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 HB 1133

2007 Legislature

1                   A bill to be entitled  
 2           An act relating to Levy County; providing for career  
 3           service for members of the Levy County Sheriff's Office;  
 4           providing for application of the act, career status of  
 5           members, and administration; providing for a procedure  
 6           with respect to complaints against members; providing for  
 7           appeals; providing for certain protections during the  
 8           transition of a new Sheriff; providing for a Career  
 9           Service Appeal Board; providing for status as career  
 10          members; providing that the board is not governed by the  
 11          Administrative Procedure Act; prohibiting certain actions  
 12          to circumvent the act; providing for exclusions; providing  
 13          severability; providing an effective date.

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

16  
 17           Section 1. Members of the Levy County Sheriff's Office;  
 18 applicability of the act; career status of the members;  
 19 administration.--

20           (1) APPLICABILITY.--

21           (a) This act shall apply to all full-time certified and  
 22 noncertified persons in the employ of the Levy County Sheriff's  
 23 Office except as specifically described in section 6.

24           (b) As used in this act, the terms "member," "employee,"  
 25 "employ," and "employment" shall refer to all persons, whether  
 26 employed or appointed, to whom the act applies. It is not,  
 27 however, the intent of this act to grant any rights not  
 28 specifically stated in this act beyond the provisions of this

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29 act to persons in the employ of the Levy County Sheriff's Office  
 30 who do not otherwise have those rights pursuant to law.

31 (2) CAREER STATUS; CAUSE FOR TERMINATION OF EMPLOYMENT.--

32 (a) After a member of the Levy County Sheriff's Office to  
 33 whom the provisions of this act apply has served in such  
 34 employment for a period of 1 calendar year and successfully  
 35 completed a probationary training program, such employee shall  
 36 have attained career status with the Levy County Sheriff's  
 37 Office, provided that, if an employee is terminated and rehired  
 38 at a later date, said employee shall be required to complete 1  
 39 calendar year of service from the date of rehire before being  
 40 granted the right of appeal provided in section 4 of this act.

41 (b) Any employee who has achieved career status with the  
 42 Levy County Sheriff's Office may only be terminated for just  
 43 cause, provided that prior to such action the employee shall be  
 44 furnished written notice of the proposed action and offered an  
 45 opportunity to respond to the reasons for the termination.  
 46 However, in situations in which delay could result in damage or  
 47 injury, an employee may be relieved of duty immediately and  
 48 provided notice thereof and reasons therefor within 24 hours.

49 (c) Just cause for initiating an internal investigation  
 50 that may result in termination of employment shall include  
 51 violation of the provisions of law or office rules or direct  
 52 violation of published Sheriff's Office policy.

53 (d) Just cause for initiating an internal investigation  
 54 shall also include, with respect to any felony or misdemeanor,  
 55 adjudication of guilt by a court of competent jurisdiction, a  
 56 plea of guilty or of nolo contendere, or adjudication of guilt

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57 withheld and the accused placed on probation.

58 (e) The filing of felony or misdemeanor charges by the  
59 state attorney against an employee shall constitute just cause  
60 for initiating an internal investigation.

61 (3) TRANSITION OF CAREER SERVICE EMPLOYEES.--

62 (a) When a newly elected or appointed Sheriff assumes  
63 office, the new Sheriff shall continue the employment of all  
64 currently employed career personnel unless just cause for  
65 termination of employment, as provided herein, exists. However,  
66 the incoming Sheriff shall have the option of maintaining the  
67 current personnel assigned to the positions of Lieutenant and  
68 above, Executive Assistants, Executive Office Managers, and  
69 Administrative Positions of Trust.

70 (b) Positions of Trust include the Comptroller, the  
71 Director of Property Management, and Special Investigators  
72 assigned and involved in conducting internal inquiries or  
73 internal investigations.

74 (c) If the incoming Sheriff fills the positions of  
75 Lieutenant and above, Executive Assistants, Executive Office  
76 Managers, and Administrative Positions of Trust with new  
77 personnel, the current occupants of those positions may be  
78 reduced to the next lower existing rank or civilian designation  
79 and transferred to another assignment within the same division  
80 or a salary adjustment of up to 10 percent downward, or both. In  
81 the event no position is available downward, as in a one-person  
82 department, the occupant may be transferred to another  
83 assignment within the Sheriff's Office with up to a 10-percent  
84 pay reduction.

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85           (d) The new rank of the individuals shall be the permanent  
 86 rank of the individuals for a period of 6 months and then may be  
 87 later changed by independent disciplinary action.

88           (e) Initial actions taken pursuant to this subsection  
 89 affecting the Lieutenants and above and other Executive  
 90 Positions of Trust and within the guidelines of section 3 shall  
 91 not be subject to appeal under section 4.

92           (4) ADMINISTRATION.--

93           (a) The Sheriff shall have the authority to adopt such  
 94 rules and regulations as are necessary for the implementation  
 95 and administration of this act.

96           (b) The promulgation of rules and regulations related to  
 97 this act by the Sheriff are at his or her sole discretion;  
 98 however, nothing in this act shall be construed as affecting the  
 99 budget-making powers of the Board of County Commissioners of  
 100 Levy County.

101           Section 2. Complaints against employees; procedure.--

102           (1) A complaint receipt and processing procedure shall be  
 103 established in order to provide adequately for the prompt  
 104 receipt, investigation, and disposition of complaints against  
 105 members of the Levy County Sheriff's Office. The complaint  
 106 procedure shall reflect the provisions in section 112.532,  
 107 Florida Statutes.

108           (2) After written receipt of the disposition of the  
 109 complaint, if an employee is dissatisfied with the decision of  
 110 the Sheriff regarding disciplinary action resulting in  
 111 termination of employment, the employee may appeal the action to  
 112 the Career Service Appeal Board.

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113           Section 3. Disciplinary appeal procedure.--  
 114           (1) An appeal of disciplinary action resulting in  
 115 termination of employment shall result in the opportunity for a  
 116 hearing before a Career Service Appeal Board as specified in  
 117 said procedure.

118           (2) Immediately following the hearing, the board shall  
 119 report to the Sheriff via the director of human resources or  
 120 other person so designated by the Sheriff.

121           Section 4. Career Service Appeal Board; creation;  
 122 membership; duties.--

123           (1) FUNCTION OF BOARD.--

124           (a) An ad hoc Career Service Appeal Board shall be  
 125 appointed as provided herein for the purpose of hearing appeals  
 126 from career employees brought under the provisions of this act  
 127 or the Sheriff's Office rules or policies that result in  
 128 termination of employment.

129           (b) A board may also, upon the request of the Sheriff,  
 130 provide assistance and advice to the Sheriff in matters  
 131 concerning disciplinary actions and may take any other actions  
 132 as authorized by the Sheriff.

133           (2) MEMBERSHIP OF BOARD.--

134           (a) When needed upon the call of the Sheriff or the filing  
 135 of an appeal of a termination of employment, an ad hoc Career  
 136 Service Appeal Board shall be appointed. The membership of each  
 137 such board shall consist of two members selected by the Sheriff  
 138 from among any full-time eligible employees from within the  
 139 Sheriff's Office; two members selected by the employee filing  
 140 the appeal from among any full-time eligible employees within

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141 the Sheriff's Office; and one member, who is a full-time  
142 eligible member from within the Levy County Sheriff's Office,  
143 selected by the other members of the board, who shall serve as  
144 chairperson.

145 (b) If a noncertified member requests an appeal, the two  
146 members selected by the noncertified member may be from among  
147 any full-time eligible employees from any division of the  
148 Sheriff's Office.

149 (c) The appealing member shall have 7 calendar days from  
150 the date that the request for a hearing was delivered directly  
151 to the Sheriff, or to one of the administrative assistants in  
152 the Sheriff's Office, to select two qualified members willing to  
153 serve as members of the board and deliver their names directly  
154 to Human Resources. If, within the 7-day period, the appealing  
155 member fails to submit the names of two qualified members as  
156 outlined in this paragraph and paragraphs (a) and (b) who have  
157 been contacted and are willing to serve, the option to be heard  
158 by a Career Service Appeal Board is procedurally waived and  
159 ceases to exist.

160 (d) The Sheriff shall, within this same 7-day period,  
161 deliver to Human Resources the names of his or her two  
162 selections to serve as members of the board. If, within the 7-  
163 day period, the Sheriff fails to submit the names of two  
164 qualified members as outlined in this paragraph and paragraph  
165 (a), the action against the employee is procedurally waived and  
166 ceases to exist.

167 (e) The four members shall then have 5 calendar days to  
168 select the fifth member from the list of remaining qualified

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169 members.

170 (f) If an impartial chairperson cannot be agreed upon  
171 within 5 calendar days after the first four members are  
172 selected, a judge from within the Third Circuit of the state  
173 shall, within 5 days, appoint a chairperson who is a full-time  
174 eligible member within the Levy County Sheriff's Office.

175 (g) The ranking officer or his or her designee in charge  
176 of personnel matters shall serve as an ex officio member of the  
177 board for the purpose of providing procedural guidance to the  
178 board concerning the application of this act and any rules or  
179 regulations of this act and any rules or regulations adopted by  
180 the Sheriff relating thereto, but such ex officio member shall  
181 have no vote.

182 (h) The Sheriff may, at his or her own initiative, appoint  
183 a Career Service Appeal Board for the purpose of receiving,  
184 considering, and making a recommendation on matters related to  
185 the formation or streamlining of rules related to this act or to  
186 consider any other matter deemed appropriate by the Sheriff,  
187 excluding disciplinary termination of employment. If the issue  
188 to be under consideration involves a specific member of the  
189 Sheriff's Office and may result in some disciplinary  
190 recommendation by the board, the Sheriff shall notify the  
191 individual and offer the opportunity for the individual to  
192 provide two members to the board to consider the specific  
193 question at issue. If no specific member is involved, the  
194 Sheriff shall appoint two members from the Civil Division and  
195 two members from the Criminal Division, and the Captain of the  
196 Administrative Division shall serve as the chairperson. A board

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197 appointed by initiative may only make recommendations.  
 198 (3) HEARING TIME; DATE; COMPENSATION; CONSOLIDATION;  
 199 EXCLUSIONS.--  
 200 (a) Standardized dates and times of meetings shall be  
 201 established by rule and shall occur during normal administrative  
 202 office hours.  
 203 (b) Members selected to serve on the board shall serve  
 204 without additional compensation for meetings occurring during  
 205 their normal work hours. For nonwork hours, compensatory time at  
 206 the rate of 150 percent for the actual hours in session shall be  
 207 credited to the member.  
 208 (c) Once selected to the board, the members thereof shall  
 209 serve until final action is taken with respect to the purpose  
 210 for which the board was selected, at which time the board shall  
 211 be dissolved.  
 212 (d) A new Career Service Appeal Board shall be selected  
 213 for each separate occurrence; however, multiple parties filing  
 214 appeals on the same incident may request to be heard by a single  
 215 board.  
 216 (e) A person may not serve as a member of an ad hoc Career  
 217 Service Appeal Board who:  
 218 1. Was involved in the original incident that resulted in  
 219 the disciplinary process that is the subject of the appeal.  
 220 2. Is related to the appellant.  
 221 3. Is currently under investigation or suspension.  
 222 4. Has any ongoing litigation against the Levy County  
 223 Sheriff's Office.  
 224 5. Is on probation or has received sustained discipline



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225 within the past year.

226 (4) PROCEDURE WITH RESPECT TO AN APPEAL.--

227 (a) An appeal of an action specified in section 3 shall be  
 228 made to the Sheriff in writing and must be received by the  
 229 Sheriff no later than 5 calendar days after the employee is  
 230 notified of the action on which the appeal is based.

231 (b) When a Career Service Appeal Board has been selected  
 232 for purposes of hearing the appeal, the Sheriff shall publish  
 233 and furnish notice to the appealing person of the date,  
 234 location, and time of the hearing before the Career Service  
 235 Appeal Board. In any case, the date of the hearing shall be  
 236 within 15 calendar days, excluding weekends and holidays, after  
 237 notification of the selection of the fifth member.

238 (c) The date of the hearing may be extended by mutual  
 239 agreement of the parties.

240 (d) During the hearing, the employee filing the appeal  
 241 shall have the right to be heard, to be represented by a person  
 242 of his or her choice, and to present any relevant evidence on  
 243 his or her behalf, and during the hearing the technical rules of  
 244 evidence shall not apply.

245 (e) The board shall, in the conduct of a hearing, have the  
 246 power to administer oaths, issue subpoenas, compel the  
 247 attendance of witnesses, and require the production of books,  
 248 records, accounts, papers, documents, prior statements,  
 249 testimony, and investigative files related to the issue that are  
 250 in the possession of or have been delivered to Human Resources a  
 251 minimum of 5 business days prior to the beginning of the  
 252 hearing. In case of disobedience of any person to comply with an

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253 order of the board or a subpoena issued by the board, or upon  
 254 the refusal of a witness to testify on any matter regarding  
 255 which he or she may be lawfully interrogated, a County Judge of  
 256 the county in which a person resides, upon application of a  
 257 member of the board, shall compel obedience by proceeding as for  
 258 contempt. Each witness who appears in obedience to a subpoena  
 259 before the board shall receive compensation for attendance fees  
 260 and mileage as provided for witnesses in civil cases in the  
 261 courts of this state. Such payments shall be made by the party  
 262 calling the witness, except that with respect to any witnesses  
 263 called by the board, payments shall be made by the Sheriff upon  
 264 presentation of proper vouchers and approval by three members of  
 265 the board. In any case, the board shall restrict its  
 266 considerations and deliberations to the evidence presented at  
 267 the hearing.

268 (f) This board is not governed by the Administrative  
 269 Procedure Act, as codified in chapter 120, Florida Statutes.

270 (5) DISPOSITION WITH RESPECT TO A CAREER SERVICE APPEAL.--

271 (a) The board shall, by majority vote, dispose of the  
 272 appeal for which it was appointed by making a determination of  
 273 just cause and issuing a written decision. Such decision shall  
 274 be based upon the simple determination of a preponderance of  
 275 evidence (51 percent). In the instance of an appeal to the board  
 276 concerning a termination, a majority vote of the board shall be  
 277 required to overturn the Sheriff's decision to terminate. All  
 278 members of the board must be present to conduct any official  
 279 business of the board.

280 (b) If the board does not sustain the action by the

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281 Sheriff, back pay and benefits shall be reinstated. No board  
 282 shall have the authority to impose on any employee any penalty  
 283 that is different than that which formed the basis of the  
 284 appeal. If the board sustains the action of the Sheriff, it may  
 285 also make a recommendation to the Sheriff to reconsider  
 286 mitigating circumstances and reconsider the termination-of-  
 287 employment action. The Sheriff shall review the determination of  
 288 the board and consider its recommendation prior to imposition of  
 289 final action.

290 (c) The decision of the board, which is to be arrived at  
 291 by paper ballot, shall be forwarded to the Sheriff.

292 (d) This final decision of the board shall be binding on  
 293 the employee and the Sheriff.

294 (e) The Sheriff shall prepare, or cause to be prepared, an  
 295 order and publish the final disposition of the appeal. The final  
 296 disposition shall be binding on the employee.

297 (f) The board hearing and the board's deliberations shall  
 298 be open to the public, recorded, and preserved for the public  
 299 record.

300 (g) The chairperson of the board shall have the authority  
 301 to receive and consider written prehearing motions that shall be  
 302 presented to the full board at the hearing. He or she shall  
 303 preside over the hearing, enforce the decorum of the hearing,  
 304 receive requests for breaks, convene the deliberations, and  
 305 cause the removal of anyone attempting to disrupt any of the  
 306 proceedings.

307 Section 5. Included individuals; circumvention.--

308 (1) INCLUDED INDIVIDUALS.--All full-time certified and

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309 noncertified persons in the employ of the Levy County Sheriff's  
 310 Office on the effective date of this act who have served for a  
 311 period of 1 calendar year or more and successfully completed  
 312 their probationary period as of such effective date of the act  
 313 shall be career employees subject to the provisions of this act.  
 314 All other full-time employees shall become career employees  
 315 subject to the provisions of this act upon reaching their 1-  
 316 calendar-year service anniversary date and successfully  
 317 completing their probationary period.

318 (2) CIRCUMVENTION.--

319 (a) Promotions or demotions of members or creation of rank  
 320 to circumvent the intent of this act shall be held as a valid  
 321 reason to request the Sheriff to appoint a Career Service  
 322 Appeals Board to consider the issue in question.

323 (b) No certified or noncertified full-time employee of the  
 324 Levy County Sheriff's Office shall be discharged or  
 325 discriminated against in regard to his or her employment or  
 326 appointment, or threatened with any such treatment, by reason of  
 327 his or her exercise of the rights granted by this act.

328 Section 6. Exclusions.--

329 (1) The career status provisions of this act shall not  
 330 apply to the Sheriff; to Special Deputy Sheriffs appointed  
 331 pursuant to section 30.09(4), Florida Statutes; to members  
 332 employed pursuant to a grant whose continued existence or  
 333 funding is subject to the expiration or withdrawal of the grant;  
 334 to nondisciplinary termination of employment arising out of a  
 335 reduction of force, layoff, or partial or total abolition or  
 336 cessation of a program, service, operation, or department at the

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337 discretion of the Sheriff; to members of the Sheriff's Reserve  
338 Unit; or to individuals appointed as part-time Deputy Sheriffs,  
339 as defined by the Criminal Justice Standards and Training  
340 Commission, unless any such person is also employed full-time by  
341 the Levy County Sheriff's Office.

342 (2) This act shall not apply to an otherwise covered  
343 person who claims that a termination of employment was for  
344 lawful off-duty political activity. Claims of this nature are  
345 already covered under chapter 30, Florida Statutes.

346 (3) This act shall not apply to an otherwise covered  
347 person who claims that a termination of employment was for  
348 discriminatory purposes. Claims of this nature are already  
349 covered under state and federal statutes.

350 Section 7. Severability.--The provisions of this act shall  
351 be severable and, if any of the provisions shall be  
352 unconstitutional, the decision of the court shall not affect the  
353 validity of the remaining provisions. It is hereby declared to  
354 be the intent of the Legislature that this act would have been  
355 adopted had such unconstitutional provision not been included  
356 therein.

357 Section 8. This act shall take effect upon becoming a law.