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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/16/2009	.	
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Floor: 2/AD/2R	.	
04/24/2009 03:59 PM	.	

The Committee on Governmental Oversight and Accountability
(Jones) recommended the following:

Senate Amendment

Delete lines 241 - 316
and insert:

officer" includes the officer's representative or legal
counsel, except in application of s. 112.534(1) (d).

(a) The law enforcement officer or correctional officer
shall 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



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11 investigator of the requirements of this part which are alleged
12 to have been violated and the factual basis of each violation.

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

22 (c) Thereafter, within 3 working days, a written notice of
23 violation and request for a compliance review hearing shall be
24 filed with the agency head or designee which must contain
25 sufficient information to identify the requirements of this part
26 which are alleged to have been violated and the factual basis of
27 each violation. All evidence related to the investigation must
28 be preserved for review and presentation at the compliance
29 review hearing. For purposes of confidentiality, the compliance
30 review panel hearing shall be considered part of the original
31 investigation.

32 (d) Unless otherwise remedied by the agency before the
33 hearing, a compliance review hearing must be conducted within 10
34 working days after the request for a compliance review hearing
35 is filed, unless, by mutual agreement of the officer and agency
36 or for extraordinary reasons, an alternate date is chosen. The
37 panel shall review the circumstances and facts surrounding the
38 alleged intentional violation. The compliance review panel shall
39 be made up of three members: one member selected by the agency



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40 head, one member selected by the officer filing the request, and
41 a third member to be selected by the other two members. The
42 review panel members shall be law enforcement officers or
43 correctional officers who are active from the same law
44 enforcement discipline as the officer requesting the hearing.
45 Panel members may be selected from any state, county or
46 municipal agency within the county in which the officer works.
47 The compliance review hearing shall be conducted in the county
48 in which the officer works.

49 (e) It is the responsibility of the compliance review panel
50 to determine whether or not the investigator or agency
51 intentionally violated the requirements provided under this
52 part. It may hear evidence, review relevant documents and hear
53 argument before making such a determination; however, all
54 evidence received shall be strictly limited to the allegation
55 under consideration and may not be related to the disciplinary
56 charges pending against the officer. The investigative materials
57 are considered confidential for purposes of the compliance
58 review hearing and determination.

59 (f) The officer bears the burden of proof to establish that
60 the violation of this part was intentional. The standard of
61 proof for such a determination is by a preponderance of the
62 evidence. The determination of the panel must be made at the
63 conclusion of the hearing, in writing, and filed with the agency
64 head and the officer.

65 (g) If the alleged violation is sustained as intentional by
66 the compliance review panel the agency head shall immediately
67 remove the investigator from any further involvement with the
68 investigation of the officer. Additionally, the agency head



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69 shall direct an investigation be initiated against the
70 investigator determined to have intentionally violated the
71 requirements provided under this part for purposes of agency
72 disciplinary action. If that investigation is sustained, the
73 sustained allegations against the investigator shall be
74 forwarded to the Criminal Justice Standard and Training
75 Commission for review as an act of official misconduct or misuse
76 of position. a law enforcement officer or correctional officer
77 employed by or appointed to such agency who is personally
78 injured by such failure to comply may apply directly to the
79 circuit court of the county wherein such agency is headquartered
80 and permanently resides for an injunction to restrain and enjoin
81 such violation of the provisions of this part and to compel the
82 performance of the duties imposed by this part.

83 (2) (a) All the provisions of s. 838.022 shall apply to this
84 part.

85 (b) The provisions of chapter 120 do not apply to this
86 part.