COMMITTEE ON PUBLIC SAFETY, MILITARY AND TECHNOLOGY

SENATE AMENDMENTS TO S.B. 1467

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

"Section 1.  Section 38-1102, Arizona Revised Statutes, is amended to read:

38-1102.  Peace officers bill of rights; preemption; attorney general

A.  A peace officers bill of rights is established.  This article does not preempt agreements that supplant, revise or otherwise deviate from the provisions of this article, including written agreements between the employer and the law enforcement officer or the law enforcement officer's lawful representative association.

B.  THE ATTORNEY GENERAL HAS JURISDICTION TO ENFORCE THIS ARTICLE.  THE ATTORNEY GENERAL MAY SEEK RELIEF FOR ANY VIOLATION OF THIS ARTICLE THROUGH AN APPROPRIATE ACTION IN THE SUPERIOR COURT, INCLUDING AN ACTION TO ENJOIN A THREATENED OR PENDING VIOLATION OF THIS ARTICLE.

Sec. 2.  Section 38-1104, Arizona Revised Statutes, is amended to read:

38-1104.  Internal investigations; employee representative; polygraph examination; exception

A.  If an employer interviews a law enforcement officer in the course of an administrative investigation and the employer or law enforcement officer reasonably believes that the interview could result in dismissal, demotion or suspension:

1.  The law enforcement officer may request to have a representative of the officer present at no cost to the employer during the interview.  The law enforcement 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 not be an attorney and shall be from the same agency except that if a representative from the same agency is not reasonably available, with the employer's permission, the law enforcement officer's representative may be from the law enforcement officer's professional membership organization. The law enforcement officer shall be permitted reasonable breaks of limited duration during any interview
for telephonic or in person consultation with authorized persons, 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 paragraph.

2. Before the commencement of any interview described in this section, the employer shall provide the law enforcement officer with a written notice informing the officer of the alleged facts that are the basis of the investigation, the specific nature of the investigation, the officer's status in the investigation, all known allegations of misconduct that are the reason for the interview and the officer's right to have a representative present at the interview. The notice shall include copies of all complaints that contain the alleged facts that are reasonably available, except for copies of complaints that are filed with the employer and that include allegations of unlawful discrimination, harassment or retaliation or complaints that involve matters under the jurisdiction of the United States equal employment opportunity commission.

3. At the conclusion of the interview, the law enforcement officer is entitled to a period of time to consult with the officer's representative and may make a statement not to exceed five minutes addressing specific facts or policies that are related to the interview.

4. The law enforcement officer may audio record the interview. The audio recording shall be at no cost to the employer.

B. Subsection A of this section does not require the employer to either:
   1. Stop an interview to issue another notice for allegations based on information provided by the law enforcement officer during the interview.
   2. Disclose any fact to the law enforcement officer or the law enforcement officer's representative that would impede the investigation.

C. Subsection A, paragraphs 1 and 2 of this section do not apply to an interview of a law enforcement 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.
   2. Preliminary questioning to determine the scope of the allegations or if an investigation is necessary.
   3. Conducted during the course of a criminal investigation.
   4. Conducted during the course of a polygraph examination.

D. The employer may require the law enforcement officer to submit to a polygraph examination if the officer makes a statement to the employer during the investigation that differs from other information relating to the investigation that is known to the employer and reconciling that difference.
is necessary to complete the investigation. If a polygraph examination is
administered pursuant to this paragraph SUBSECTION, the employer or the
person administering the polygraph examination shall make an audio recording
of the complete polygraph procedure and provide a copy of the recording to
the law enforcement officer. Section 38-1108 applies to a polygraph
examination that is administered pursuant to this subsection.

E. If after an employer completes an investigation of a law
enforcement officer the employer seeks disciplinary action, at the request of
the law enforcement officer, the employer shall:

1. Provide a basic summary of any discipline ordered against any other
law enforcement officer of generally similar rank and experience employed by
the employer within the previous two years for the same or a similar
violation. As an alternative, the employer may provide file copies of the
relevant disciplinary cases. The employer shall

2. PROVIDE THE LAW ENFORCEMENT OFFICER WITH A COMPLETE COPY OF THE
INVESTIGATIVE FILE.

3. ALLOW THE LAW ENFORCEMENT OFFICER FOURTEEN DAYS TO REVIEW THE
INVESTIGATIVE FILE AND TO SUBMIT A RESPONSE OR REBUTTAL TO THE INVESTIGATION
BEFORE ANY DISCIPLINE IS ORDERED. THE EMPLOYER MAY GRANT EXTENSIONS TO THE
FOURTEEN-DAY PERIOD. THE LAW ENFORCEMENT OFFICER SHALL RETURN THE
INVESTIGATIVE FILE TO THE EMPLOYER AT THE TIME THE REBUTTAL OR RESPONSE IS
DELIVERED TO THE EMPLOYER OR AT THE END OF THE ALLOTTED TIME PERIOD.

4. Not take final action and the employer shall not schedule a hearing
until the basic summary or file copies are provided to the law enforcement
officer. ON ANY DISCIPLINE UNTIL THE LAW ENFORCEMENT OFFICER’S REBUTTAL OR
RESPONSE IS CONSIDERED.

F. This section does not apply to a law enforcement officer who is
employed by an agency of this state as an at will employee.

G. THE EMPLOYER SHALL INCLUDE ALL EXCULPATORY EVIDENCE IN THE
INVESTIGATIVE FILE.

Sec. 3. Section 38-1106, Arizona Revised Statutes, is amended to read:

38-1106. Appeal of disciplinary actions; transcripts; change of
hearing officer or administrative law judge; burden
of proof; exception

A. In any appeal of a disciplinary action by a law enforcement
officer, the parties shall cooperate with each other, act in good faith and
exchange copies of all relevant documents and a list of all witnesses
pursuant to the following time periods and requirements:
1. Within fourteen calendar days after the employer's receipt of a written request from the law enforcement 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 contact information for all persons interviewed during the course of the investigation.

2. No later than fourteen calendar days before the appeal hearing, the parties shall produce and serve on every party the following information:
   (a) The name of each witness whom the disclosing party expects to call at the appeal hearing, with a designation of the subject matter on which each witness might be called to testify. A witness may decline an interview. 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.
   (b) The name and contact information of each person who has given statements, whether written or recorded or signed or unsigned, regarding matters relevant to the notice of discipline and the custodian of the copies of those statements.
   (c) Copies of any documents that may be introduced at the hearing and that have not previously been disclosed.

B. It is unlawful for a person to disseminate information that is disclosed pursuant to subsection A of this section 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.

C. If a transcript is required in an administrative hearing, the employer shall obtain the transcript and provide a copy to the law enforcement officer within ten calendar days after the employer's receipt of the transcript.

D. Failure to comply with the requirements of subsection A or B of this section shall result in the exclusion of the witness, evidence or testimony, unless the failure to comply is because of excusable neglect.

E. The employer or the law enforcement 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 believes should not be disclosed pursuant to subsection A of this section 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 in which a single hearing officer or administrative law judge has been appointed to conduct the appeal hearing, the law enforcement officer or the employer, within ten calendar days after the appointment of the hearing officer or administrative law judge, may request a change of hearing officer or administrative law judge. In cases before the office of administrative hearings or if the employer is a county, city or town, on the first request of a party, the request shall be granted. A city or town with a population of less than sixty-five thousand persons or a county with a population of less than two hundred fifty thousand persons must provide, if necessary to comply with this subsection, for an alternate hearing officer by means of an interagency agreement with another city, town or county. If the law enforcement officer is the party who requested the alternate hearing officer, the law enforcement officer shall reimburse the city, town or county for one-half of any additional expenses incurred by the city, town or county in procuring the alternate hearing officer under the interagency agreement. If an alternate hearing officer is requested by means of an interagency agreement, the hearing officer shall provide to the law enforcement officer or employer the option of continuing the hearing for an additional ten calendar days. Any subsequent requests 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. The employer has the burden of proof in an appeal of a disciplinary action by a law enforcement officer.

H. Except where a statute, rule or ordinance makes the administrative evidentiary hearing the final administrative determination and after a hearing where the law enforcement officer and the employer have been equally allowed to call and examine witnesses, cross-examine witnesses, provide documentary evidence and otherwise fully participate in the hearing, an employer or a person acting on behalf of an employer may amend, modify, reject or reverse the portion of a decision made by a hearing officer, administrative law judge or appeals board that was arbitrary or without reasonable justification. The employer or person acting on behalf of the employer shall state the reason for the amendment, modification, rejection or reversal.

I. Notwithstanding chapter 3, article 3.1 of this title, all hearings pursuant to this section shall be open to the public. Executive sessions
permitted pursuant to section 38-431.03 shall be limited to legal advice to a personnel appeals board or for deliberations.

J. A law enforcement officer who prevails in an appeal where a termination has been reversed may be awarded retroactive compensation from the date of the officer's separation to the date of reinstatement. The hearing officer, administrative law judge or appeals board hearing the appeal shall determine the amount of retroactive compensation awarded and any reduction to that amount. Retroactive compensation may be reduced:

1. If there is undue delay in setting a hearing date caused by the law enforcement officer or the law enforcement officer's representative.

2. If the law enforcement officer requests a continuance.

3. If there exists a period between separation and reinstatement that the law enforcement officer would have been unable to perform the duties of a law enforcement officer.

4. By any amount earned by the law enforcement officer in alternative employment.

K. The hearing officer, administrative law judge or appeals board shall state in every finding of disciplinary action whether or not just cause existed for the disciplinary action.

L. The hearing officer, administrative law judge or appeals board shall document in the record those circumstances where the hearing officer, administrative law judge or appeals board determines that a party has clearly violated a party's obligation under this section.

M. IN AN APPEAL OF A DISCIPLINARY ACTION, THE STANDARD OF REVIEW IS A DE NOVO REVIEW AS TO WHETHER THE APPOINTING AUTHORITY HAS SATISFIED ITS BURDEN TO ESTABLISH THAT THERE WAS JUST CAUSE FOR THE DISCIPLINARY ACTION.

N. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee."