming Sheriff may
 123 maintain the current staff personnel assigned to the position of
 124 Undersheriff, Colonel, Major, Director, or their executive staff
 125 equivalents. However, in the event that the incoming Sheriff
 126 fills such positions with new personnel, the current occupants
 127 of those positions who are career service employees shall be
 128 reduced to no lower than the rank of Captain, or its equivalent,
 129 which rank shall be permanent unless later reduced by
 130 disciplinary demotion or increased through subsequent promotion.
 131 Their regular base salaries may be reduced ~~accordingly~~. Actions
 132 taken pursuant to this subsection affecting ~~the Undersheriff,~~
 133 Colonels, Majors, Directors, or their executive staff
 134 equivalents shall not be appealable under section 2.

135 (b) Dismissals or demotions pursuant to across-the-board
 136 actions directed by the Palm Beach County Board of County
 137 Commissioners, resulting from county fiscal impacts, shall not
 138 be appealable under the provisions of section 2.

139 (5) ADMINISTRATION.--The Sheriff shall ~~have the full~~
 140 ~~authority to~~ adopt such rules, regulations, and procedures
 141 necessary for the administration and implementation of this act.
 142 The rules, regulations, and procedures shall meet or exceed
 143 approved Standards of Accreditation for Law Enforcement
 144 Agencies.

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145 Section 2. Hearing review boards; function; membership;
 146 procedures.--

147 (1) FUNCTION OF BOARDS.--Ad hoc hearing review boards
 148 shall be appointed as provided herein for the purpose of hearing
 149 appeals of career service employees arising from personnel
 150 actions brought under the rules, regulations, or policies of the
 151 Office of the Sheriff which result in dismissal, suspension,
 152 demotion, or reduction in pay. Lateral transfers, shift changes,
 153 reprimands, oral or written, and suspensions of 2 working days
 154 or less shall not be appealable to the board; however, no more
 155 than one such action of suspension may occur within 1 calendar
 156 year without the right to appeal. The scope of the review board
 157 is limited to disciplinary proceedings and termination actions.
 158 Review boards have the authority to conduct hearings and make
 159 findings of fact and recommendations to the Sheriff. The Sheriff
 160 shall not be bound by the findings or recommendations of such
 161 boards, but will consider them in making his or her final
 162 decision. Except in the case of termination, the decision of the
 163 Sheriff is final and not appealable within the office.

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

165 (a) The Hearing Review Board shall consist of five members
 166 of the Office of the Sheriff. The Sheriff shall select two
 167 members, with at least one member above the rank of Lieutenant
 168 to serve as the board chairperson. Two members shall be selected
 169 by the employee requesting the hearing. The fifth member shall
 170 be selected by the other four members. Each selected member
 171 shall have the right to decline to serve.

172 (b) All members of the Hearing Review Board shall be
 173 selected on the basis of fairness, objectivity, and

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174 impartiality. The board shall have no investigative powers and
 175 shall function in the capacity of a fact finder in an effort to
 176 arrive at a fair and equitable recommendation in all matters
 177 brought before it. Selected members shall have no involvement
 178 with the issues under consideration. Membership on ~~of~~ the board
 179 is not mandatory ~~voluntary and without remuneration~~. Members
 180 will not discuss matters to be heard before the board until the
 181 board convenes and then may only discuss said matters during the
 182 officially convened sessions of the board.

183 (c) The Hearing Review Board chairperson shall have the
 184 responsibility to:

185 1. Chair all meetings utilizing parliamentary rules of
 186 order.

187 2. Convene an organizational meeting of the board to
 188 select a fifth member.

189 3. Request that the employee provide the names of any
 190 witnesses.

191 4. Schedule and provide written notification of all
 192 meetings to the Internal Affairs Bureau, witnesses, board
 193 members, and employees.

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

195 6. Ensure compliance with hearing procedures.

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

197 (a) Any career service employee may request a hearing
 198 before the Hearing Review Board for any appealable disciplinary
 199 action of his or her superiors which adversely affects his or
 200 her employment.

201 (b) Requests for a hearing shall be made in writing to the
 202 employee's immediate supervisor within 10 working days of notice

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203 of appealable disciplinary action. The request shall contain a
 204 brief statement of the matters to be considered by the board and
 205 the names of the two employees selected to be members of the
 206 board.

207 (c) The immediate supervisor shall forward the hearing
 208 request to the Sheriff and the appropriate division commander
 209 without delay. The Hearing Review Board will be impaneled and a
 210 hearing date will be scheduled by the Sheriff within 10 working
 211 days of receipt.

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

214 (e) The employee and his or her representative have ~~has~~
 215 the right to be present, to present the employee's ~~his~~ case, to
 216 explain or defend, and to cross examine all witnesses and
 217 complainants, provided that neither the employee nor his or her
 218 representative shall disrupt the proceedings. The qualification
 219 of disruptive conduct shall be in the exclusive determination of
 220 the chairperson of the Hearing Review Board.

221 (f) The employee has the right to be represented during
 222 the hearing by counsel or other representative of choice ~~who~~
 223 ~~shall serve as an observer and advisor to the employee. If the~~
 224 employee elects to be represented by counsel or other
 225 representative, the employee must be present throughout the
 226 hearing and must ~~The representative may not~~ actively participate
 227 in the proceedings.

228 (g) The employee shall not discuss the circumstances of
 229 the matter being brought before the board except through the
 230 chairperson.

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231 (h) All witnesses shall be notified in writing of the date
 232 and time of the Hearing Review Board through the appropriate
 233 chain of command by the chairperson of the board. Written
 234 statements from nonemployee witnesses should be used in lieu of
 235 personal appearance. Nonemployee witnesses should only be called
 236 to appear before the board at the request of the board.

237 (4) CONDUCT OF HEARING.--

238 (a) Hearing review boards are designed to determine the
 239 truth while maintaining an atmosphere of fundamental fairness
 240 and shall not be controlled by civil or criminal rules of
 241 procedure.

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

246 (c) Employees and their representatives shall have an
 247 opportunity to present evidence, conduct cross examination, ~~and~~
 248 submit rebuttal evidence, and present opening and closing
 249 statements.

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

251 (a) Each complaint shall receive a separate finding and
 252 recommendation by the majority of the board. Each finding shall
 253 consider the seriousness of the complaint, any extenuating
 254 circumstances, the tenure of the employee, and past conduct
 255 record. The board shall submit to the Sheriff its written
 256 findings of fact and recommendations within 5 days after the
 257 hearing.

258 (b) The board may place before the Sheriff any recommended
 259 disposition that the board believes may be of benefit to the

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260 Office of the Sheriff, including, but not limited to: oral or
 261 verbal reprimand; suspension; reduction of rank; termination of
 262 employment; sustaining or reversing the original decision; or
 263 recommending a more severe disposition.

264 (c) The Sheriff will review the findings and
 265 recommendations of the board and may either approve or
 266 disapprove them. The Sheriff has the sole discretion to overrule
 267 the findings of the board.

268 (d) The Sheriff will notify the employee of the final
 269 results of the Hearing Review Board and the reasons therefor.

270 (e) In the event the employee is exonerated, the employee
 271 shall be reinstated without prejudice or penalty.

272 (f) When summary discipline is imposed by any supervisor,
 273 the Sheriff may order a board to convene and review the action
 274 of the supervisor.

275 (g) Except for termination, there shall be no further
 276 appeals within the Office of the Sheriff. Terminations may be
 277 appealed to the Termination Review Board.

278 (h) All proceedings of the board shall be recorded and
 279 retained by the Internal Affairs Bureau. Rest periods shall be
 280 duly noted and there shall be no unrecorded questions or
 281 statements by any parties or witnesses. Recordings shall be
 282 properly marked and identified prior to filing.

283 (i) All associated reports, paperwork, and personnel
 284 action taken as a result of the Hearing Review Board shall be
 285 retained by the Internal Affairs Bureau.

286 (6) TERMINATION REVIEW BOARD.--

287 (a) In the event of termination, the employee may request
 288 that the termination decision be resubmitted to the board which

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289 originally heard the appeal within 10 days of notice of
 290 termination.

291 (b) Upon review of their original recommendation and the
 292 Sheriff's rationale for termination, the board may uphold or
 293 reverse the decision of the Sheriff, provided that any reversal
 294 shall require at least four members of the board voting to
 295 reverse. The reversal shall be binding upon the Sheriff, who
 296 shall reinstate the employee within 72 hours of the board's
 297 reversal. The board's original findings and decisions regarding
 298 discipline shall also be binding upon the Sheriff.

299 (c) In the event the termination is based upon criminal
 300 charges, the charges must be disposed of prior to a
 301 determination by the Termination Review Board.

302 Section 3. Preservation of employment benefits and
 303 emoluments.--

304 (1) The provisions of this section shall apply to all
 305 certified and noncertified persons in the employ of the Sheriff
 306 of Palm Beach County, including deputy sheriffs, as specified in
 307 section 1(2)(a) ~~of chapter 93-367, Laws of Florida~~, except that
 308 this section shall not apply to those employees beyond the rank
 309 of Captain or its civilian equivalent.

310 (2) Existing employer-paid benefits and emoluments for
 311 active and retired employees with regard to the pay plan,
 312 longevity plan, tuition-reimbursement plan, career-path program,
 313 health insurance, life insurance, and disability benefits may
 314 not be ~~substantially~~ reduced, except in the case of exigent
 315 operational necessity, ~~except all moneys which would have been~~
 316 ~~allocated to longevity pay for those at the rank of captain or~~
 317 ~~its civilian equivalent shall be disbursed in accordance with~~

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318 ~~objective performance-related criteria. The objective~~
319 ~~performance-related criteria shall take into consideration input~~
320 ~~from a committee including those at the rank of captain or its~~
321 ~~civilian equivalent.~~

322 (3) Nothing in this act shall preclude the Sheriff from
323 enhancing those benefits and emoluments for active and retired
324 employees ~~and appointees~~ of the Palm Beach County Sheriff's
325 Office.

326 (4) Nothing in this act shall be construed as affecting
327 the budget-making authority and power of the Palm Beach County
328 Board of County Commissioners.

329 Section 2. This act shall take effect upon becoming a law.