

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1107

Law Enforcement Officers and Correctional Officers

SPONSOR(S): Kreegel and others

TIED BILLS:

IDEN./SIM. BILLS: SB 624

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	6 Y, 0 N, As CS	Crocker	Kramer
2)	Governmental Affairs Policy Committee	(ref. removed)		
3)	Criminal & Civil Justice Policy Council	(ref. removed)		
4)	Government Accountability Act Council	(ref. removed)		
5)	Policy Council	22 Y, 0 N, As CS	Hogge	Hogge

SUMMARY ANALYSIS

Part VI of chapter 112, F.S., is commonly known as the "Law Enforcement Officers' Bill of Rights (LEOBOR)." It provides certain statutory rights and privileges to law enforcement and correctional officers while they are under investigation.

This bill expands the investigated officer's rights regarding access to evidence and investigative files. Also, an officer's right to view all evidence when he or she is the subject of a complaint would be expanded. The bill would require the investigating agency to supply the subject officer with the proposed length of suspension, if applicable.

The bill also establishes compliance review procedures when an agency is alleged to have failed to comply with the requirements of the LEOBOR, and provides that chapter 120, the Administrative Procedures Act (APA) does not apply to the LEOBOR.

By increasing the information that must be provided to a law enforcement officer who is under investigation, there may be an increased cost to a state or local law enforcement agency who is conducting such an investigation.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Bill

General Background

Part VI of chapter 112, commonly referred to as the "Law Enforcement Officers' Bill of Rights (LEOBOR)," grants law enforcement officers¹ and correctional officers² specific rights when the officer is under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion or dismissal. Section 112.532, F.S., places conditions on certain aspects of an interrogation of an accused officer relating to time, place, and method of interrogation; requires all identifiable witnesses to be interviewed; protects the officer from being mistreated while under interrogation; and extends to the officer the right to counsel, among other rights [e.g., 112.532(1)(d) provides that an accused officer must be informed of the nature of the investigation and the name of all complainants prior to any interrogation of the officer].

Access to Evidence

Currently, s. 112.532(1)(d), F.S., requires that an officer be provided with the complaint and all witness statements prior to being interviewed. This bill would require that an officer under investigation be provided with all other existing subject officer statements and all other evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings related to the incident under investigation. Moreover, this bill would include as a triggering event for these rights an investigation that may result in suspension time.

This bill also requires that the officer be provided with a complete copy of the investigative file, including the final investigative report and all existing evidence, upon request. As the law is currently written, the

¹ Section 112.531(1), F.S., defines "law enforcement officer" as "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07."

² Section 112.531(1), F.S., defines "correctional officer" as "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

officer is entitled to a complete copy of the investigative report and supporting documents. The bill also provides that the officer's representative is permitted to request this information, as well.

Currently, complaints filed against law enforcement officers and correctional officers who are employed by an agency, and all information obtained pursuant to the investigation of the complaint are confidential and exempt from public records laws until the investigation ceases to be active or the investigation is otherwise concluded.³ However, the officer who is the subject of the complaint, and his or her chosen representative, is permitted to review the complaint and all statements made by the complainant and witnesses immediately prior to the beginning of an investigative interview.⁴ Additionally, officers subject to disciplinary action⁵ must, upon request, be provided with a complete copy of the investigative report and supporting documents prior to the imposition of disciplinary action.⁶

This bill would amend s. 112.533(2), F.S., which relates to the current public records exemption relating to complaints against officers, to allow the officer who is the subject of the complaint to review all existing evidence relating to the investigation, including, but not limited to, incident reports, analyses, GPS locator information, and audio or video recordings, immediately before the agency begins the investigative interview.

Disciplinary Action

Currently, s. 112.532(6) provides that no disciplinary action, dismissal, or demotion may be undertaken unless the investigation is completed within 180 days after the date the agency receives notice of the allegation by a person authorized to initiate an investigation of the alleged misconduct.

This bill would include suspension as a prohibited action after the time period has expired. It would also require the agency to provide written notice of the proposed length of suspension, if applicable, to the officer.

Compliance Review

Section 112.534, F.S., provides that if a law enforcement or correctional agency fails to comply with the provisions of the LEOBOR, an officer who is personally injured by such failure to comply may file a civil suit for damages, and/or apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.⁷

The bill establishes compliance review procedures applicable when an law enforcement or correctional agency is alleged to have failed to comply with the LEOBOR. It expressly provides that "agency" includes internal affairs investigators and those in the professional standards division.

- *The officer under investigation must advise the investigating officer of the intentional violation which is alleged to have occurred. The officer's notice is sufficient to notify the investigator of the requirements which have allegedly been violated and the factual basis of each violation.*
- *If the investigator fails to cure the violation, or continues the violation after notification, the officer being interviewed must request that the interview stop and that the agency head or a designee be informed of the alleged violation. The officer's refusal to respond to further questions does not constitute insubordination.*
- *The officer under investigation must then file in writing a notice of violation and a request for a compliance review hearing. All evidence related to the investigation must be preserved for*

³ s. 112.533, F.S.

⁴ This provision does not apply to any public record that is exempt from disclosure if it is active criminal intelligence or criminal investigative information. See ss. 112.533 and 119.071, F.S.

⁵ Disciplinary action consists of a suspension with loss of pay, demotion, or dismissal. See s. 112.532(4)(b), F.S.

⁶ *Id.*

⁷ s. 112.534, F.S.

review and presentation at the hearing. Such documents are not confidential for the purpose of presentation at the compliance review panel hearing.

- *The hearing must be conducted within 10 days after the request is filed unless another date is chosen by mutual agreement.*
- *The compliance review panel consists of 3 members: 1 selected by the agency head, 1 selected by the officer filing the request, and 1 selected by the other two members. The hearing must be conducted in the county in which the officer works.*
- *The compliance review panel is responsible for determining if an intentional violation was committed. The determination of the panel must be filed with the agency head and the officer.*
- *The officer bears the burden of proving that the violation was intentional, The standard of proof is a "preponderance of the evidence."*
- *If the violation is found to be intentional, the investigator must be removed, and an investigation must be initiated. If the investigation of the investigator is sustained, the allegations must be forwarded to the Criminal Justice Standard and Training Commission for review as official misconduct or misuse of position.*

The bill expressly provides that Chapter 120, the Administrative Procedures Act, does not apply to the LEOBOR.

The bill provides an effective date of July 1, 2009.

B. SECTION DIRECTORY:

Section 1 amends s. 112.532, F.S., relating to the rights of law enforcement and correctional officers.

Section 2 amends s. 112.533, F.S., relating to the review and processing of complaints against law enforcement and correctional officers.

Section 3 amends s. 112.534, F.S., relating to remedies for violations of Part VI of chapter 112.

Section 4 provides an effective date of July 1, 2009.

II. 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:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By increasing the information that must be provided to a law enforcement officer who is under investigation, there may be an increased cost to a state or local law enforcement agency who is conducting such an investigation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, chapter 120, F.S., the APA, applies to most state agencies and others named in statute. It does not routinely apply to units of local government. Local governments typically develop their own codes of administrative practice. The disclaimer, then, would have little effect upon most local governments since the majority of law enforcement officers are employed by counties, cities, and independent districts. It will apply to state agencies and, as made applicable to the entire part, the investigative process will be exempt from the APA. At the conclusion of these proceedings, however, it is likely that any referral due to violation or abuse of the investigative process will be referred to either the Criminal Justice Standards and Training Commission, for licensure action; the Public Employees Relations Commission, for civil service employment action; or to the collective bargaining agreement, if any, for contractual rights. In the first two instances, there will be supplemental recourse to chapter 120 if there is a final agency action.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 21, 2009, the Policy Council reported the bill favorably as a Council Substitute after adopting a "strike-all" amendment. The Policy Council Substitute differs from the previous Committee Substitute in that the Council Substitute sets forth the compliance review procedures that apply when an agency is alleged to have failed to comply with the requirements of the LEOBOR. It also provides that the APA is not applicable to this part.

On March 24, 2009, the Public Safety and Domestic Security Committee adopted a strike-all amendment to the bill and reported the bill favorably with a Committee Substitute. The strike-all amendment:

- Removes the requirement that an investigating agency permit subject officers to review officers statements and allowing them to amend or clarify statements previously given;
- Removes proposed language amending 112.532, F.S., to allow for disciplinary reversals for not complying with the law;

- Narrows evidence that must be provided to officers to “existing” evidence; and
- Changes the alternative remedy for a violation of the officers’ rights statute.