

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 123

Investigations of Law Enforcement and Correctional Officers

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS: SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>9 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>13 Y, 1 N, As CS</u>	<u>Cunningham</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Florida statutes grant law enforcement officers and correctional officers certain rights when the officer is being investigated by his or her employing agency. HB 123 provides that, whenever possible, a law enforcement or correctional agency must interview all identifiable witnesses prior to the beginning of an investigative interview of an accused officer. Further, the bill provides that the accused officer must be given a copy of the complaint and all witness statements prior to the investigative interview of the accused officer. The bill also permits the accused officer, after being informed of the right to review witness statements, to voluntarily waive the right to do so.

HB 123 also creates an additional exception to the requirement that an agency provide notice of its intent to proceed with disciplinary action within 180 days after the date the agency received notice of the misconduct. Specifically, the bill provides that the running of the limitations period may be tolled for emergencies or natural disasters during the time period wherein the Governor has declared a state of emergency within the jurisdictional boundaries of the concerned agency.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill impacts the discretion of a law enforcement or correctional agency who is conducting an investigation of an officer by providing that an agency, whenever possible, must interview all witnesses prior to the beginning of an investigative interview of an officer.

Safeguard individual liberty - The bill will require an accused officer to be given a copy of the statements of all identifiable witnesses prior to the officer being interviewed.

B. EFFECT OF PROPOSED CHANGES:

Investigations of Law Enforcement and Correctional Officers

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. The section places conditions on certain aspects of an interrogation of an accused officer relating to time, place and method of interrogation (e.g. paragraph (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).³

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.⁴ 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.⁵ Additionally, officers subject to disciplinary action⁶ must, upon request, be provided with a complete copy of the investigative report and supporting documents prior to the imposition of disciplinary action.⁷

HB 123 amends s. 112.532, F.S. to provide that all identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of an investigative interview of an accused officer. The bill also provides that a copy of the complaint and all witness statements must be provided to the officer who is the subject of the complaint prior to the beginning of any investigative interview.

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.

³ Section 112.534, F.S., 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.

⁴ s. 112.533, F.S.

⁵ 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.

⁶ Disciplinary action consists of a suspension with loss of pay, demotion, or dismissal. See s. 112.532(4)(b), F.S.

⁷ *Id.*

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The Law Enforcement Officers' Bill of Rights also provides that no disciplinary action, demotion, or dismissal shall be undertaken by an agency against an officer for any act, omission, or other allegation of misconduct if the investigation is not completed within 180 days after the date the agency receives notice of the allegation. If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the officer of its intent to proceed with disciplinary action, along with a proposal of the action sought. This notice must be provided within 180 days after the date the agency received notice of the misconduct with certain exceptions:

- The running of the limitations period may be tolled for a time specified by the officer in writing.
- The running of the limitations period shall be tolled during the time that any criminal investigation or prosecution is pending in connection with the misconduct.
- The running of the limitations period shall be tolled if the officer being investigated is incapacitated or otherwise unavailable.
- In a multi-jurisdictional investigation, the limitations period may be extended for a period of time reasonably necessary to facilitate the coordination of the agencies involved.

HB 123 creates an additional exception to the requirement that an agency provide notice of its intent to proceed with disciplinary action within 180 days after the date the agency received notice of the misconduct. Specifically, the bill provides that the running of the limitations period may be tolled for emergencies or natural disasters during the time period wherein the Governor has declared a state of emergency within the jurisdictional boundaries of the concerned agency.

C. SECTION DIRECTORY:

Section 1. Amends s. 112.532, F.S., relating to law enforcement officers' and correctional officers' rights.

Section 2. This bill takes effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to have any fiscal impact on state or local government or on the private sector.

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 an 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:

A substantively identical bill was vetoed by Governor Bush in 2005. The Governor's veto letter cited two reasons for vetoing the bill. First, the bill afforded law enforcement officers rights that are not afforded to other state employees and limited the ability of investigators to determine whether the trust that the public places in law enforcement officers has been breached. Second, because the bill required all witnesses to be interviewed prior to the investigative interview of the accused officer, the bill might have had a significant impact on the time it takes to bring an investigation to a conclusion (e.g. witnesses may be difficult to locate or unable to provide information that would have a significant impact on the investigation). The veto letter stated that the bill's restrictions "eliminate needed flexibility and place an undue burden on the conduct of internal investigations."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor did not submit a comment.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 11, 2007, the Safety & Security Council adopted one amendment and reported the bill favorably as a council substitute. The amendment creates an additional exception to the requirement that an agency provide notice of its intent to proceed with disciplinary action within 180 days after the date the agency received notice of the misconduct.

This analysis is drafted to the council substitute.