

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123
SPONSOR(S): Gibson
TIED BILLS:

Investigations of Law Enforcement and Correctional Officers
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></u>	<u>Cunningham</u>	<u>Havlicak</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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.

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:

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.*

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

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES