

By Senator Argenziano

3-1604-07

See HB

1                                   A bill to be entitled

2           An act relating to Levy County; providing for

3           career service for members of the Levy County

4           Sheriff's Office; providing for application of

5           the act, career status of members, and

6           administration; providing for a procedure with

7           respect to complaints against members;

8           providing for appeals; providing for certain

9           protections during the transition of a new

10          Sheriff; providing for a Career Service Appeal

11          Board; providing for status as career members;

12          providing that the board is not governed by the

13          Administrative Procedure Act; prohibiting

14          certain actions to circumvent the act;

15          providing for exclusions; providing

16          severability; providing an effective date.

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

19

20           Section 1. Members of the Levy County Sheriff's

21 Office; applicability of the act; career status of the

22 members; administration.--

23           (1) APPLICABILITY.--

24           (a) This act shall apply to all full-time certified

25 and noncertified persons in the employ of the Levy County

26 Sheriff's Office except as specifically described in section

27 6.

28           (b) As used in this act, the terms "member,"

29 "employee," "employ," and "employment" shall refer to all

30 persons, whether employed or appointed, to whom the act

31 applies. It is not, however, the intent of this act to grant

1 any rights not specifically stated in this act beyond the  
2 provisions of this act to persons in the employ of the Levy  
3 County Sheriff's Office who do not otherwise have those rights  
4 pursuant to law.

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

7 (a) After a member of the Levy County Sheriff's Office  
8 to whom the provisions of this act apply has served in such  
9 employment for a period of 1 calendar year and successfully  
10 completed a probationary training program, such employee shall  
11 have attained career status with the Levy County Sheriff's  
12 Office, provided that, if an employee is terminated and  
13 rehired at a later date, said employee shall be required to  
14 complete 1 calendar year of service from the date of rehire  
15 before being granted the right of appeal provided in section 4  
16 of this act.

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

26 (c) Just cause for initiating an internal  
27 investigation that may result in termination of employment  
28 shall include violation of the provisions of law or office  
29 rules or direct violation of published Sheriff's Office  
30 policy.

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1           (d) Just cause for initiating an internal  
2 investigation shall also include, with respect to any felony  
3 or misdemeanor, adjudication of guilt by a court of competent  
4 jurisdiction, a plea of guilty or of nolo contendere, or  
5 adjudication of guilt withheld and the accused placed on  
6 probation.

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

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

11           (a) When a newly elected or appointed Sheriff assumes  
12 office, the new Sheriff shall continue the employment of all  
13 currently employed career personnel unless just cause for  
14 termination of employment, as provided herein, exists.  
15 However, the incoming Sheriff shall have the option of  
16 maintaining the current personnel assigned to the positions of  
17 Lieutenant and above, Executive Assistants, Executive Office  
18 Managers, and Administrative Positions of Trust.

19           (b) Positions of Trust include the Comptroller, the  
20 Director of Property Management, and Special Investigators  
21 assigned and involved in conducting internal inquiries or  
22 internal investigations.

23           (c) If the incoming Sheriff fills the positions of  
24 Lieutenant and above, Executive Assistants, Executive Office  
25 Managers, and Administrative Positions of Trust with new  
26 personnel, the current occupants of those positions may be  
27 reduced to the next lower existing rank or civilian  
28 designation and transferred to another assignment within the  
29 same division or a salary adjustment of up to 10 percent  
30 downward, or both. In the event no position is available  
31 downward, as in a one-person department, the occupant may be

1 transferred to another assignment within the Sheriff's Office  
2 with up to a 10-percent pay reduction.

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

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

10 (4) ADMINISTRATION.--

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

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

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

20 (1) A complaint receipt and processing procedure shall  
21 be established in order to provide adequately for the prompt  
22 receipt, investigation, and disposition of complaints against  
23 members of the Levy County Sheriff's Office. The complaint  
24 procedure shall reflect the provisions in section 112.532,  
25 Florida Statutes.

26 (2) After written receipt of the disposition of the  
27 complaint, if an employee is dissatisfied with the decision of  
28 the Sheriff regarding disciplinary action resulting in  
29 termination of employment, the employee may appeal the action  
30 to the Career Service Appeal Board.

31 Section 3. Disciplinary appeal procedure.--

1           (1) An appeal of disciplinary action resulting in  
2 termination of employment shall result in the opportunity for  
3 a hearing before a Career Service Appeal Board as specified in  
4 said procedure.

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

8           Section 4. Career Service Appeal Board; creation;  
9 membership; duties.--

10           (1) FUNCTION OF BOARD.--

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

16           (b) A board may also, upon the request of the Sheriff,  
17 provide assistance and advice to the Sheriff in matters  
18 concerning disciplinary actions and may take any other actions  
19 as authorized by the Sheriff.

20           (2) MEMBERSHIP OF BOARD.--

21           (a) When needed upon the call of the Sheriff or the  
22 filing of an appeal of a termination of employment, an ad hoc  
23 Career Service Appeal Board shall be appointed. The membership  
24 of each such board shall consist of two members selected by  
25 the Sheriff from among any full-time eligible employees from  
26 within the Sheriff's Office; two members selected by the  
27 employee filing the appeal from among any full-time eligible  
28 employees within the Sheriff's Office; and one member, who is  
29 a full-time eligible member from within the Levy County  
30 Sheriff's Office, selected by the other members of the board,  
31 who shall serve as chairperson.

1       **(b) If a noncertified member requests an appeal, the**  
2 **two members selected by the noncertified member may be from**  
3 **among any full-time eligible employees from any division of**  
4 **the Sheriff's Office.**

5       **(c) The appealing member shall have 7 calendar days**  
6 **from the date that the request for a hearing was delivered**  
7 **directly to the Sheriff, or to one of the administrative**  
8 **assistants in the Sheriff's Office, to select two qualified**  
9 **members willing to serve as members of the board and deliver**  
10 **their names directly to Human Resources. If, within the 7-day**  
11 **period, the appealing member fails to submit the names of two**  
12 **qualified members as outlined in this paragraph and paragraphs**  
13 **(a) and (b) who have been contacted and are willing to serve,**  
14 **the option to be heard by a Career Service Appeal Board is**  
15 **procedurally waived and ceases to exist.**

16       **(d) The Sheriff shall, within this same 7-day period,**  
17 **deliver to Human Resources the names of his or her two**  
18 **selections to serve as members of the board. If, within the**  
19 **7-day period, the Sheriff fails to submit the names of two**  
20 **qualified members as outlined in this paragraph and paragraph**  
21 **(a), the action against the employee is procedurally waived**  
22 **and ceases to exist.**

23       **(e) The four members shall then have 5 calendar days**  
24 **to select the fifth member from the list of remaining**  
25 **qualified members.**

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

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1       (g) The ranking officer or his or her designee in  
2 charge of personnel matters shall serve as an ex officio  
3 member of the board for the purpose of providing procedural  
4 guidance to the board concerning the application of this act  
5 and any rules or regulations of this act and any rules or  
6 regulations adopted by the Sheriff relating thereto, but such  
7 ex officio member shall have no vote.

8       (h) The Sheriff may, at his or her own initiative,  
9 appoint a Career Service Appeal Board for the purpose of  
10 receiving, considering, and making a recommendation on matters  
11 related to the formation or streamlining of rules related to  
12 this act or to consider any other matter deemed appropriate by  
13 the Sheriff, excluding disciplinary termination of employment.  
14 If the issue to be under consideration involves a specific  
15 member of the Sheriff's Office and may result in some  
16 disciplinary recommendation by the board, the Sheriff shall  
17 notify the individual and offer the opportunity for the  
18 individual to provide two members to the board to consider the  
19 specific question at issue. If no specific member is involved,  
20 the Sheriff shall appoint two members from the Civil Division  
21 and two members from the Criminal Division, and the Captain of  
22 the Administrative Division shall serve as the chairperson. A  
23 board appointed by initiative may only make recommendations.

24       (3) HEARING TIME; DATE; COMPENSATION; CONSOLIDATION;  
25 EXCLUSIONS.--

26       (a) Standardized dates and times of meetings shall be  
27 established by rule and shall occur during normal  
28 administrative office hours.

29       (b) Members selected to serve on the board shall serve  
30 without additional compensation for meetings occurring during  
31 their normal work hours. For nonwork hours, compensatory time

1 at the rate of 150 percent for the actual hours in session  
2 shall be credited to the member.

3 (c) Once selected to the board, the members thereof  
4 shall serve until final action is taken with respect to the  
5 purpose for which the board was selected, at which time the  
6 board shall be dissolved.

7 (d) A new Career Service Appeal Board shall be  
8 selected for each separate occurrence; however, multiple  
9 parties filing appeals on the same incident may request to be  
10 heard by a single board.

11 (e) A person may not serve as a member of an ad hoc  
12 Career Service Appeal Board who:

13 1. Was involved in the original incident that resulted  
14 in the disciplinary process that is the subject of the appeal.

15 2. Is related to the appellant.

16 3. Is currently under investigation or suspension.

17 4. Has any ongoing litigation against the Levy County  
18 Sheriff's Office.

19 5. Is on probation or has received sustained  
20 discipline within the past year.

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

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

27 (b) When a Career Service Appeal Board has been  
28 selected for purposes of hearing the appeal, the Sheriff shall  
29 publish and furnish notice to the appealing person of the  
30 date, location, and time of the hearing before the Career  
31 Service Appeal Board. In any case, the date of the hearing



1 shall be within 15 calendar days, excluding weekends and  
2 holidays, after notification of the selection of the fifth  
3 member.

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

6 (d) During the hearing, the employee filing the appeal  
7 shall have the right to be heard, to be represented by a  
8 person of his or her choice, and to present any relevant  
9 evidence on his or her behalf, and during the hearing the  
10 technical rules of evidence shall not apply.

11 (e) The board shall, in the conduct of a hearing, have  
12 the power to administer oaths, issue subpoenas, compel the  
13 attendance of witnesses, and require the production of books,  
14 records, accounts, papers, documents, prior statements,  
15 testimony, and investigative files related to the issue that  
16 are in the possession of or have been delivered to Human  
17 Resources a minimum of 5 business days prior to the beginning  
18 of the hearing. In case of disobedience of any person to  
19 comply with an order of the board or a subpoena issued by the  
20 board, or upon the refusal of a witness to testify on any  
21 matter regarding which he or she may be lawfully interrogated,  
22 a County Judge of the county in which a person resides, upon  
23 application of a member of the board, shall compel obedience  
24 by proceeding as for contempt. Each witness who appears in  
25 obedience to a subpoena before the board shall receive  
26 compensation for attendance fees and mileage as provided for  
27 witnesses in civil cases in the courts of this state. Such  
28 payments shall be made by the party calling the witness,  
29 except that with respect to any witnesses called by the board,  
30 payments shall be made by the Sheriff upon presentation of  
31 proper vouchers and approval by three members of the board. In

1 any case, the board shall restrict its considerations and  
2 deliberations to the evidence presented at the hearing.

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

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

7 (a) The board shall, by majority vote, dispose of the  
8 appeal for which it was appointed by making a determination of  
9 just cause and issuing a written decision. Such decision shall  
10 be based upon the simple determination of a preponderance of  
11 evidence (51 percent). In the instance of an appeal to the  
12 board concerning a termination, a majority vote of the board  
13 shall be required to overturn the Sheriff's decision to  
14 terminate. All members of the board must be present to conduct  
15 any official business of the board.

16 (b) If the board does not sustain the action by the  
17 Sheriff, back pay and benefits shall be reinstated. No board  
18 shall have the authority to impose on any employee any penalty  
19 that is different than that which formed the basis of the  
20 appeal. If the board sustains the action of the Sheriff, it  
21 may also make a recommendation to the Sheriff to reconsider  
22 mitigating circumstances and reconsider the  
23 termination-of-employment action. The Sheriff shall review the  
24 determination of the board and consider its recommendation  
25 prior to imposition of final action.

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

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

30 (e) The Sheriff shall prepare, or cause to be  
31 prepared, an order and publish the final disposition of the

1 appeal. The final disposition shall be binding on the  
2 employee.

3 (f) The board hearing and the board's deliberations  
4 shall be open to the public, recorded, and preserved for the  
5 public record.

6 (g) The chairperson of the board shall have the  
7 authority to receive and consider written prehearing motions  
8 that shall be presented to the full board at the hearing. He  
9 or she shall preside over the hearing, enforce the decorum of  
10 the hearing, receive requests for breaks, convene the  
11 deliberations, and cause the removal of anyone attempting to  
12 disrupt any of the proceedings.

13 Section 5. Included individuals; circumvention.--

14 (1) INCLUDED INDIVIDUALS.--All full-time certified and  
15 noncertified persons in the employ of the Levy County  
16 Sheriff's Office on the effective date of this act who have  
17 served for a period of 1 calendar year or more and  
18 successfully completed their probationary period as of such  
19 effective date of the act shall be career employees subject to  
20 the provisions of this act. All other full-time employees  
21 shall become career employees subject to the provisions of  
22 this act upon reaching their 1-calendar-year service  
23 anniversary date and successfully completing their  
24 probationary period.

25 (2) CIRCUMVENTION.--

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

30 (b) No certified or noncertified full-time employee of  
31 the Levy County Sheriff's Office shall be discharged or

1 discriminated against in regard to his or her employment or  
2 appointment, or threatened with any such treatment, by reason  
3 of his or her exercise of the rights granted by this act.

4 Section 6. Exclusions.--

5 (1) The career status provisions of this act shall not  
6 apply to the Sheriff; to Special Deputy Sheriffs appointed  
7 pursuant to section 30.09(4), Florida Statutes; to members  
8 employed pursuant to a grant whose continued existence or  
9 funding is subject to the expiration or withdrawal of the  
10 grant; to nondisciplinary termination of employment arising  
11 out of a reduction of force, layoff, or partial or total  
12 abolition or cessation of a program, service, operation, or  
13 department at the discretion of the Sheriff; to members of the  
14 Sheriff's Reserve Unit; or to individuals appointed as  
15 part-time Deputy Sheriffs, as defined by the Criminal Justice  
16 Standards and Training Commission, unless any such person is  
17 also employed full-time by the Levy County Sheriff's Office.

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

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

26 Section 7. Severability.--The provisions of this act  
27 shall be severable and, if any of the provisions shall be  
28 unconstitutional, the decision of the court shall not affect  
29 the validity of the remaining provisions. It is hereby  
30 declared to be the intent of the Legislature that this act  
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1 would have been adopted had such unconstitutional provision  
2 not been included therein.  
3           Section 8. This act shall take effect upon becoming a  
4 law.  
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