Senate Engrossed

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JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 61

SENATE BILL 1609

AN ACT

AMENDING SECTIONS 38-1101 AND 48-3712, ARIZONA REVISED STATUTES; RELATING TO LAW ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-1101, Arizona Revised Statutes, is amended to read:

38-1101. Law enforcement officers; probation officers; right to representation; right to evidence on appeal; change of hearing officer or administrative law judge; definitions

A. If an employer interviews a law enforcement officer or probation officer and the employer reasonably believes that the interview could result in dismissal, demotion or suspension, the law enforcement officer or probation officer may request to have a representative of the officer present at no cost to the employer during the interview. The law enforcement officer or probation officer shall select a representative who is available on reasonable notice so that the interview is not unreasonably delayed. The representative shall participate in the interview only as an observer. Unless agreed to by the employer, the representative shall be from the same agency and shall not be an attorney. The law enforcement officer or probation officer shall be permitted reasonable breaks of limited duration during any interview for telephonic or in person consultation with others, including an attorney, who are immediately available. An employer shall not discipline, retaliate against or threaten to retaliate against a law enforcement officer for requesting that a representative be present or for acting as the representative of a law enforcement officer pursuant to this subsection.

B. Subsection A does not apply to an interview of a law enforcement officer or probation officer that is:

1. In the normal course of duty, counseling or instruction or an informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other law enforcement officer or probation officer.

2. Preliminary questioning to determine the scope of the allegations or if an investigation is necessary.

3. Conducted in the course of a criminal investigation.

4. Conducted in the course of a polygraph examination.

C. In any appeal of a disciplinary action by a law enforcement officer or probation officer, the parties shall exchange copies of all relevant documents and a list of all witnesses pursuant to the following time periods and requirements:

1. Within three business days after the employer's receipt of a written request from the law enforcement officer or probation officer for a copy of the investigative file that is accompanied by a copy of the filed notice of appeal, the employer shall provide a complete copy of the investigative file as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation.

2. No later than five business days before the appeal hearing, or, if the appeal hearing is scheduled more than twenty days after the notice of appeal, no later than ten business days before the appeal hearing, the employer and the law enforcement officer or probation officer shall exchange copies of any documents that may be introduced at the hearing and that have not previously been disclosed.

3. No later than five business days before the appeal hearing, or, if the appeal hearing is scheduled more than twenty days after the notice of appeal, no later than ten business days before the appeal hearing, the employer and the law enforcement officer or probation officer shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An employer shall not discipline, retaliate against or threaten to retaliate against any witness for agreeing to be interviewed or for testifying or providing evidence in the appeal.

D. It is unlawful for a person to disseminate information that is disclosed pursuant to subsection C to any person other than the parties to the appeal and their lawful representatives for purposes of the appeal of the disciplinary action. This subsection does not prohibit the use of the information in the hearing or disclosure pursuant to title 39, chapter 1, article 2.

E. The employer or the law enforcement officer or probation officer may seek a determination by the hearing officer, administrative law judge or appeals board hearing the appeal regarding any evidence that the employer or the law enforcement officer or probation officer believes should not be disclosed pursuant to subsection C because the risk of harm involved in disclosure outweighs any usefulness of the disclosure in the hearing. In determining whether evidence will be disclosed, the hearing officer, administrative law judge or appeals board may perform an in camera review of the evidence and may disclose the material subject to any restriction on the disclosure, including the closing of the hearing or the sealing of the records, that the hearing officer, administrative law judge or appeals board finds necessary under the circumstances.

F. In any appeal of a disciplinary action by a law enforcement officer or probation officer in which a single hearing officer or administrative law judge has been appointed to conduct the appeal hearing, the law enforcement officer or probation officer or the employer may request a change of hearing officer or administrative law judge. In cases before the office of administrative hearings, on the first request of a party, the request shall be granted. All other requests, including any subsequent requests in cases before the office of administrative hearings, may be granted only on a showing that a fair and impartial hearing cannot be obtained due to the prejudice of the assigned hearing officer or administrative law judge. The

supervisor or supervising body of the hearing officer or administrative law judge shall decide whether a showing of prejudice has been made.

G. A party who violates subsection C or D, unless the violation is harmless, shall not be permitted to use that evidence at the hearing, except on a showing of good cause. The hearing officer or administrative law judge, on a showing of good cause, may grant the opposing party a continuance, otherwise limit the use of the evidence or make such other order as may be appropriate.

H. If the employer amends, modifies, rejects or reverses the decision of a hearing officer, administrative law judge or board, the employer shall state the employer's reasons for the amendment, modification, rejection or reversal.

I. This section does not preempt agreements that supplant, revise or otherwise alter the provisions of this section, including preexisting agreements between the employer and the law enforcement officer or probation officer or the law enforcement officer's or probation officer's lawful representative association.

J. For the purposes of this section:

1. "Appeal" means a hearing before a state or local merit board, a civil service board, an administrative law judge or a hearing officer.

2. "Disciplinary action" means the dismissal or demotion or the suspension for more than forty hours of a law enforcement officer or probation officer that is authorized by statute, charter or ordinance and that is subject to a hearing or other procedure by a local merit board, a civil service board, an administrative law judge or a hearing officer.

3. "Investigative file" means the law enforcement agency's complete report and any attachments detailing the incidents leading to the disciplinary action.

4. "Law enforcement officer" means:

(a) An individual, other than a probationary employee, who is certified by the Arizona peace officer standards and training board, OTHER THAN A PERSON EMPLOYED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT.

(b) A detention officer or correction officer who is employed by this state or a political subdivision of this state ~~other than a multi-county water conservation district~~.

5. "Probation officer" means a probation officer or surveillance officer who is employed by this state or a political subdivision of this state.

Sec. 2. Section 48-3712, Arizona Revised Statutes, is amended to read:

48-3712. <u>Powers and duties of the board</u>

A. The board shall:

1. Manage and conduct the affairs and business of the district.

2. Make and execute all necessary contracts and other instruments which shall be signed by the president or, in the president's absence, by

another member of the board designated for that purpose, and attested by the secretary.

3. Establish bylaws and rules for the governing of the board and for the functions of the district~~, as provided in title 41~~.

4. Perform all acts necessary to carry out the purposes of this chapter.

5. Except as provided in subsection C of this section and in sections 48-3713.03, 48-3715.01, 48-3715.03, 48-3715.05, 48-3772 and 48-3773, require that all funds received on behalf of the district shall be deposited, pursuant to sections 35-146 and 35-147, in a special fund established by the state to be expended at the direction of the board to effectuate the provisions and purposes of this chapter. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

6. Adopt an ordinance or ordinances to establish a revenue bonding program that pledges to bond repayment any monies received or to be received by the district from any source except ad valorem tax revenues, replenishment assessment revenues and replenishment tax generated under article 4 of this chapter.

7. Employ such agents, engineers, attorneys and employees not readily available from existing state agencies.

B. The board may:

1. Accept grants, gifts or donations of money or other property from any source which may be expended for any purpose consistent with the provisions of this chapter.

2. Establish a revolving fund for the purpose of defraying the costs and expenses of the district.

APPROVED BY THE GOVERNOR APRIL 16, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2007.