

HB 0771

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A bill to be entitled

An act relating to Columbia County; providing for career service for members of the Columbia County Sheriff's Office; providing for application of the act, career status of members, and administration; providing for a procedure with respect to complaints against members; providing for appeals; providing for certain protections during the transition of a new Sheriff; providing for a Career Service Appeal Board; providing for status as career members; prohibiting certain actions to circumvent the act; providing for exclusions; providing severability; providing an effective date.

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

Section 1. Members of the Columbia County Sheriff's Office; applicability of the act; career status of the members; administration.--

(1) APPLICABILITY.--

(a) The provisions of this act shall apply to all full-time certified and noncertified persons in the employ of the Columbia County Sheriff's Office except as specifically described in section 6 of this act.

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

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30 Office 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 Columbia County Sheriff's Office
 33 to 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 Columbia 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 Columbia 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
 57 withheld and the accused placed on probation.

58 (e) The filing of felony or misdemeanor charges by the

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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 position may be
 78 reduced to the next lower existing rank or civilian designation
 79 and transferred to another assignment within the same division
 80 except that those individuals' basic salaries may not be reduced
 81 but remain frozen until "cost of living" or "across the board"
 82 raises would authorize an increase.

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

86 (e) Initial actions taken pursuant to this subsection
 87 affecting the Lieutenants and above and other Executive

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88 Positions of Trust and within the guidelines of section 3 shall
 89 not be subject to appeal under section 4.

90 (4) ADMINISTRATION.--

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

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

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

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

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

111 Section 3. Disciplinary appeal procedure.--

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

116 (2) Immediately following the hearing, the board shall

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117 report to the Sheriff via the Director of Human Resources or
 118 other person so designated by the Sheriff.

119 Section 4. Career Service Appeal Board; creation;
 120 membership; duties.--

121 (1) FUNCTION OF BOARD.--

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

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

131 (2) MEMBERSHIP OF BOARD.--

132 (a) When needed upon the call of the Sheriff or the filing
 133 of an appeal of a termination of employment, an ad hoc Career
 134 Service Appeal Board shall be appointed. The membership of each
 135 such board shall consist of two members selected by the Sheriff
 136 from among the certified law enforcement or correctional
 137 officers from within the Sheriff's Office who are assigned to
 138 the same division as the appealing member; two members selected
 139 by the employee filing the appeal from among the certified law
 140 enforcement or correctional officers within the Sheriff's Office
 141 who are members of the same division as the appealing member;
 142 and one member, who may be any qualified member currently
 143 employed by the Columbia County Sheriff's Office, selected by
 144 the other members of the board, who shall serve as chairperson.

145 (b) If a noncertified member requests an appeal, the two

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146 members selected by the noncertified member must be certified
 147 members but may be selected from any division of the Sheriff's
 148 Office.

149 (c) Upon receipt of a request to appoint a Career Service
 150 Appeal Board, the Sheriff shall instruct Human Resources to
 151 compile a list of members who meet the requirements to serve on
 152 the board. This list shall be hand delivered to the Sheriff, who
 153 shall ensure that the list is delivered to the appealing member.

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

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

172 (f) The four members shall then have 5 calendar days to
 173 select the fifth member from the list of remaining qualified
 174 members.

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175 (g) If an impartial chairperson cannot be agreed upon
176 within 5 calendar days after the first four members are
177 selected, the Sheriff shall deliver a list of current remaining
178 qualified Sheriff's Office members to a judge from within the
179 Third Circuit of the state, who shall, within 5 days, appoint a
180 chairperson from the list.

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

197 (3) HEARING TIME; DATE; COMPENSATION; CONSOLIDATION;
198 EXCLUSIONS.--

199 (a) Standardized dates and times of meetings shall be
200 established by rule and shall occur during normal administrative
201 office hours.

202 (b) Members selected to serve on the board shall serve
203 without additional compensation for meetings occurring during

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204 their normal work hours. For nonwork hours, compensatory time at
 205 the rate of 150 percent for the actual hours in session shall be
 206 credited to the member.

207 (c) Once selected to the board, the members thereof shall
 208 serve until final action is taken with respect to the purpose
 209 for which the board was selected, at which time the board shall
 210 be dissolved.

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

215 (e)1. A person may not serve as a member of an ad hoc
 216 Career Service Appeal Board who:

217 a. Is a member of a different division than the grieving
 218 member except as provided in paragraph (2)(b).

219 b. Was involved in the original incident that resulted in
 220 the disciplinary process that is the subject of the appeal.

221 c. Is related to the appellant.

222 d. Is currently under investigation or suspension.

223 e. Has any ongoing litigation against the Columbia County
 224 Sheriff's Office.

225 f. Is on probation or have received discipline within the
 226 past year.

227 2. Notwithstanding subparagraph 1., the fifth member may
 228 be from any division, and certified or noncertified, if he or
 229 she meets the other requirements.

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

231 (a) An appeal of an action specified in section 3 shall be
 232 made to the Sheriff in writing and must be received by the

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233 Sheriff no later than 5 calendar days after the employee is
 234 notified of the action on which the appeal is based.

235 (b) When a Career Service Appeal Board has been selected
 236 for purposes of hearing the appeal, the Sheriff shall publish
 237 and furnish notice to the appealing person of the date,
 238 location, and time of the hearing before the Career Service
 239 Appeal Board. In any case, the date of the hearing shall be
 240 within 10 calendar days, excluding weekends and holidays, after
 241 notification of the selection of the fifth member.

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

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

249 (e) The board shall, in the conduct of a hearing, have the
 250 power to administer oaths, interview witnesses, and review
 251 books, records, accounts, papers, documents, prior statements,
 252 and investigative files related to the issue that are in the
 253 possession of or have been delivered to Human Resources a
 254 minimum of 24 hours prior to the beginning of the hearing. In
 255 any case, the board shall restrict its considerations and
 256 deliberations to the evidence presented at the hearing.

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

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

260 (a) The board shall, by majority vote, dispose of the
 261 appeal for which it was appointed by making a determination of

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262 just cause and issuing a written decision. Such decision shall
263 be based upon the simple determination of a preponderance of
264 evidence (51 percent). In the instance of an appeal to the board
265 concerning a termination, the affirmative vote of four members
266 of the board shall be required to overturn the Sheriff's
267 decision to terminate. All members of the board must be present
268 to conduct any official business of the board.

269 (b) If the board does not sustain the action by the
270 Sheriff, back pay and benefits shall be reinstated. No board
271 shall have the authority to impose on any employee any penalty
272 that is different than that which formed the basis of the
273 appeal. If the board sustains the action of the Sheriff, it may
274 also make a recommendation to the Sheriff to reconsider
275 mitigating circumstances and reconsider the termination-of-
276 employment action. The Sheriff shall review the determination of
277 the board and consider its recommendation prior to imposition of
278 final action.

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

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

283 (e) The Sheriff shall prepare, or cause to be prepared, an
284 order and publish the final disposition of the appeal. The final
285 disposition shall be binding on the employee and becomes a
286 public record at that time.

287 (f) The board hearing shall be open to the public,
288 recorded, and preserved for the public record. After all
289 materials are received and all witnesses heard, the chairperson
290 shall declare the hearing completed for the purpose of beginning

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291 deliberations.

292 (g) Official written minutes of the deliberations shall be
 293 kept by a clerical person and made part of the official record
 294 of the board.

295 (h) The chairperson of the board shall have the authority
 296 to receive and consider written prehearing motions that shall be
 297 presented to the full board at the hearing. He or she shall
 298 preside over the hearing, enforce the decorum of the hearing,
 299 receive requests for breaks, convene the deliberations, and
 300 cause the removal of anyone attempting to disrupt any of the
 301 proceedings.

302 Section 5. Upon enactment.--

303 (1) INCLUDED INDIVIDUALS.--All full-time certified and
 304 noncertified persons in the employ of the Columbia County
 305 Sheriff's Office on the effective date of this act who have
 306 served for a period of 1 calendar year or more and successfully
 307 completed their probationary period as of such effective date of
 308 the act shall be career employees subject to the provisions of
 309 this act. All other full-time employees shall become career
 310 employees subject to the provisions of this act upon reaching
 311 their 1-calendar-year service anniversary date and successfully
 312 completing their probationary period.

313 (2) CIRCUMVENTION.--

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

318 (b) No certified or noncertified full-time employee of the
 319 Columbia County Sheriff's Office shall be discharged or

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

323 Section 6. Exclusions.--

324 (1) The career status provisions of this act shall not
 325 apply to the Sheriff; to Special Deputy Sheriffs appointed
 326 pursuant to section 30.09(4), Florida Statutes; to members
 327 employed pursuant to a grant whose continued existence or
 328 funding is subject to the expiration or withdrawal of the grant;
 329 to nondisciplinary termination of employment arising out of a
 330 reduction of force, layoff, or partial or total abolition or
 331 cessation of a program, service, operation, or department at the
 332 discretion of the Sheriff; to members of the Sheriff's Reserve
 333 Unit; or to individuals appointed as part-time Deputy Sheriffs,
 334 as defined by the Criminal Justice Standards and Training
 335 Commission, unless any such person is also employed full-time by
 336 the Columbia County Sheriff's Office.

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

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

345 Section 7. Severability.--The provisions of this act shall
 346 be severable and, if any of the provisions shall be
 347 unconstitutional, the decision of the court shall not affect the
 348 validity of the remaining provisions. It is hereby declared to

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349 be the intent of the Legislature that this act would have been
350 adopted had such unconstitutional provision not been included
351 therein.

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