

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 453 Law Enforcement and Correctional Officers

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Duggan

TIED BILLS: **IDEN./SIM. BILLS:** SB 884

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Villa	Smith
2) Judiciary Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Law Enforcement Officers' Bill of Rights (LEOBOR) provides certain statutory rights and privileges to law enforcement and correctional officers who are under investigation and subject to interrogation for any reason that could result in disciplinary action. The LEOBOR defines "law enforcement officer" and "correctional officer" to mean officers employed on a full time basis.

Currently, disciplinary action may not be taken against an officer unless the investigation is completed within 180 days after the date the agency receives notice of the allegation of misconduct by a person authorized by the agency to initiate an investigation of the misconduct. Notice of disciplinary action must be provided to the officer within the 180 days. Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints.

The bill revises the definitions of "law enforcement officer" and "correctional officer" to include officers employed part time. The bill further specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. Therefore, disciplinary action may not be taken against an officer for external or internal complaints unless the investigation is completed within 180 days. If the agency determines that disciplinary action is appropriate, the officer must be provided written notice within the 180 days.

The bill may have a negative fiscal impact on state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law Enforcement Officers' Bill of Rights

Chapter 112, Part VI, F.S., commonly known as the Law Enforcement Officers' Bill of Rights (LEOBOR), provides specific rights when a law enforcement officer¹ or correctional officer² is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The LEOBOR defines "law enforcement officer" and "correctional officer" to mean officers employed on a full time basis.

The LEOBOR prescribes the conditions under which an interrogation of an officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, as well as restrictions on the interrogation techniques.³ The LEOBOR further affords officers:

- the right to be informed of the nature of the investigation;
- the right to be provided with all evidence against the officer before any interrogation;
- the right to counsel during any interrogation;
- the right to the interrogation recording;
- the right to a complete copy of the investigative file;
- the right to be notified of the reason for disciplinary action before it is imposed; and
- the right to address the findings in the investigative file with the employing agency before disciplinary action is imposed.⁴

An officer cannot be disciplined or otherwise discriminated against for exercising his or her rights under the LEOBOR.⁵

Limitations Period for Disciplinary Action

The LEOBOR provides that disciplinary action may not be taken against an officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.⁶ Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints. In *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*⁷ an internal complaint was filed against an officer and the agency's subsequent investigation exceeded 180 days. The court reaffirmed its prior interpretation and held that the 180-day provision does not apply to internal complaints because the 180-day provision is triggered by the agency's receipt of a complaint, and therefore, the complaint would need to come from a person outside the agency for the 180-day provision to apply.⁸

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(2), 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.

³ Section 112.532(1), F.S.

⁴ Section 112.532(1) & (4), F.S.

⁵ Section 112.532(5), F.S.

⁶ Section 112.532(6), F.S.

⁷ *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, 148 So. 3d 798 (Fla. 1st DCA 2014).

⁸ *Id.* See also *McQuade v. Department of Corrections*, 51 So. 3d 489 (Fla. 1st DCA 2010); *Migliore v. City of Lauderhill*, 415 So. 2d 62 (Fla. 4th DCA 1982); *approved*, 431 So. 2d 986 (Fla. 1983).

If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct. The running of the limitations period may be tolled or extended under certain circumstances.⁹

Effect of the Bill

The bill revises the definitions of “law enforcement officer” and “correctional officer” to include officers employed on a part time basis for the purposes of misconduct review proceedings.

The bill specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. Therefore, disciplinary action may not be taken against an officer for external or internal complaints unless the investigation is completed within 180 days. If the agency determines that disciplinary action is appropriate, the officer must be provided written notice within the 180 days.

B. SECTION DIRECTORY:

Section 1 amends s. 112.531, F.S., relating to definitions.

Section 2 amends s. 112.532(6), F.S., relating to law enforcement officers’ and correctional officers’ rights.

Section 3 provides an effective date of July 1, 2020.

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:

⁹ The running limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer; must be tolled during the time that any criminal investigation or prosecution is pending in connection with act, omission, or other allegation of misconduct; must be tolled if the investigation involves an officer who is incapacitated or otherwise unavailable; may be extended during a multijurisdictional investigation to facilitate coordination with other agencies involved; may be tolled for certain emergencies or natural disasters; and must be tolled during the time that the officer’s compliance hearing proceeding is continuing beginning with the filing of notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency. Section 112.532(6), F.S.

The bill requires all law enforcement and correctional agencies to comply with the LEOBOR for part time law enforcement and correctional officers. The bill also requires the investigations of allegations raised internally and externally to be completed within 180 days. Therefore, the fiscal impact on these agencies will vary based on part time officers employed and frequency of complaints raised internally.

The Department of Highway Safety and Motor Vehicles reports that the bill does not appear to have any fiscal impact on the department.¹⁰

The Department of Corrections reports that the bill would significantly impact the resources necessary to conduct investigations. The department estimates a 43% increase in investigative staff and a recurring annual cost of 3.1 million dollars.¹¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Oversight, Transparency & Public Management Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment revises the definitions of “law enforcement officer” and “correctional officer” to include officers employed part time. The strike-all amendment further specifies that the 180-day provision applies regardless of the origin of the allegation or complaint.

This analysis is drafted to the committee substitute as passed by the Oversight, Transparency & Public Management Subcommittee.

¹⁰ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 HB 453, p. 3 (December 18, 2019).

¹¹ Department of Corrections, Agency Analysis of 2020 HB 453, p. 3-4 (January 17, 2020).