

STEVENS FLOOR AMENDMENT
SITTING AS IN COMMITTEE OF THE WHOLE
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1521
(Reference to Senate engrossed bill)

1 Page 1, between lines 8 and 9, insert:

2 "B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, REDUCTIONS TO
3 RETROACTIVE PAYROLL COMPENSATION ARE AUTHORIZED PURSUANT TO SECTION 38-1106,
4 SUBSECTION J, PARAGRAPH 5."

5 Reletter to conform

6 Lines 21 and 22, strike "~~one thousand~~ THREE HUNDRED FIFTY" insert "one thousand"

7 Lines 31 and 32, strike "THREE HUNDRED FIFTY" insert "FOUR HUNDRED"

8 Line 35, after "IN" strike remainder of line insert "SUBDIVISION (d) OF THIS
9 PARAGRAPH, STATE EMPLOYEES OF THE STATE DEPARTMENT OF CORRECTIONS AND STATE
10 EMPLOYEES WHO ARE LAW ENFORCEMENT OFFICERS."

11 Page 2, lines 37 and 42, strike "B" insert "C"

12 Page 3, lines 2 and 4, strike "B" insert "C"

13 After line 28, insert:

14 "Sec. 2. Section 38-1106, Arizona Revised Statutes, is amended to
15 read:

16 38-1106. Appeal of disciplinary actions; transcripts; change of
17 hearing officer or administrative law judge; burden
18 of proof; exception

19 A. In any appeal of a disciplinary action by a law enforcement
20 officer, the parties shall cooperate with each other, act in good faith and
21 exchange copies of all relevant documents and a list of all witnesses
22 pursuant to the following time periods and requirements:

1 1. Within fourteen calendar days after the employer's receipt of a
2 written request from the law enforcement officer for a copy of the
3 investigative file that is accompanied by a copy of the filed notice of
4 appeal, the employer shall provide a complete copy of the investigative file
5 as well as the names and contact information for all persons interviewed
6 during the course of the investigation.

7 2. No later than fourteen calendar days before the appeal hearing, the
8 parties shall produce and serve on every party the following information:

9 (a) The name of each witness whom the disclosing party expects to call
10 at the appeal hearing, with a designation of the subject matter on which each
11 witness might be called to testify. A witness may decline an interview. The
12 parties shall not interfere with any decision of a witness regarding whether
13 to be interviewed. An employer shall not discipline, retaliate against or
14 threaten to retaliate against any witness for agreeing to be interviewed or
15 for testifying or providing evidence in the appeal.

16 (b) The name and contact information of each person who has given
17 statements, whether written or recorded or signed or unsigned, regarding
18 matters relevant to the notice of discipline and the custodian of the copies
19 of those statements.

20 (c) Copies of any documents that may be introduced at the hearing and
21 that have not previously been disclosed.

22 B. It is unlawful for a person to disseminate information that is
23 disclosed pursuant to subsection A of this section to any person other than
24 the parties to the appeal and their lawful representatives for purposes of
25 the appeal of the disciplinary action. This subsection does not prohibit the
26 use of the information in the hearing or disclosure pursuant to title 39,
27 chapter 1, article 2.

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

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

4 E. The employer or the law enforcement officer may seek a
5 determination by the hearing officer, administrative law judge or appeals
6 board hearing the appeal regarding any evidence that the employer or the law
7 enforcement officer believes should not be disclosed pursuant to subsection A
8 of this section because the risk of harm involved in disclosure outweighs any
9 usefulness of the disclosure in the hearing. In determining whether evidence
10 will be disclosed, the hearing officer, administrative law judge or appeals
11 board may perform an in camera review of the evidence and may disclose the
12 material subject to any restriction on the disclosure, including the closing
13 of the hearing or the sealing of the records, that the hearing officer,
14 administrative law judge or appeals board finds necessary under the
15 circumstances.

16 F. In any appeal of a disciplinary action by a law enforcement officer
17 in which a single hearing officer or administrative law judge has been
18 appointed to conduct the appeal hearing, the law enforcement officer or the
19 employer, within ten calendar days after the appointment of the hearing
20 officer or administrative law judge, may request a change of hearing officer
21 or administrative law judge. In cases before the office of administrative
22 hearings or if the employer is a county, city or town, on the first request
23 of a party, the request shall be granted. A city or town with a population
24 of less than sixty-five thousand persons or a county with a population of
25 less than two hundred fifty thousand persons must provide, if necessary to
26 comply with this subsection, for an alternate hearing officer by means of an
27 interagency agreement with another city, town or county. If the law
28 enforcement officer is the party who requested the alternate hearing officer,
29 the law enforcement officer shall reimburse the city, town or county for
30 one-half of any additional expenses incurred by the city, town or county in
31 procuring the alternate hearing officer under the interagency agreement. If
32 an alternate hearing officer is requested by means of an interagency

1 agreement, the hearing officer shall provide to the law enforcement officer
2 or employer the option of continuing the hearing for an additional ten
3 calendar days. Any subsequent requests may be granted only on a showing that
4 a fair and impartial hearing cannot be obtained due to the prejudice of the
5 assigned hearing officer or administrative law judge. The supervisor or
6 supervising body of the hearing officer or administrative law judge shall
7 decide whether a showing of prejudice has been made.

8 G. The employer has the burden of proof in an appeal of a disciplinary
9 action by a law enforcement officer.

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

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

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

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

1 2. If the law enforcement officer requests a continuance.

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

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

7 5. IF THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
8 FINDS THAT THE LAW ENFORCEMENT OFFICER'S ACTION OR MISCONDUCT WARRANTS
9 SUSPENSION OR DEMOTION.

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

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

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

19 Amend title to conform

DAVID W. STEVENS

1521FloorSTEVENS22
04/27/2016
11:37 AM
H: RH/MH/rca