

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 887

(Senator Munson, *et al.*)

Judicial Proceedings

Appropriations

Correctional Services - State Correctional Officers' Bill of Rights

This bill provides for rights of a State correctional officer relating to the employment, investigation, and discipline of correctional officers who are employees of the Division of Correction (DOC) working in a State correctional facility. The bill establishes exclusive procedures for the investigation and discipline of a State employed correctional officer for alleged misconduct.

Fiscal Summary

State Effect: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase by at least \$3.0 million in FY 2011, not including costs for overtime. Significant operational impact on the Department of Budget and Management (DBM) and potential savings for the Office of Administrative Hearings (OAH). Any future impacts arising from decisions of hearing boards cannot be reliably predicted.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	3,000,500	2,619,800	2,738,200	2,862,200	3,092,100
Net Effect	(\$3,000,500)	(\$2,619,800)	(\$2,738,200)	(\$2,862,200)	(\$3,092,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill's provisions supersede any inconsistent provisions of any other State law that conflicts with its provisions to the extent of the conflict. These provisions do not limit the appointing authority to regulate the competent and efficient operation and management of a State correctional facility by any reasonable means including transfer and reassignment of employees if that action is not punitive in nature and the appointing authority determines it to be in the best interests of the internal management of the correctional facility.

Current Law: The Law Enforcement Officers' Bill of Rights was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of specified State and local agencies, but does not extend to any correctional officers in the State. However, the Cecil County Correctional Officers' Bill of Rights was enacted by Chapter 689 of 2008, which applies to correctional officers in the county's detention center.

Background: DOC employs about 7,200 correctional officers who are assigned to 26 correctional facilities in the State.

The current collective bargaining agreement for State employees (under Title 3 of the State Personnel and Pensions Article) and a memorandum of understanding (MOU) between the State and the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, and the Teamsters include an agreement of the parties on the standards of wages, hours and other terms and conditions of employment for State employees in the State Personnel Management System (SPMS). Disciplinary matters for all covered employees, including State correctional officers, are addressed under Articles 21 and 22 of the agreement.

State Fiscal Effect: According to DBM, in calendar 2008 and 2009, there were approximately 600 disciplinary appeals for the State Personnel Management System. Of those appeals, about 70% each year (430) were exclusively from DPSCS. In calendar 2008 and 2009 respectively, DBM resolved 56% and 64% of the appeals without the need for an adversarial hearing by OAH. DBM advises that this bill will have an operational impact on the agency since it duplicates current disciplinary appeals processes, while also expanding disciplinary protections beyond the current MOU (as discussed above).

Generally, the bill allows investigations of alleged misconduct by the appointing authority as well as the Internal Investigations Unit of DOC. The bill also establishes exclusive procedures for the investigation and discipline of a correctional officer for alleged misconduct and establishes new timeframes relating to interrogations and

appeals. Because the required disciplinary processes of the bill are significantly different from the current collective bargaining agreement, the bill will have a significant operational and fiscal impact on DPSCS and DBM.

The bill requires all correctional officer disciplinary cases to be decided by an internal hearing board or under grievance provisions of the State Personnel and Pensions Article, § 11-109. It also provides for certain disciplinary cases to be appealed back to the hearing board. Currently, appeals of disciplinary cases are reviewed by the Employee Relations Unit in DPSCS's Human Resources and Services Division (HRSD). In calendar 2009, the Employee Relations Unit performed reviews of approximately 450 correctional officer disciplinary cases. Based upon data from that same year, DPSCS estimates there will be 90 to 110 cases that qualify for appeal to a new hearing board created under the bill. To handle this number of cases, DPSCS estimates it would require an additional two personnel officers and one administrative aide. The salary and fringe benefits for these positions would total \$146,200 in fiscal 2011.

Under current policy, individuals in which discipline results in demotions, suspensions over 10 days, and terminations, are usually sent home on paid administrative leave for 30 days and then are removed from payroll. Under the bill, these individuals would remain on payroll throughout the process including all appeals. DPSCS estimates this would result in an increase in salaries and fringe benefits paid to 90 to 110 individuals over a period of 60 days to eight months at a cost of \$2.4 million in fiscal 2011 and increasing to \$2.9 million by fiscal 2015. DBM advises that the bill's provision creating an emergency suspension with pay status for up to 90 days specifies that such a suspension is subject to appeal and hearing process. Currently employees may be placed on 30 days of administrative leave with pay but this status is not grievable nor subject to any appeals process. DBM believes that the bill does not clearly define this additional process and that it would establish an additional layer of appeal not currently part of the employee relations process. It is assumed that costs associated with this provision are included in the \$2.4 million cited above.

DBM estimates that having terminations, demotions, and suspensions greater than 10 days going to the hearing board process required under the bill would involve about 82 cases in 2011 and would have an estimated cost of \$102,700 in fiscal 2011. The bill also requires hearing board members to be from facilities other than that of the employee. Expenses for this feature would include travel (*e.g.*, Hagerstown to Baltimore) and could be costly under the standard State travel regulations. The bill specifies that any costs incurred by a grievant and a grievant's representative to attend hearings must be covered by DPSCS. This may also include potential overtime costs depending on how far a distance is traveled by employees. The cost for four employees at \$300 in travel expenses (including meals), for an estimated 82 cases, is estimated at \$24,600 per year. If the board will be required to convene twice on each case (once for the hearing phase

and once for the recommendation), this total would be doubled for a total cost of approximately \$50,000.

In summary, general fund expenditures increase by \$3.0 million in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring two personnel officers, two assistant Attorneys General, and one administrative aide to handle the additional workload of the new disciplinary procedures. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses – including the maintenance of affected correctional officers on payroll throughout the process including all appeals.

Salaries and Fringe Benefits	\$330,287
Hearing Board Costs, including Travel	127,264
Additional Equipment	157,731
Suspension With Pay Costs	2,379,480
Other Operating Expenses	<u>5,735</u>
Total FY 2011 State Expenditures	\$3,000,497

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses.

The hiring of the two additional assistant Attorneys General is in answer to two needs under the bill: (1) to provide legal advice to hearing boards separate from the legal counsel to DPSCS or the correctional officer; and (2) to oversee show cause proceedings under § 10-906. This latter provision of the bill specifies that a correctional officer who is denied a right granted under the bill may apply to a circuit court for an order to show cause why the right should not be granted. DPSCS estimates that one out of every six cases heard by a hearing board will result in the defendant exercising their right to apply for an order to show cause. Based on calendar 2009 information, DPSCS estimates that a board will be convened between 180 to 220 times annually to handle demotions, suspensions over 10 days, and terminations and that 30 to 37 defendants will exercise their right to apply for an order to show cause.

The new procedures would likely also incur significant additional overtime costs for DPSCS. However, any such impact cannot be reliably estimated without actual experience under the bill. In addition, any future impacts arising from decisions of hearing boards cannot be reliably predicted.

Legislative Services notes that DPSCS has significantly revised its fiscal estimate on this bill. DPSCS now reports that the only “hard costs” of the bill are those attributable to the hiring of the five new positions cited above (\$486,100 in fiscal 2011), but should not include the costs designated for salaries and fringe benefits for correctional officers suspended with pay (\$2.4 million). DPSCS advises that “[t]he change in policy of pay

for suspensions and terminations is one with a variety of factors, difficult to estimate, including how many may occur, how many may be appealed and the duration of each. All of this is subsumed into the larger calculation of the turnover expectancy in the operating budget submission.” Because this belief represents a substantial change of position and fiscal impact from earlier estimates, Legislative Services is unable to verify the reliability of this later estimate.

DBM has concerns that, under the bill, a State Personnel and Pensions Article, Title 11 appeal would be made on a recommendation of the hearing board rather than after a disciplinary action has been imposed. Additionally, there is no provision for how to impose discipline or for any appeal rights if OAH upholds the board’s recommendation.

In any case, DBM’s operations would continue to be significantly impacted because the bill would make any “punitive action other than termination, demotion, or suspension without pay” appealable through the existing disciplinary appeals process. Currently, the types of actions that are appealable are clearly delineated in the statute. Allowing any “punitive action” to be appealable will substantially increase the types of actions that can be appealed through DBM.

There could also be a savings to DPSCS for current costs attributable to OAH due to a decrease of cases handled by OAH. OAH advises that the average length per case is approximately 17 hours. However, all related costs for OAH will not be replaced by this new Bill of Rights process because some disciplinary appeals will still be able to be appealed to OAH. Such a savings continues to be difficult to quantify.

Additional Information

Prior Introductions: HB 924 of 2009, a similar bill, was withdrawn.

Cross File: Although HB 1090 is not identified as a cross file, the bills were identical as introduced.

Information Source(s): Department of Public Safety and Correctional Services, Department of Budget and Management, Department of Legislative Services

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