

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

Part VI of chapter 112, commonly referred to as the "Law Enforcement Officers' Bill of Rights," 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).

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. Additionally, if more than one officer is being investigated, or comes under investigation, the agency would be required to provide each subject officer the opportunity to review all statements given, and also allow the subject officers to amend or clarify any of their previously given statements. Moreover, this bill would include as a triggering event of 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 evidence, upon request. As the law is currently written, the 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.

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.

The bill further provides that any violation of s. 112.532, F.S., voids the disciplinary action taken against the officer, and also mandates that the officer be reinstated to the position or rank previously held, along with reimbursement of wages and benefits, as if the discipline had not been imposed.

Currently, s. 122.532(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.

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. 122.533(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 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.

Section 112.534, F.S., also provides that if an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, 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 amends this section to allow an officer alternative paths to seek recourse. In addition to the option to seek an injunction from circuit court, the officer would be allowed to seek declaratory relief under chapter 86, or "other extraordinary remedies pursuant to law," to ensure compliance. Also, the bill would direct courts, in fashioning a remedy for a violation of the part, to declare the action taken by the agency void and direct that the officer be reinstated and reimbursed as if the discipline had not been imposed.

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.

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.

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:

The bill provides that if a law enforcement agency or correctional agency violates s. 112.532, F.S., the disciplinary action is void and the officer must be reinstated. There is no requirement that the violation be willful or substantial, or that the officer be injured by the violation, in order for the action to be void.

The Department of Corrections, in their analysis, has listed three concerns with the proposed bill. Namely, they feel that aspects of the bill would substantially degrade the integrity of the investigation of the officer, would tie the hands of the disciplinary authority, and would allow for too liberal of a remedy on the basis of a minor mistake.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES