

CHAMBER ACTION

1 The Committee on Local Government & Veterans' Affairs recommends
2 the following:

3
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to Palm Beach County; amending chapter 93-
8 367, Laws of Florida, as amended; revising provisions
9 relating to employees of the Palm Beach County Sheriff;
10 revising the definition of "career service employee" and
11 providing restrictions for reduction in rank of certain
12 employees; providing applicability; specifying rights of
13 such employees; revising procedures for appeal of
14 disciplinary actions and complaints against employees;
15 revising provisions for the appointment of boards to hear
16 appeals and procedures with respect thereto; revising
17 provisions relating to monetary emoluments based on
18 performance; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Chapter 93-367, Laws of Florida, as amended, is
23 amended to read:

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

27 (1) CAREER SERVICE EMPLOYEES.--The term "career service
28 employee" as used in this act shall mean those employees hired
29 at the entry level (nonsupervisory, nonmanagement position) who
30 have successfully completed their probationary period. Employees
31 who are hired directly into supervisory or management positions
32 below the rank of Major, or its civilian equivalent, must
33 complete 10 years of full-time service to be considered a career
34 service employee. Colonels, Majors, Directors, or their
35 executive staff equivalents promoted through the ranks (hired at
36 entry level and successfully completed probationary period as a
37 nonsupervisory, nonmanagement employee, and successfully
38 completed the probationary period in all successive promotions
39 through ranks in which the employee served) shall be considered
40 career service employees, and during any transition may only be
41 reduced to the rank of Captain or its civilian equivalent. The
42 sworn officer status and Florida Retirement System Special Risk
43 status of sworn staff may not be affected through actions taken
44 pursuant to this section. Colonels, Majors, Directors, Assistant
45 Directors, or their executive staff equivalents directly
46 appointed by the Sheriff laterally to those ranks must have
47 completed 10 years of service in the appointed rank to be
48 considered career service employees. The Undersheriff shall at
49 no time be considered a career service employee. Career service
50 employees below the rank of Major or its civilian equivalent

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51 shall not be subject to dismissal or demotion without just
52 cause.

53 (2) APPLICABILITY.--

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

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

69 (c) Approved and authorized reductions in staff shall be
70 accomplished on a seniority basis within the Office of the
71 Sheriff.

72 (3) CAREER SERVICE STATUS; CAUSE FOR SUSPENSION OR
73 DISMISSAL.--

74 (a) When an employee of the Sheriff to whom the provisions
75 of this act apply has served in such employment for a period of
76 1 calendar year from the date the employee first enters the
77 Sheriff's orientation program or the beginning of field
78 training, whichever comes first, such employee shall have

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79 | attained career service status in the Office of the Sheriff;
80 | however, if an employee is placed on disciplinary probation for
81 | a period of 6 months or more or is terminated and rehired at a
82 | later date, the employee shall be required to complete 1
83 | calendar year of service from the date of the disciplinary
84 | action before being granted the right to appeal as provided in
85 | section 2. Any employee who is required to serve a probationary
86 | period attendant to a promotion shall retain permanent status in
87 | the Office of the Sheriff, but may be returned to his or her
88 | prior rank during such probationary period without the right of
89 | appeal as provided in section 2. For the purpose of determining
90 | career service status as defined by the provisions of this act,
91 | all time in the employment of the Office of the Sheriff while in
92 | the police academy or other comparable training for
93 | certification as a sworn officer or deputy sheriff shall not be
94 | counted or considered in any manner in determining whether the
95 | employee has attained 1 calendar year of minimum service for
96 | career service protection.

97 | (b) Any employee who has achieved career service status in
98 | the Office of the Sheriff may only be suspended or dismissed for
99 | cause, provided that, prior to such action, the employee has
100 | been furnished written notice of the proposed action and has
101 | been offered an opportunity to respond to the reasons for the
102 | suspension or dismissal. In extraordinary situations, however,
103 | such as when delay could result in damage or injury, an employee
104 | may be suspended or dismissed immediately and then provided
105 | notice thereof and reasons therefor within 48 hours, or as soon
106 | as is practical if circumstances surrounding such extraordinary

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107 | situation makes notice within 48 hours impractical. Cause for
 108 | suspension or dismissal includes, but is not limited to,
 109 | negligence, inefficiency, or inability to perform assigned
 110 | duties, insubordination, violation of provisions of law or
 111 | office rules, conduct unbecoming a public employee, misconduct,
 112 | proof of alcohol abuse, proof of abuse of prescription drugs, or
 113 | proof of use of illegal drugs. Cause for suspension or dismissal
 114 | also includes, but is not limited to, adjudication of guilt by a
 115 | court of competent jurisdiction, a plea of guilty or of nolo
 116 | contendere, or a verdict of guilty when adjudication of guilt is
 117 | withheld and the accused is placed on probation, with respect to
 118 | any felony, misdemeanor, or major traffic infraction. The filing
 119 | by a law enforcement agency of felony, misdemeanor, or major
 120 | traffic infraction charges against an employee or an arrest of
 121 | an employee for such infractions constitutes cause for
 122 | suspension.

123 | (4) TRANSITION OF EMPLOYEES.--

124 | (a) When a newly elected or appointed Sheriff assumes
 125 | office, the new Sheriff shall continue the employment of all
 126 | currently employed career service personnel unless cause for
 127 | dismissal, as provided herein, exists. The incoming Sheriff may
 128 | maintain the current staff personnel assigned to the position of
 129 | Undersheriff, Colonel, Major, Director, or their executive staff
 130 | equivalents. However, in the event that the incoming Sheriff
 131 | fills such positions with new personnel, the current occupants
 132 | of those positions who are career service employees shall be
 133 | reduced to no lower than the rank of Captain, or its equivalent,
 134 | which rank shall be permanent unless later reduced by

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135 | disciplinary demotion or increased through subsequent promotion.
 136 | Their regular base salaries may be reduced or increased
 137 | accordingly. Actions taken pursuant to this subsection affecting
 138 | ~~the Undersheriff,~~ Colonels, Majors, Directors, or their
 139 | executive staff equivalents shall not be appealable under
 140 | section 2.

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

145 | (5) ADMINISTRATION.--The Sheriff shall ~~have the full~~
 146 | ~~authority to~~ adopt such rules, regulations, and procedures
 147 | necessary for the administration and implementation of this act.
 148 | The rules, regulations, and procedures shall meet or exceed
 149 | approved Standards of Accreditation for Law Enforcement
 150 | Agencies.

151 | Section 2. Hearing review boards; function; membership;
 152 | procedures.--

153 | (1) FUNCTION OF BOARDS.--Ad hoc hearing review boards
 154 | shall be appointed as provided herein for the purpose of hearing
 155 | appeals of career service employees arising from personnel
 156 | actions brought under the rules, regulations, or policies of the
 157 | Office of the Sheriff which result in dismissal, suspension,
 158 | demotion, or reduction in pay. Lateral transfers, shift changes,
 159 | reprimands, oral or written, and suspensions of 2 working days
 160 | or less shall not be appealable to the board; however, no more
 161 | than one such action of suspension may occur within 1 calendar
 162 | year without the right to appeal. The scope of the review board

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163 is limited to disciplinary proceedings and termination actions.
 164 Review boards have the authority to conduct hearings and make
 165 findings of fact and recommendations to the Sheriff. The Sheriff
 166 shall not be bound by the findings or recommendations of such
 167 boards, but will consider them in making his or her final
 168 decision. Except in the case of termination, the decision of the
 169 Sheriff is final and not appealable within the office.

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

171 (a) The Hearing Review Board shall consist of five members
 172 of the Office of the Sheriff. The Sheriff shall select two
 173 members, with at least one member above the rank of Lieutenant
 174 to serve as the board chairperson. Two members shall be selected
 175 by the employee requesting the hearing. The fifth member shall
 176 be selected by the other four members. Each selected member
 177 shall have the right to decline to serve.

178 (b) All members of the Hearing Review Board shall be
 179 selected on the basis of fairness, objectivity, and
 180 impartiality. The board shall have no investigative powers and
 181 shall function in the capacity of a fact finder in an effort to
 182 arrive at a fair and equitable recommendation in all matters
 183 brought before it. Selected members shall have no involvement
 184 with the issues under consideration. Membership on ~~of~~ the board
 185 is not mandatory ~~voluntary and without remuneration~~. Members
 186 will not discuss matters to be heard before the board until the
 187 board convenes and then may only discuss said matters during the
 188 officially convened sessions of the board.

189 (c) The Hearing Review Board chairperson shall have the
 190 responsibility to:

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191 | 1. Chair all meetings utilizing parliamentary rules of
192 | order.

193 | 2. Convene an organizational meeting of the board to
194 | select a fifth member.

195 | 3. Request that the employee provide the names of any
196 | witnesses.

197 | 4. Schedule and provide written notification of all
198 | meetings to the Internal Affairs Bureau, witnesses, board
199 | members, and employees.

200 | 5. Provide copies of all charges to board members.

201 | 6. Ensure compliance with hearing procedures.

202 | (3) PROCEDURE WITH RESPECT TO HEARINGS.--

203 | (a) Any career service employee may request a hearing
204 | before the Hearing Review Board for any appealable disciplinary
205 | action of his or her superiors which adversely affects his or
206 | her employment.

207 | (b) Requests for a hearing shall be made in writing to the
208 | employee's immediate supervisor within 10 working days of notice
209 | of appealable disciplinary action. The request shall contain a
210 | brief statement of the matters to be considered by the board and
211 | the names of the two employees selected to be members of the
212 | board.

213 | (c) The immediate supervisor shall forward the hearing
214 | request to the Sheriff and the appropriate division commander
215 | without delay. The Hearing Review Board will be impaneled and a
216 | hearing date will be scheduled by the Sheriff within 10 working
217 | days of receipt.

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

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

227 (f) The employee has the right to be represented during
228 the hearing by counsel or other representative of choice ~~who~~
229 ~~shall serve as an observer and advisor to the employee. If the~~
230 employee elects to be represented by counsel or other
231 representative, the employee must be present throughout the
232 hearing and must ~~The representative may not~~ actively participate
233 in the proceedings.

234 (g) The employee shall not discuss the circumstances of
235 the matter being brought before the board except through the
236 chairperson.

237 (h) All witnesses shall be notified in writing of the date
238 and time of the Hearing Review Board through the appropriate
239 chain of command by the chairperson of the board. Written
240 statements from nonemployee witnesses should be used in lieu of
241 personal appearance. Nonemployee witnesses should only be called
242 to appear before the board at the request of the board.

243 (4) CONDUCT OF HEARING.--

244 (a) Hearing review boards are designed to determine the
245 truth while maintaining an atmosphere of fundamental fairness

246 | and shall not be controlled by civil or criminal rules of
247 | procedure.

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

252 | (c) Employees and their representatives shall have an
253 | opportunity to present evidence, conduct cross examination, ~~and~~
254 | submit rebuttal evidence, and present opening and closing
255 | statements.

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

257 | (a) Each complaint shall receive a separate finding and
258 | recommendation by the majority of the board. Each finding shall
259 | consider the seriousness of the complaint, any extenuating
260 | circumstances, the tenure of the employee, and past conduct
261 | record. The board shall submit to the Sheriff its written
262 | findings of fact and recommendations within 5 days after the
263 | hearing.

264 | (b) The board may place before the Sheriff any recommended
265 | disposition that the board believes may be of benefit to the
266 | Office of the Sheriff, including, but not limited to: oral or
267 | verbal reprimand; suspension; reduction of rank; termination of
268 | employment; sustaining or reversing the original decision; or
269 | recommending a more severe disposition.

270 | (c) The Sheriff will review the findings and
271 | recommendations of the board and may either approve or
272 | disapprove them. The Sheriff has the sole discretion to overrule
273 | the findings of the board.

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

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

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

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

284 (h) All proceedings of the board shall be recorded and
285 retained by the Internal Affairs Bureau. Rest periods shall be
286 duly noted and there shall be no unrecorded questions or
287 statements by any parties or witnesses. Recordings shall be
288 properly marked and identified prior to filing.

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

292 (6) TERMINATION REVIEW BOARD.--

293 (a) In the event of termination, the employee may request
294 that the termination decision be resubmitted to the board which
295 originally heard the appeal within 10 days of notice of
296 termination.

297 (b) Upon review of their original recommendation and the
298 Sheriff's rationale for termination, the board may uphold or
299 reverse the decision of the Sheriff, provided that any reversal
300 shall require at least four members of the board voting to
301 reverse. The reversal shall be binding upon the Sheriff, who

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302 shall reinstate the employee within 72 hours of the board's
 303 reversal. The board's original findings and decisions regarding
 304 discipline shall also be binding upon the Sheriff.

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

308 Section 3. Preservation of employment benefits and
 309 emoluments.--

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

316 (2) Existing employer-paid benefits and emoluments for
 317 active and retired employees with regard to the pay plan,
 318 longevity plan, tuition-reimbursement plan, career-path program,
 319 health insurance, life insurance, and disability benefits may
 320 not be ~~substantially~~ reduced, except in the case of exigent
 321 operational necessity, ~~except all moneys which would have been~~
 322 ~~allocated to longevity pay for those at the rank of captain or~~
 323 ~~its civilian equivalent shall be disbursed in accordance with~~
 324 ~~objective performance-related criteria. The objective~~
 325 ~~performance-related criteria shall take into consideration input~~
 326 ~~from a committee including those at the rank of captain or its~~
 327 ~~civilian equivalent.~~

328 (3) Nothing in this act shall preclude the Sheriff from
 329 enhancing those benefits and emoluments for active and retired

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330 | employees ~~and appointees~~ of the Palm Beach County Sheriff's
331 | Office.

332 | (4) Nothing in this act shall be construed as affecting
333 | the budget-making authority and power of the Palm Beach County
334 | Board of County Commissioners.

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