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HB 757

2006 Legislature

1 A bill to be entitled
2 An act relating to Polk County; amending chapter 88-443,
3 Laws of Florida, as amended; excluding certain positions
4 from the classified service of the Sheriff's Office of
5 Polk County; removing legislative intent; revising names
6 of units and titles of persons in the Sheriff's Office;
7 revising terminology; revising the effective date of
8 appointments to the personnel board; reducing the term of
9 the chairperson of the board; specifying the office and
10 departments from which members are elected to the Members
11 Nominating Committee; revising the effective date of the
12 initial probationary period; providing an effective date.

13

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

15

16 Section 1. Chapter 88-443, Laws of Florida, as amended by
17 chapter 98-516, Laws of Florida, is amended to read:

18 Section 1. The terms of this act shall apply to the
19 classified service of the Polk County Sheriff's Office, which
20 shall include all certified deputy sheriffs, certified detention
21 deputies, and noncertified support staff of the Polk County
22 Sheriff's Office. The provisions of this act shall not include
23 the sheriff or chief of staff, chief of detention, chief of law
24 enforcement, chief of criminal investigations, executive
25 director of the Office of Business Affairs ~~under sheriff,~~
26 ~~colonels~~, directors, legal advisors, personnel holding the rank
27 of major or above or equivalent noncertified support positions,
28 contract personnel, nonsalaried personnel, any special deputy

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29 | sheriff appointed pursuant to s. 30.09(4) (b), Florida Statutes,
 30 | members of the Mounted Enforcement Unit, ~~or~~ Auxiliary or Reserve
 31 | Unit, or any person appointed as a part-time employee. ~~It is the~~
 32 | ~~intent of this act to authorize an advisory personnel system, to~~
 33 | ~~maintain the full powers of the Sheriff, and to continue to~~
 34 | ~~respect the legal limitations on the right of collective~~
 35 | ~~bargaining and other rights under part II of chapter 447,~~
 36 | ~~Florida Statutes, and not to grant such rights to any deputy,~~
 37 | ~~member, or employee of the Polk County Sheriff's Office who,~~
 38 | ~~prior to the effective date of this act, did not otherwise have~~
 39 | ~~such rights pursuant to law.~~

40 | Section 2. The Sheriff of Polk County is hereby authorized
 41 | to appoint a personnel board, hereafter referred to as the
 42 | "board," to act as an advisory agency of and to the Sheriff,
 43 | which board shall be composed of five members to be appointed as
 44 | follows:

45 | (1) Two members of the board shall be selected and
 46 | appointed by the Sheriff.

47 | (2) Two members of the board shall be appointed by the
 48 | Sheriff after being elected in an election among members of the
 49 | classified service from a group of three nominations chosen by a
 50 | majority vote of a three-person committee known as the Members
 51 | Nominating Committee representing the classified members of the
 52 | Sheriff's Office as described in section 9. Each of three
 53 | candidates nominated by the Members Nominating Committee shall
 54 | possess qualifications for board membership as outlined in
 55 | subsections (5) and (6).

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56 (3) The fifth member shall be selected by the four
57 appointed members of the board and shall be appointed by the
58 Sheriff.

59 (4) All members shall be appointed by the Sheriff and
60 shall also possess the qualifications for board membership
61 outlined in subsections (5) and (6).

62 (5) No member appointed pursuant to subsection (1),
63 subsection (2), or subsection (3), or that member's ~~his or her~~
64 alternate, may be:

65 (a) A member ~~An employee~~ of the Sheriff's Office or of any
66 city or county of this state or of the State of Florida or the
67 United States; or

68 (b) A member of any national, state, or county committee
69 of a political party; or

70 (c) A candidate for, or incumbent of, any paid public
71 office; or

72 (d) The spouse, parent or grandparent, child or
73 grandchild, brother or sister, aunt or uncle, niece or nephew,
74 by consanguinity or affinity, of a member of the classified
75 service; or

76 (e) Situated so as to have a conflict of interest in the
77 terms of the member's or alternate's ~~his or her~~ related
78 business, duties, or responsibilities in connection with the
79 board.

80 (6) All the members of the personnel board shall be at
81 least 21 years of age; of good moral character; of good
82 reputation in the community; citizens of the United States;
83 permanent residents of Florida; and residents of Polk County for

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84 at least 2 years prior to the date of appointment.

85 (7) Two alternates to the board shall be appointed by the
 86 Sheriff. In the event that a vacancy occurs in that a board
 87 member terminates or that a matter before the board involves a
 88 conflict of interest, the alternate member shall serve for the
 89 hearing or term of office as the case may be.

90 (8) The ranking officer in charge of the Human Resources
 91 Division ~~Section~~ shall be designated as the Human Resources
 92 Director ~~Administrator~~ and shall serve as secretary to the board
 93 and as an ex officio member of the board but shall have no vote.

94 Section 3. To ensure continuity, board members shall be
 95 appointed by the Sheriff to 2-year terms on an alternating
 96 schedule effective the second Tuesday of February ~~January~~. Two
 97 members shall be appointed during even numbered years, and three
 98 members shall be appointed during odd numbered years. Nothing
 99 contained herein shall prohibit board members from being
 100 reappointed by the Sheriff for additional terms.

101 Section 4. Members of the board shall receive no salary,
 102 but each shall be paid a monthly allowance, the amount to be
 103 determined by the Sheriff, for expenses incurred in performing
 104 the duties of the board.

105 Section 5. The board shall elect one member to serve as
 106 chairperson ~~the chair~~ for a 1-year period ~~2-year period~~. The
 107 chairperson ~~chair~~ shall perform such duties as are provided for
 108 by the board's rules.

109 Section 6. The Sheriff shall make available to the board a
 110 table of organization and a list of all employees and members,
 111 positions, and classes and the pay scale of each position and

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112 class in the Sheriff's Office.

113 Section 7. The board shall have the following powers and
 114 duties:

115 (1) To adopt and amend rules and regulations for its
 116 hearing procedures subject to approval by the Sheriff.

117 (2) To hear appeals and complaints in matters provided for
 118 in this act and to make recommendations to the Sheriff regarding
 119 the same. Three members shall constitute a quorum for hearing an
 120 appeal and rendering a decision.

121 Section 8. The Sheriff shall have the authority to adopt
 122 such rules and regulations as are necessary for ~~the~~
 123 ~~implementation and~~ administration of this act.

124 Section 9. There shall be a three-person Members
 125 Nominating Committee which shall nominate candidates for
 126 appointment to the board. All members of the committee shall be
 127 members of the classified service. One member shall be elected
 128 from the Office of Business Affairs, the Department of Law
 129 Enforcement, and the Department of Detention ~~each department~~ by
 130 secret vote of all members of the classified service within each
 131 respective office or department. Members of the committee shall
 132 serve a 2-year term of office beginning July 1.

133 Section 10. The Sheriff or the Sheriff's designee may
 134 create new positions within the Sheriff's Office or combine,
 135 alter, or abolish existing positions in such manner as the
 136 Sheriff deems necessary.

137 Section 11. The Human Resources Director ~~Administrator~~
 138 shall give public notice of vacancies and of open competitive
 139 examinations for positions in the classified service. The Human

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140 Resources Director ~~Administrator in the Sheriff's Office~~ shall
141 establish and maintain such eligibility lists for the various
142 job classes as are deemed necessary to meet the needs of the
143 Sheriff's Office.

144 Section 12. ~~(1)~~ Whenever a vacancy occurs in any position
145 in the classified service, the Sheriff or the Sheriff's designee
146 shall make requisition to the Human Resources Director
147 ~~Administrator~~ for the names and addresses of all persons
148 eligible for appointment thereto. In the event that a candidate
149 acceptable to the Sheriff or the Sheriff's designee is
150 recommended, the Sheriff or the Sheriff's designee thereupon
151 shall appoint this person to the position where the vacancy
152 exists. The Sheriff or the Sheriff's designee shall immediately
153 inform the Human Resources Director ~~Administrator~~ of such ~~his~~
154 action.

155 ~~(1)(2)~~ In the absence of an eligibility list, the Sheriff
156 or the Sheriff's designee may, if either ~~he or she~~ determines
157 that the necessity of adequate law enforcement or operational
158 efficiency so requires, appoint a person without reference to an
159 eligibility list to fill a vacant position on a provisional
160 basis. The Sheriff or the Sheriff's designee shall immediately
161 inform the Human Resources Director ~~Administrator~~ of such ~~his~~
162 action. Such provisional appointee shall be a person who
163 lawfully could be appointed within the personnel system had the
164 appointee ~~he or she~~ been an applicant. Such provisional
165 appointee shall acquire no rights under the system by virtue of
166 said appointment and said appointment shall terminate
167 immediately when an eligible person from an eligibility list is

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168 certified to and accepted by the Sheriff, or within 6 months
 169 from the date of the appointment, or 45 days after the
 170 establishment of an eligibility list, whichever is the shorter
 171 length of time. Acceptance or refusal or a provisional
 172 appointment shall not prejudice or in any way affect the
 173 standing of a person who is an applicant or who shall become an
 174 applicant for an established position.

175 ~~(2)(3)~~ In the event of an emergency, the Sheriff or the
 176 Sheriff's designee may appoint a person to fill a position not
 177 to exceed 3 calendar months during any 12-month period.

178 Section 13. No employee shall become a member of
 179 ~~appointment to any position in the classified service shall be~~
 180 ~~deemed complete~~ until the expiration of a period of at least 1-
 181 year probationary service. During the initial probationary
 182 period, the Sheriff or the Sheriff's designee may terminate or
 183 otherwise discipline the employee appointee and the employee
 184 ~~appointee~~ shall not be eligible for a hearing before the board.
 185 The initial probationary period ~~Appointments~~ may be regarded as
 186 taking effect upon the date the employee successfully completes
 187 all entry-level training ~~person appointed reports for duty.~~

188 Section 14. Whenever a position in the classified service
 189 is filled by promotion, the employee ~~person~~ may be returned to
 190 duty in a position at the level formerly held ~~by him or her~~ in
 191 the classified service without a hearing during the employee's
 192 ~~his or her~~ promotion probationary period. The member may have
 193 the opportunity for a hearing if dismissed from the service or
 194 suspended for greater than 40 hours if the member ~~he or she~~ has
 195 completed an initial 1-year probationary period.

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196 Section 15. It is not the intent of this act to modify the
197 Sheriff's absolute control over the selection and retention of
198 the Sheriff's deputies and of other members of the Sheriff's
199 Office as provided for by the law. No dismissal, demotion,
200 suspension, or reduction in pay shall be taken against any
201 nonprobationary member of the classified service unless notice
202 of the action and the reason therefor is given to the member
203 verbally or in writing prior to the action taking effect. An
204 opportunity to respond orally and in writing to the Sheriff or
205 the Sheriff's designee ~~representative in the decisionmaking~~
206 ~~process~~ may be granted prior to the effective date of the
207 action. Following issuance of the written notice of disciplinary
208 action, the affected member of the classified service may seek a
209 formal hearing for a review of dismissal, demotion, suspension
210 of greater than 40 hours, or reduction in pay, provided that the
211 member, as a condition to seeking a hearing, shall, upon receipt
212 of the written notice, answer the same in writing and file the
213 answer and a request with the Sheriff within 7 calendar days
214 after the issuance of the notice. If a dismissal, demotion,
215 suspension of greater than 40 hours, or reduction in pay is
216 answered and a hearing is requested in writing within 7 calendar
217 days, the member of the classified service may have an
218 opportunity for a hearing before the board with all the rights
219 and privileges afforded under section 16. In the case of a
220 notice of dismissal, the member shall remain dismissed without
221 pay pending the hearing and the final decision of the Sheriff.
222 In the case of a notice of a demotion, suspension of greater
223 than 40 hours, or reduction in pay, the disciplinary action

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224 shall not be delayed pending the review process. The board shall
225 report in writing its findings and recommendations to the
226 Sheriff along with any mitigating circumstances noted for review
227 and consideration by the Sheriff. The Sheriff shall retain the
228 right of final determination. No member of the classified
229 service may be reinstated, with or without backpay or benefits,
230 without the concurrence of the Sheriff. For disciplinary
231 purposes, the Sheriff or the Sheriff's designee may reprimand,
232 orally or in writing, or summarily suspend a member of the
233 classified service for a period not exceeding 40 hours, and such
234 action shall not be subject to review and recommendation of the
235 board.

236 Section 16. The practice and procedure of the board with
237 respect to any hearing by the board authorized by this act shall
238 be in accordance with the rules and regulations ~~to be~~
239 established by the board. Such rules shall provide for a
240 reasonable notice of hearing to all persons affected by a
241 recommendation to be made by the board, with the opportunity to
242 be heard in their ~~his or her~~ behalf at a hearing to be held for
243 that purpose and to examine and cross-examine witnesses.

244 (1) The board, when conducting any hearings authorized by
245 this act, shall have the power to administer oaths and issue
246 subpoenas to compel the attendance of witnesses and the
247 production of books, accounts, papers, records, documents, and
248 testimony. In the case of the disobedience or failure of any
249 person to comply with a subpoena issued by the board or any of
250 its members, or on the refusal of a witness to testify on any
251 matter on which the witness ~~he or she~~ may be lawfully

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252 | interrogated, the judge of the circuit court of the county, on
 253 | application of the board, shall compel the obedience by
 254 | proceedings as for contempt. The service of a subpoena shall be
 255 | made in the manner provided by the Florida Rules of Civil
 256 | Procedure. Each witness subpoenaed by the board shall receive
 257 | for the witness's ~~his or her~~ attendance, fees and mileage in the
 258 | amount as provided for witnesses in civil cases, if requested.

259 | (2) The board shall meet for the purpose of hearing the
 260 | appeal promptly and no later than 30 days after receipt of the
 261 | answer and request for hearing, unless good cause exists for, or
 262 | the affected member agrees to, a postponement.

263 | (3) The actions of the board and the Sheriff shall be
 264 | exempt from the provisions of chapter 120, Florida Statutes.

265 | Section 17. When a newly elected or appointed Sheriff
 266 | assumes office, the service of all personnel shall continue
 267 | without the necessity of formal reappointment. Notwithstanding
 268 | any other provisions of this act, the incoming Sheriff shall
 269 | have the option of maintaining the current personnel assigned to
 270 | the rank of major and above or equivalent noncertified support
 271 | positions or transferring those personnel as described below. If
 272 | the incoming Sheriff fills any of the above positions with a new
 273 | person and the current occupant of the above position is a
 274 | certified law enforcement deputy ~~officer~~ or detention deputy, he
 275 | or she shall be reduced to the rank of captain if certified, or
 276 | to the equivalent noncertified support position if not certified
 277 | immediately. The member's salary shall be reduced in compliance
 278 | with the salary policy in effect at that time, but shall be no
 279 | less than the salary the member would have attained had the

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280 member remained in the highest classification accorded appeal
281 rights under this act. Following the election or appointment of
282 a Sheriff, appointments of all personnel remain at the pleasure
283 of the Sheriff, and personnel in the classified service may be
284 terminated by affirmative action of the Sheriff or the Sheriff's
285 successor in office subject to the provisions of this act.

286 Section 18. If any provision of this act or the
287 application thereof to any person or circumstance is held
288 invalid, it is the legislative intent that the invalidity shall
289 not affect other provisions or applications of the act which can
290 be given effect without the invalid provision or application,
291 and to this end provisions of this act are declared severable.

292 Section 19. This act shall not be held or construed to
293 create any property rights or any vested interest in any
294 position in the classified service and the right is hereby
295 reserved to repeal, alter, or amend this act or any provision
296 thereof at any time.

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