

By Representative Bean

1                                   A bill to be entitled  
2           An act relating to correctional officers;  
3           creating s. 943.105, F.S.; creating the "Job  
4           Protection for Correctional Officers Act";  
5           providing for certain employment appeals to a  
6           complaint review board; providing for a  
7           definition of just cause; providing for the  
8           creation of ad hoc complaint review boards;  
9           providing for the function of such boards;  
10          providing for membership; providing procedures  
11          with respect to appeals; providing an effective  
12          date.

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

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16           Section 1.   Section 943.105, Florida Statutes, is  
17          created to read:

18                   943.105 Job Protection for Correctional Officers Act;  
19                   appeals; complaint review board; procedures.--

20                   (1) Short title.--This section may be cited as the  
21                   "Job Protection for Correctional Officers Act."

22                   (2) Notwithstanding any other provision of the law to  
23                   the contrary, in lieu of using any career service procedure or  
24                   protection in effect on January 1, 2001, a non-probationary  
25                   correctional officer of the rank of captain or below as  
26                   defined under s. 943.10(2) and certified or a non-probationary  
27                   correctional probation officer of the rank of senior  
28                   supervisor or below as defined in s. 943.10(3), and certified  
29                   may, at his or her sole discretion, appeal certain adverse  
30                   employment actions to an ad hoc complaint review board  
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1 established by the Department of Corrections in accordance  
2 with the following criteria:

3 (a) JUST CAUSE.--A correctional officer or  
4 correctional probation officer who has permanent status may  
5 only be suspended or dismissed for cause. Cause shall include,  
6 but not be limited to, negligence, inefficiency or inability  
7 to perform assigned duties, insubordination, willful violation  
8 of the provisions of law or agency rules, conduct unbecoming a  
9 public employee, misconduct, habitual drug abuse, or  
10 conviction of any crime involving moral turpitude.

11 (b) FUNCTION OF BOARDS.--Ad hoc complaint review  
12 boards shall be appointed as provided herein for the purpose  
13 of hearing appeals of permanent employees arising from  
14 personnel actions which result in dismissal, suspension,  
15 demotion, transfer, or reduction in pay; provided that  
16 reprimands, oral or written, and suspensions of 4 working days  
17 or less shall not be appealable to a board; provided further,  
18 however, that no more than one such action of suspension may  
19 occur within 1 calendar year without the right to appeal  
20 regardless of the length of suspension.

21 (c) MEMBERSHIP OF BOARDS.--

22 1. Membership of each such board shall consist of five  
23 correctional officers or, in the case of correctional  
24 probation officers, five correctional probation officers who  
25 are assigned within the county of the officer's employment.  
26 Two members shall be selected by the Department of  
27 Corrections, two members shall be selected by the employee  
28 filing the appeal, and the fifth member, who shall serve as  
29 chair of the board, shall be selected by the four members,  
30 with the concurrence of the department and the employee  
31 requesting the hearing. Any person shall have the right to

1 decline to serve as a member of the board, and persons  
2 selected to serve on the board shall serve without additional  
3 compensation or overtime compensation with respect to such  
4 service. Once selected to a board, the members thereof shall  
5 serve until final action is taken by the board with respect to  
6 the purpose for which the board was selected, at which time  
7 the board shall be dissolved.

8         2. If the chair, or fifth member, cannot be agreed  
9 upon within 10 working days after the appeal is submitted,  
10 then the parties shall jointly request the Federal Mediation  
11 and Conciliation Service to furnish a panel of seven names  
12 from which each party shall have the option, within 5 days of  
13 receipt, of striking three names in alternating fashion. The  
14 seventh or remaining name shall serve as the chair. The  
15 parties shall jointly notify the arbitrator of his or her  
16 selection. Either party may object to all names on the list,  
17 provided the objection is made prior to the commencement of  
18 the striking process. If this occurs, the objecting party may  
19 request the Federal Mediation and Conciliation Service to  
20 furnish another list of arbitrators. No more than two lists  
21 may be requested. The costs of the arbitrator shall be shared  
22 equally by the parties.

23         (d) PROCEDURES WITH RESPECT TO APPEALS.--

24         1. An appeal of an action specified in paragraph (a)  
25 shall be made to the Secretary of the Department of  
26 Corrections in writing, and must be received by the department  
27 no later than 14 calendar days after the employee is notified  
28 of the action on which the appeal is based.

29         2. A complaint review board shall be selected and must  
30 meet for purposes of hearing the appeal no later than 30  
31 working days after the selection of the chair of the board

1 unless the time limit is extended by the board or with the  
2 mutual agreement of the parties to the proceeding.  
3 3. During any hearing, the employee filing the appeal  
4 shall have the right to be heard publicly, to be represented  
5 by a person of his or her choice, and to present any  
6 evidential facts in his or her behalf, and during such  
7 hearings the technical rules of evidence shall not apply. The  
8 board shall, in the conduct of such hearings, have the power  
9 to administer oaths, issue subpoenas, compel the attendance of  
10 witnesses, and require the production of books, records,  
11 accounts, papers, documents, and testimony. In case of  
12 disobedience of any person to comply with an order of the  
13 board or a subpoena issued by the board, or upon the refusal  
14 of a witness to testify on any matter regarding which he or  
15 she may be lawfully interrogated, a county judge of the county  
16 in which a person resides, upon application of a member of the  
17 board, shall compel obedience by proceeding as for contempt.  
18 Each witness who appears in obedience to a subpoena before the  
19 board shall receive compensation for attendance fees and  
20 mileage as provided for witnesses in civil cases in the courts  
21 of this state. Such payments shall be made by the party  
22 calling the witness, except that with respect to any witnesses  
23 called by the board, payments shall be made by the department  
24 upon presentation of proper vouchers and approval by three  
25 members of the board.  
26 4. The department shall bear the burden of  
27 establishing that the adverse personnel action was for just  
28 cause by a preponderance of the evidence and the discipline  
29 imposed was appropriate under the circumstances.  
30 5. A board shall by majority vote dispose of the  
31 appeal for which it was appointed by making findings of fact

1 and issuing a written decision. Such decision shall either  
2 sustain or not sustain the action being appealed. If an action  
3 by the department is not sustained by a board, the board shall  
4 order such remedial action as is appropriate, which may  
5 include reinstatement with back pay, and may modify any  
6 personnel action which was the subject of the appeal. No Board  
7 shall have the authority to impose on any employee any penalty  
8 which is more harsh than that which formed the basis of the  
9 appeal.

10 6. The decision of the board shall be final and  
11 binding on the employee and the Department of Corrections.

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

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15 HOUSE SUMMARY

16  
17 Creates the "Job Protection for Correctional Officers  
18 Act." Provides for the creation of ad hoc complaint  
19 review boards for the purpose of hearing appeals of  
20 permanent employees who are correctional officers or  
21 correctional probation officers from personnel actions  
22 which result in dismissal, suspension, demotion,  
23 transfer, or reduction in pay. See bill for details  
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