The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 1086
INTRODUCER:	Senator Gruters
SUBJECT:	Rights of Law Enforcement Officers
DATE:	April 4, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Favorable**
2.	Harmsen	McVaney	GO	**Pre-meeting**
3.			RC	

I. Summary:

SB 1086 amends provisions contained in part VI of ch. 112, F.S., commonly referred to as the "Law Enforcement Officer's Bill of Rights." The bill provides an additional right and permits a law enforcement officer or a correctional officer who is under consideration for disciplinary action by his or her agency to seek redress, if the agency fails to follow the disciplinary process in the "Officer's Bill of Rights" and related statutes.[1]

The bill amends s. 112.532, F.S., to provide that if an agency undertakes disciplinary action, suspension, demotion, or dismissal against a law enforcement officer or a correctional officer, the officer must receive notice of the investigation within 180 days after the agency receives notice of the alleged misconduct when none of the specified tolling exceptions[2] apply. If the agency does not comply with the notice provision, and an officer is disciplined, suspended, demoted, or dismissed, the bill provides that the officer may appeal the issuance of the disciplinary action administratively or in a court of competent jurisdiction.

Additionally, the bill amends s. 112.534, F.S., to convey upon the officer a right to appeal administratively or in a court of competent jurisdiction if a violation of s. 112.534, F.S., is discovered after an interview or interrogation, or if the agency fails to abide by the Law Enforcement Officer's Bill of Rights, and related provisions.[3]

Law enforcement agencies and the Department of Corrections may incur additional costs of litigation as a result of the bill's provisions although the fiscal impact is unquantifiable.

The bill becomes effective July 1, 2023.

[1] Part VI of ch. 112, F.S.
[2] Section 112.532(6)(a), F.S.; *See* footnote 7 for a complete list of the exceptions.
[3] Part VI of ch. 112, F.S.; *See* ss. 112.531-112.535, F.S.

II. Present Situation:

Law Enforcement Officers' Bill of Rights

Section 112.532, F.S., commonly known as the "Law Enforcement Officers' Bill of Rights" provides specific rights when a law enforcement officer or a correctional officer is under investigation and subject to interrogation for a reason which could lead to a disciplinary action, demotion, or dismissal. These rights generally include:

- The right to be informed of the nature of the investigation and the evidence against the law enforcement officer or correctional officer, including the complaint, all witness statements, and all other existing evidence, before any interrogation;[4]
- The right to counsel during any interrogation;[5]
- The right to be notified of the reasons for any disciplinary action before it is imposed;[6]
- The right to materials that would allow a transcript of any interrogation to be prepared;[7]
- The right to a complete copy of the investigatory file;[8] and
- The right to address the findings in the investigatory report with the agency before the disciplinary action is imposed.[9]

Additionally, these rights provide the conditions under which any interrogation of the officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, and restriction on the interrogation techniques.[10]

Notice of Disciplinary Action

A dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against any law enforcement officer or correctional officer unless the law enforcement officer or correctional officer is notified of the action and the reason or reasons for the action before the effective date of the action.[11]

No disciplinary action, demotion, or dismissal may be taken unless the investigation is completed within 180 days of receipt of a notice of a complaint against an officer, unless:[12]

- The subject officer agrees to toll the time period in a written waiver;
- A criminal investigation or prosecution in connection with the officer's alleged act, omission, or other misconduct is ongoing;
- The subject officer is incapacitated or otherwise unavailable;
- The investigation is part of a multijurisdictional investigation, and an extension is reasonably necessary to facilitate coordination;

[4] Section 112.532(1)(d), F.S.
[5] Section 112.532(1)(i), F.S.
[6] Section 112.532(4)(a), F.S.
[7] Section 112.532(1)(g), F.S.
[8] Section 112.532(4)(b), F.S.
[9] *Id*.
[10] Section 112.532(1)(a), (1)(b), (1)(c), (1)(e), (1)(f), and (4)(b), F.S.
[11] Section 112.532(4)(a), F.S.
[12] Section 112.532(6), F.S.

- An emergency or natural disaster occurs, and is the subject of a declared state of emergency; or
- The subject officer's compliance hearing is ongoing (a hearing is deemed to end with the compliance review panel's written determination or other remedy by the agency).

The Agency must provide notice to the officer within 180 days after the date that it received notice of the alleged misconduct, regardless of the origin of the allegation or complaint.[13] If the agency determines that disciplinary action is appropriate, it shall complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action, along with a proposal of the specific action sought, including length of suspension, if applicable.

An investigation against a law enforcement officer or correctional officer may be reopened if significant new evidence has been discovered that is likely to affect the outcome of the investigation, and such evidence could not have reasonably been discovered in the normal course of the investigation or the evidence resulted from the predisciplinary response of the officer. Such an investigation must be completed within 90 days after the date it was reopened.[14]

Agency Non-Compliance

Section 112.534, F.S., provides a method of recourse for an officer who alleges that any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally failed to comply with the requirements of Part VI of ch. 112, F.S., related to an investigation of a complaint against that officer.[15]

The officer must advise the investigator of the intentional violation of the requirements of this part which is alleged to have occurred. The officer's notice of violation is sufficient to notify the investigator of the requirements of this part which are alleged to have been violated and the factual basis of each violation.[16]

If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request the agency head or his or her designee be informed of the alleged intentional violation.[17] Once this request is made, the interview of the officer shall cease, and the officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.[18]

Thereafter, within 3 working days, a written notice of violation and request for a compliance review hearing shall be filed with the agency head or designee that must contain sufficient information to identify the requirements of part VI of ch. 112, F.S., which are alleged to have been violated and the factual basis of each violation. All evidence related to the investigation

[13] Section 112.532(6)(a), F.S.
[14] Section 112.532(6)(b), F.S.
[15] Part VI of ch. 112, F.S., pertains to law enforcement and correctional officers. *See* ss. 112.531-112.535, F.S.
[16] Section 112.534(1)(a), F.S.
[17] Section 112.534(1)(b), F.S.
[18] *Id*.

must be preserved for review and presentation at the compliance review hearing. For purposes of confidentiality, the compliance review panel hearing shall be considered part of the original investigation.[19]

Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a compliance review hearing is filed, unless, by mutual agreement of the officer and agency or for extraordinary reasons, an alternate date is chosen. The compliance review panel shall review the circumstances and facts surrounding the alleged intentional violation.[20]

Section 112.534(1)(d), F.S., sets forth the composition of compliance review panels, which hold compliance review hearings when requested by an officer with a complaint.[21] It is the responsibility of the compliance review panel to determine whether the investigator or agency intentionally violated the requirements provided under part VI of ch. 112, F.S. The panel may hear evidence, review relevant documents, and hear argument before making a determination. All evidence received shall be strictly limited to the allegation under consideration and may not be related to the disciplinary charges pending against the officer.[22] The officer bears the burden of proof in the hearing. The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer.[23]

If the alleged violation is sustained as intentional by the compliance review panel, the agency head shall immediately remove the investigator from any further involvement with the investigation of the officer. Additionally, the agency head shall direct an investigation be initiated against the investigator for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.[24]

Although the aggrieved officer may seek redress through the compliance review panel process under the circumstances described above, it appears that other avenues of complaint are unavailable. For example, s. 112.534(2)(b), F.S., specifies that the provisions of ch. 120, F.S., "do not apply" to part VI of ch. 112, F.S. Chapter 120, F.S., the Administrative Procedure Act, allows certain claims to be adjudicated at the Department of Administrative Hearings or through

[19] Section 112.534(1)(c), F.S.
[20] Section 112.534(1)(d), F.S.
[21] The compliance review panel shall be made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member to be selected by the other two members. The review panel members shall be law enforcement officers or correctional officers who are active from the same law enforcement discipline as the officer requesting the hearing. Panel members may be selected from any state, county, or municipal agency within the county in which the officer works.
[22] Section 112.534(1)(e), F.S.
[23] Section 112.534(1)(f), F.S.
[24] Section 112.534(1)(g), F.S. The Criminal Justice Standards and Training Commission is authorized to certify, and revoke the certification of officers, instructors, including agency in-service training instructors, and criminal justice training schools. Section 943.12(3), F.S. "Officer" means any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer. Section 943.10(14), F.S.

other manners of hearings. This statutory prohibition against an officer seeking relief in the administrative law system became effective on July 1, 2009.[25]

In the same 2009 law, the following language was stricken from s. 112.534(g), F.S.: "[A] law enforcement officer or correctional officer employed by or appointed to such agency who is personally injured by such failure to comply may apply directly to the circuit court of the county wherein such agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part."[26]

III. Effect of Proposed Changes:

The bill amends provisions contained in part VI of ch. 112, F.S., commonly referred to as the "Law Enforcement Officer's Bill of Rights." The bill provides for an additional right, and permits a law enforcement officer or a correctional officer who is under consideration for disciplinary action by his or her agency to seek redress, if the agency fails to follow the disciplinary process in the "Officer's Bill of Rights" and related statutes.[27]

Section 1 amends s. 112.532, F.S., to provide that if an agency undertakes disciplinary action, suspension, demotion, or dismissal against a law enforcement officer or a correctional officer, the officer must receive notice within 180 days after the agency receives notice of the alleged misconduct when none of the specified tolling exceptions,[28] apply. Since, generally, the agency must finalize its investigation within 180 days, this provision requires notice to the officer before the investigation is finalized, and before discipline is meted out.

If the agency does not comply with the notice provision, and an officer is disciplined, suspended, demoted, or dismissed, the bill provides that the officer may appeal the issuance of the disciplinary action administratively or in a court of competent jurisdiction.

Section 2 amends s. 112.534, F.S., to convey upon the officer a right to appeal administratively or in a court of competent jurisdiction if a violation of s. 112.534, F.S., is discovered after an interview or interrogation, or if the agency fails to abide by the Law Enforcement Officer's Bill of Rights, and related provisions.[29]

The bill, therefore, gives an officer options for redress if the officer believes he or she has been wronged in the disciplinary process. This availability of redress has not been available since the law was changed in 2009.

Law enforcement agencies and the Department of Corrections may incur additional costs of litigation as a result of the bill's provisions although the fiscal impact is unquantifiable.

The bill becomes effective July 1, 2023.

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[25] Chapter 2009-200, L.O.F.
[26] *Id*.
[27] Part VI of ch. 112, F.S.
[28] Section112.532(6)(a), F.S.; *See* footnote 7 for a complete list of the exceptions.
[29] Part VI of ch. 112, F.S.; *See* ss. 112.531-112.535, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement agencies and the Department of Corrections may incur additional costs of litigation although the fiscal impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.532 and 112.534 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.