

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 927 Rights of Law Enforcement Officers and Correctional Officers

SPONSOR(S): Alvarez

TIED BILLS: IDEN./SIM. BILLS: SB 1086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Padgett	Hall
2) Constitutional Rights, Rule of Law & Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides law enforcement officers and correctional officers with specified rights when they are being investigated for misconduct by their own agencies. Chapter 112, part VI, F.S., commonly known as the Law Enforcement Officers' Bill of Rights (LEOBOR), provides specific rights when a law enforcement officer or correctional officer (officer) 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.

Generally, an agency may not discipline, suspend, demote, or dismiss an officer unless an investigation is completed within 180 days of receipt of a notice of a complaint against an officer. If an 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 for such disciplinary action within 180 days after the date the agency received notice of the officer's alleged misconduct.

If an officer's employing agency, including its investigators, *intentionally* fail to comply with LEOBOR, an officer may request a compliance review hearing if the agency does not cure the intentional violation. If the compliance review panel determines, by a preponderance of the evidence, that a LEOBOR violation was intentional the agency must remove the investigator who committed the violation from further investigating the officer who requested the compliance review hearing and initiate an investigation against the investigator for purposes of agency disciplinary action.

LEOBOR does not explicitly provide other legal remedies other than the compliance review process. Section 112.534(2)(b), F.S., prohibits an officer from appealing any intentional LEOBOR violations through ch. 120, F.S., the Administrative Procedures Act (APA). Generally, judicial review under the APA is available for persons who have been adversely affected by the final agency action of a state agency.

HB 927 amends s. 112.532, F.S., to authorize an officer to appeal the issuance of a disciplinary action, suspension, demotion, or dismissal administratively or in a court of competent jurisdiction if the officer does not receive notice of such disciplinary action, suspension, demotion, or dismissal within 180 days after the date the officer's employing agency received notice of the officer's alleged misconduct and none of the exceptions to the 180-day requirement apply.

The bill amends s. 112.534, F.S., to provide an officer the right to appeal a LEOBOR violation administratively or in a court of competent jurisdiction if:

- The violation is discovered by the officer after an interview or interrogation; or
- The officer's employing agency fails to abide by the rights of the officer.

The bill authorizes an officer to appeal LEOBOR violations administratively or in a court of competent jurisdiction, which may increase litigation. The bill may have an indeterminate fiscal impact on agencies that employ law enforcement officers or correctional officers due to such increased litigation.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law Enforcement Officers' Bill of Rights

Current law provides law enforcement officers and correctional officers with specified rights when they are being investigated for misconduct by their own agencies. 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. 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 LEOBOR further affords officers the right to:

- Be informed of the nature of the investigation;
- Be provided with all evidence against the officer before any interrogation;
- Counsel during any interrogation;
- Have the interrogation recorded;
- A complete copy of the investigative file;
- Be notified of the reason for disciplinary action before it is imposed; and
- 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

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 (officer) unless the officer is notified of the action and the reason or reasons for the action before the effective date of the action.⁶

Generally, an agency may not discipline, suspend, demote, or dismiss an officer unless an investigation is completed within 180 days of receipt of a notice of a complaint against an officer.⁷ If an 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 for such disciplinary action within 180 days after the date the agency received notice of the officer's alleged misconduct.⁸ The 180-day limitation does not apply if:

- An officer makes a written waiver of such limitation;
- A criminal investigation or prosecution is pending in connection with the misconduct;

¹ "Law enforcement officer" is defined 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, F.S. S. 112.531, F.S.

² "Correctional officer" is defined 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), F.S. However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. S. 112.531(2), F.S.

³ S. 112.532(1), F.S.

⁴ S. 112.532(1) and (4), F.S.

⁵ S. 112.532(5), F.S.

⁶ S. 112.532(4)(a), F.S.

⁷ S. 112.532(6)(a), F.S.

⁸ *Id.*

- The investigation involves an officer who is incapacitated or otherwise unavailable;
- The investigation is multijurisdictional and more time is needed to coordinate the agencies involved;
- There is an emergency or natural disaster and the Governor has declared a state of emergency; or
- During the pendency of an officer's compliance review hearing.⁹

An investigation against an 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.¹⁰

Agency Noncompliance

Section 112.534, F.S., provides an officer recourse if an officer's employing agency, including its investigators, *intentionally* fail to comply with LEOBOR. If an officer notifies an investigator of such intentional violation and the investigator fails to cure the violation, the officer must request the agency head or his or her designee to be informed of the violation and any interview of the officer must immediately end.¹¹ Within three working days, the officer must file a written notice of violation and a request for a compliance review hearing must be filed with the agency head or his or her designee containing sufficient information to identify which LEOBOR procedures were violated and provide the factual basis for each violation.¹²

If the intentional violation is not remedied by the employing agency, a compliance review hearing must be conducted within 10 working days after the request for such hearing, except upon mutual agreement of the officer and the employing agency.¹³ The compliance review panel is comprised of three members: one member selected by the employing agency, one member selected by the officer, and one member selected by the other two members.¹⁴ Review panel members must be active officers from the same law enforcement discipline as the requesting officer and may be employed at any law enforcement or correctional agency in the county in which the requesting officer is employed.¹⁵

The compliance review panel must determine if an employing agency committed an intentional LEOBOR violation and may hear evidence, review relevant documents, and hear argument prior to making such a determination.¹⁶ The officer bears the burden of proving by a preponderance of the evidence that a LEOBOR violation was intentional.¹⁷ If the compliance review panel determines the violation was intentional, the agency must remove the investigator from further investigation of the officer who requested the compliance review hearing and initiate an investigation against the investigator for purposes of agency disciplinary action.¹⁸

LEOBOR does not explicitly provide other legal remedies other than the compliance review process. Section 112.534(2)(b), F.S., prohibits an officer from appealing any intentional LEOBOR actions through ch. 120, F.S., the Administrative Procedures Act (APA). Generally, judicial review under the APA is available for persons who have been adversely affected by the final agency action of a state agency.¹⁹

⁹ A compliance review hearing is a proceeding an officer may initiate alleging his or her employing agency failed to comply with LEOBOR. S. 112.534, F.S.

¹⁰ S. 112.532(6)(b), F.S.

¹¹ S. 112.534(1)(b), F.S.

¹² S. 112.534(1)(c), F.S.

¹³ S. 112.534(1)(d), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 112.534(1)(e) and (f), F.S.

¹⁷ S. 112.534(1)(g), F.S.

¹⁸ *Id.*

¹⁹ S. 120.68, F.S.

Effect of Proposed Changes

HB 927 amends s. 112.532, F.S., to authorize an officer to appeal the issuance of a disciplinary action, suspension, demotion, or dismissal administratively or in a court of competent jurisdiction if the officer does not receive notice of such disciplinary action, suspension, demotion, or dismissal within 180 days after the date the officer's employing agency received notice of the officer's alleged misconduct and none of the exceptions to the 180 day requirement apply.

The bill amends s. 112.534, F.S., to provide an officer the right to appeal a LEOBOR violation administratively or in a court of competent jurisdiction if:

- The violation is discovered by the officer after an interview or interrogation; or
- The officer's employing agency fails to abide by the rights of the officer.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 112.534, F.S., relating to failure to comply; official misconduct.

Section 3: Provides an effective date of July 1, 2023.

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:

The bill authorizes an officer to appeal LEOBOR violations administratively or in a court of competent jurisdiction, which may increase litigation. The bill may have an indeterminate fiscal impact on agencies that employ law enforcement officers or correctional officers due to such increased litigation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES