

STORAGE NAME: h0955.sgc.doc
DATE: April 17, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: HB 955
RELATING TO: Correctional Officers
SPONSOR(S): Representative(s) Bean and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 5 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

Currently, career service employees can appeal certain adverse agency actions to the Public Employees Relations Commission (PERC). Such adverse agency actions include suspension, reduction in pay, transfer, layoff, demotion, or dismissal. The burden of proof, in those appeals, is on the employer to show that there was just cause for the agency action.

This bill provides an optional separate appeals process for correctional and correctional probation officers, in lieu of the current career service appeal process. Such officers can opt to go before a five member ad hoc complaint review board, appointed for their appeal. Two members of the board are appointed by the employee, two members are appointed by the employer, and the fifth member is chosen by the first four members.

This bill sets forth the procedure for the officer/employee appeals before the complaint review board. This bill provides for certain rights of the officer filing the appeal, including the right to be heard publicly, to have representation, and to present evidence. This bill authorizes the complaint review board to have certain evidentiary and procedural powers during the appeal.

This bill places the burden of proof upon the Department of Corrections to establish that the adverse personnel action was for just cause by a preponderance of the evidence, and that the discipline imposed was appropriate under the circumstances.

This bill also provides that the decision of the complaint review board is final and binding on the employee and the Department of Corrections. Currently, PERC decisions on employee appeals can be appealed to district courts of appeal.

This bill does not appear to have a fiscal impact on local governments.

The cost to the Department of Corrections is indeterminate.

The Council for Smarter Government adopted one amendment, which is traveling with the bill. See "Amendments or Committee Substitute Changes" for further detail.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill increases government by adding a third appeals process for certain employees.

B. PRESENT SITUATION:

Sections 447.207 and 447.208, F.S., provide that "the [Public Employees Relations Commission or "PERC"] or its designated agent shall hear appeals arising out of any suspension, reduction in pay, transfer, layoff, demotion, or dismissal of any permanent employee in the State Career Service System."

Section 447.208(3), F.S., provides that when an employee appeals a dismissal, suspension, or demotion, the employer must prove that "just cause" existed for the agency action, in order for PERC to affirm the agency action. In addition, s. 110.227(1), F.S. provides that

[a]ny employee who has permanent status in the career service may only be suspended or dismissed for cause. Cause shall include, but not be limited to, negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime involving moral turpitude.

The Career Service System includes a Special Risk Class of members, specifically including correctional officers and correctional probation officers, as well as other categories of personnel. Accordingly, correctional officers and correctional probation officers can currently file appeals with PERC for any of the above mentioned appeals. The Department of Corrections states that such officers also have another appeals process that is provided in the collective bargaining contract between the Florida Police Benevolence Association and the State, which includes arbitration.¹

Section 943.10(2), F.S., defines "correctional officer" as

any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

¹ 2001 Bill Analysis on HB 955, Department of Corrections, March 20, 2001.

Section 943.10(3), F.S. defines "correctional probation officer" as

a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

Currently, Chapter 30, F.S., regarding Sheriffs, provides a separate appeals process for deputy sheriffs who are terminated. Section 30.76, F.S., states that "[t]he sheriff may not terminate a regularly appointed deputy sheriff for exercising lawful off-duty political rights." This chapter also provides for a review board to hear such appeals for deputy sheriffs.²

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 943.105, F.S., entitled "Job Protection for Correctional Officers Act."

This new section of law creates an appeal process for "correctional officers"³ and "correctional probation officers."⁴ Under this process, the officers can appeal "certain adverse employment actions" to an ad hoc complaint review board in lieu of using any career service procedure. The certain adverse employment actions are not described specifically, and the only adverse employment actions mentioned in the "just cause" section of the bill are suspension and dismissal.

However, in the description of the review boards' duties(subsection 2(b) of section 1 of the bill), the adverse actions included for appeal are dismissal, suspension, demotion, and reduction in pay. The actions excluded from appeal are oral or written reprimands, and suspensions of four working days or less.

This bill provides that a correctional officer or correctional probation officer can only be suspended or dismissed for "cause." This section contains the same description of cause that is contained in s. 110.227(1), F.S., which is the current law for those officers included in this bill.

This bill provides that the specified officers can choose to appeal certain adverse employment actions to "ad hoc complaint review boards." These boards must consist of five members: two chosen by the employee; two chosen by the employer; and, one chosen by the first four members, who is also the chair. Any employee chosen can decline to be on the complaint review board. If the four members cannot agree on the fifth member within 10 working days, then the parties must request the Federal Mediation and Conciliation Service to provide a panel of seven names, which the parties can strike according to certain procedures. No more than two lists can be requested. The complaint review board is dissolved when the final action of the board concerning the appeal is taken.

This bill sets forth the procedure for officer/employee appeals before the complaint review board. An officer must appeal the adverse action to the Department of Corrections no later than 14 days after the action occurred. The complaint review board must then be selected and meet to hear the appeal within 30 working days after the selection of the chair of the board.

² "Each sheriff shall establish a review board to review, pursuant to appeals taken under §§ 30.071-30.079, terminations taken by the sheriff against regularly appointed deputy sheriffs for lawful off-duty political activity or for discriminatory reasons." § 30.075, F.S.

³ § 943.10(2), F.S.

⁴ § 943.10(3), F.S.

This bill provides for certain rights of the officer/employee filing the appeal, including the right to be heard publicly, to have representation, and to present evidence. This bill authorizes the complaint review board to have certain evidentiary and procedural powers during the appeal.

This bill places the burden of proof upon the Department of Corrections to establish "that the adverse personnel action was for just cause by a preponderance of the evidence and that the discipline imposed was appropriate under the circumstances." Currently, the employer must prove that "just cause" existed for the adverse action. It is unclear whether this new burden of proof is intended to place a more difficult burden of proof upon the Department of Corrections, than is provided in current law.

The complaint review board must, by a majority vote, rule on the appeal by making findings of fact and issuing a written decision as to whether to sustain or not sustain the agency action. If the board rules not to sustain the agency action, the board must order an appropriate remedy, which may include back pay, or a modification of the agency action.

This bill also provides that the decision of the complaint review board is final and binding on the employee and the Department of Corrections. Currently, PERC decisions on employee appeals can be appealed to the appropriate district court of appeal.⁵

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁵ § 447.504, F.S.

D. FISCAL COMMENTS:

The Department of Corrections states that specific costs of implementing this bill cannot be determined at this point.⁶ The Department goes on to state that “[h]owever, these costs will include fees for arbitrators to decide board members in the event of impasse; costs for witnesses; and, costs for court involvement/rulings.”⁷

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 17, 2001, the Council for Smarter Government adopted one amendment to HB 955. This amendment provides that only *state* correctional officers are affected by this bill. The bill, as amended, was reported favorably. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Jennifer D. Krell, J.D.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

⁶ 2001 Bill Analysis on HB 955, Department of Corrections, March 20, 2001.

⁷ *Id.* at 4.

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AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Melinda Smith

David De La Paz

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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Don Rubottom
