

By Senator Saunders

25-54A-02

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 State Correctional Officers
5 Act"; providing for certain employment appeals
6 to a 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.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 943.105, Florida Statutes, is
17 created to read:

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

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

22 (2) Notwithstanding any other law, in lieu of using
23 any career service procedure or protection in effect on
24 January 1, 2002, a nonprobationary correctional officer of the
25 rank of captain or below who is certified under chapter 943
26 and employed full-time by a state agency, or a nonprobationary
27 correctional probation officer of the rank of senior
28 supervisor or below who is certified under chapter 943 and
29 employed full-time by a state agency, may, at his or her sole
30 discretion, appeal certain adverse employment actions to an ad

31

1 hoc complaint review board established by the Department of
2 Corrections in accordance with the following criteria:

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

11 (b) Ad hoc complaint review boards shall be appointed
12 as provided in this section for the purpose of hearing appeals
13 of permanent employees arising from personnel actions that
14 result in dismissal, suspension, demotion, transfer, or
15 reduction in pay. Reprimands, oral or written, and suspensions
16 of 4 working days or less are not appealable to a board.
17 However, not more than one such action of suspension may occur
18 within 1 calendar year without the right to appeal, regardless
19 of the length of suspension.

20 (c)1. Membership of each board shall consist of five
21 state correctional officers or, in the case of correctional
22 probation officers, five state correctional probation officers
23 who are assigned within the county of the officer's
24 employment. Two members shall be selected by the Department of
25 Corrections, two members shall be selected by the employee
26 filing the appeal, and the fifth member, who shall serve as
27 chairperson of the board, shall be selected by the four
28 members, with the concurrence of the department and the
29 employee requesting the hearing. Any person shall have the
30 right to decline to serve as a member of the board, and
31 persons selected to serve on the board shall serve without

1 additional compensation or overtime compensation with respect
2 to such service. Once selected to a board, the members shall
3 serve until final action is taken by the board with respect to
4 the purpose for which the board was selected, at which time
5 the board shall be dissolved.

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

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

26 2. A complaint review board shall be selected and must
27 meet for purposes of hearing the appeal no later than 30
28 working days after the selection of the chairperson of the
29 board unless the time limit is extended by the board or with
30 the mutual agreement of the parties to the proceeding.

31

1 3. During any hearing, the employee filing the appeal
2 shall have the right to be heard publicly, to be represented
3 by a person of his or her choice, and to present any
4 evidential facts in his or her behalf, and during such
5 hearings the technical rules of evidence do not apply. The
6 board shall, in the conduct of such hearings, have the power
7 to administer oaths; issue subpoenas; compel the attendance of
8 witnesses; and require the production of books, records,
9 accounts, papers, documents, and testimony. In case of refusal
10 of any person to comply with an order of the board or a
11 subpoena issued by the board, or upon the refusal of a witness
12 to testify on any matter regarding which he or she may be
13 lawfully interrogated, a county judge of the county in which a
14 person resides, upon application of a member of the board,
15 shall compel obedience by proceeding as for contempt. Each
16 witness who appears in obedience to a subpoena before the
17 board shall receive compensation for attendance fees and
18 mileage as provided for witnesses in civil cases in the courts
19 of this state. Such payments shall be made by the party
20 calling the witness, except that with respect to any witnesses
21 called by the board, payments shall be made by the department
22 upon presentation of proper vouchers and approval by three
23 members of the board.

24 4. The department shall bear the burden of
25 establishing that the adverse personnel action was for just
26 cause by a preponderance of the evidence and that the
27 discipline imposed was appropriate under the circumstances.

28 5. A board shall by majority vote dispose of the
29 appeal for which it was appointed by making findings of fact
30 and issuing a written decision. Such decision shall sustain or
31 not sustain the action being appealed. If an action by the

1 department is not sustained by a board, the board shall order
2 such remedial action as is appropriate, which may include
3 reinstatement with back pay, and may modify any personnel
4 action that was the subject of the appeal. A board may not
5 impose on an employee any penalty that is harsher than that
6 which formed the basis of the appeal.

7 6. The decision of the board is final and binding on
8 the employee and the Department of Corrections.

9 Section 2. This act shall take effect upon becoming a
10 law.

11 *****

12
13 SENATE SUMMARY

14 Creates the "Job Protection for State Correctional
15 Officers Act." Provides for the creation of ad hoc
16 complaint review boards for the purpose of hearing
17 appeals of permanent state employees who are correctional
18 officers or correctional probation officers from
19 personnel actions that result in dismissal, suspension,
20 demotion, transfer, or reduction in pay. (See bill for
21 details.)
22
23
24
25
26
27
28
29
30
31