

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 183 CS Law Enforcement and Correctional Officers
SPONSOR(S): Allen
TIED BILLS: **IDEN./SIM. BILLS:** SB 656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u>Luppert</u>	<u>Everhart</u>
3) <u>Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 183 with committee substitute creates the Deputy James M. Weaver Act. This bill expands the death benefits to the beneficiaries of a law enforcement officer who is accidentally killed while on duty at the scene of a traffic accident to which the officer has responded or while enforcing a traffic law or ordinance

The bill also requires that an internal investigation of a law enforcement or correctional officer to be completed within 180 days. The bill specifies exceptions to this requirement.

This bill will have an indeterminate fiscal impact on state and local governments. See Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government –The bill impacts the discretion of a law enforcement or correctional agency who is conducting an investigation of an officer by providing that the investigation must be completed within 180 days. The bill also increases benefits paid to beneficiaries of law enforcement officers who are killed in certain circumstances.

Safeguard individual liberty -The bill requires that an internal investigation of an accused officer be completed within 180 days.

B. EFFECT OF PROPOSED CHANGES:

Background

Deputy James Weaver of the Orange County Sheriff's Office was struck by a vehicle while directing traffic at an automobile accident on November 24, 2003. The Deputy died as a result of his injuries the following day.

Death benefits: Section 112.19, F.S. provides for death benefits to be paid to beneficiaries of law enforcement, correctional or correctional probation officers¹ as follows:

- The sum of \$50,000 shall be paid when an officer, while engaged in the performance of the officer's duties, is accidentally killed or receives accidental bodily injury which results in the loss of the officer's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted. s. 112.19(2)(a), F.S.
- The sum of \$50,000 shall be paid if an officer is accidentally killed and the accidental death occurs as a result of the officer's response to fresh pursuit² or to the officer's response to what is reasonably believed to be an emergency. This sum is in addition to the \$50,000 provided for above. s. 112.19(2)(b), F.S.
- The sum of \$150,000³ shall be paid if an officer, while engaged in the performance of the officer's duties, is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act. s. 112.19(2)(c), F.S.

These benefits are paid by the employer of the officer.⁴ Current law requires⁵ that certain educational expenses of the spouse or children of an officer be waived at state career centers, community colleges and universities, if the officer is killed under circumstances described in s. 112.19(2)(b) or (c), F.S. – in other words, during fresh pursuit or an emergency or if the officer is unlawfully and intentionally killed. Current law does not provide for the payment of educational expenses if the officer is killed under circumstances described in s. 112.19(2)(a), F.S. – in other words, as a result of an accident.

¹ s. 112.19(1)(a), F.S.

² Fresh pursuit is defined as “the pursuit of a person who has committed or is reasonably suspected of having committed a felony, misdemeanor, traffic infraction or violation of a county or municipal ordinance. The term does not imply instant pursuit, but pursuit without unreasonable delay.” s. 112.19(1)(d), F.S.

³ The amount of death benefits are adjusted to reflect price level changes since the effective date of the act. By rule, the Bureau of Crime Prevention and Training within the Department of Legal Affairs adjusts the statutory amount based on the Consumer Price Index. s. 112.19(2)(j), F.S. In no case shall the amount payable be less than the amount stated in statute. See also, Rule 2A-8.005, F.A.C. which states that statutory amount for the period July 1, 2004 through June 30, 2005 is \$52,375.50 for benefits paid under s. 112.19(2)(a) & (b) (if benefits are paid under paragraph (b) they are added to benefits under paragraph (a) for a total of \$104, 751) and \$157,126.50 for benefits paid under 112.19(2)(c), F.S.

⁴ s. 112.19(4), F.S.

⁵ s. 112.19(3), F.S.

Law Enforcement Officers' Bill of Rights: Part VI of Chapter 112 is commonly known as the "Law Enforcement Officers' Bill of Rights." Section 112.532, F.S. grants law enforcement officers⁶ and correctional officers⁷ specific rights when the officer is under investigation by members or his or her agency for any reason which could lead to disciplinary action, demotion or dismissal. The section provides that an officer cannot be dismissed, demoted, transferred, reassigned or otherwise punished unless the officer is notified of the action and the reason for the action. Upon request, an officer who is subject to disciplinary action (suspension with loss of pay, demotion or dismissal) must be provided with a complete copy of the investigative report and supporting documents and with an opportunity to address the findings in the report prior to the imposition of disciplinary action. s. 112.532(4)(b), F.S.

If an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties. s. 112.534, F.S.

Section 112.533, F.S. makes a complaint filed against a law enforcement officer or correctional officer who is employed by an agency, and all information obtained pursuant to the investigation of the complaint, confidential and exempt from public records laws until the investigation ceases to be active or the investigation is otherwise concluded. For purposes of determining whether an investigation is active and the record is therefore confidential and exempt, an investigation is presumed to be inactive if no finding is made within 45 days after the complaint is filed. There is no statutory requirement that an investigation be completed within a set period of time.

Effect of Bill

HB 183 with committee substitute amends s. 112.19(2)(b), F.S. by adding to the category contained in that paragraph, officers who are accidentally killed;

- at the scene of a traffic accident to which the officer has responded or;
- while the officer is enforcing what is reasonably believed to be a traffic law or ordinance.

Death benefits for an officer who is killed at the scene of a traffic accident or while enforcing a traffic law or ordinance will be treated in the same manner as death benefits for an officer who is killed during fresh pursuit or during response to an emergency. As a result, beneficiaries of officers who are killed in this manner and eligible for the \$50,000 death benefit under s. 112.19(2)(a), F.S., will be eligible for an additional \$50,000 and for waiver of educational expenses described above.

HB 183 amends s. 112.532, F.S. to provide that no disciplinary action, demotion, or dismissal shall be undertaken by an agency against an officer for any act, omission, or other allegation of misconduct if the investigation is not completed within 180 days after the date the agency receives notice of the allegation. If the 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 of the action sought. This notice must be provided within 180 days after the date the agency received notice of the misconduct with certain exceptions:

- The running of the limitations period may be tolled for a time specified by the officer in writing.
- The running of the limitations period shall be tolled during the time that any criminal investigation or prosecution is pending in connection with the misconduct.

⁶The term "law enforcement officer" is defined as follows: "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." s. 112.531(1), F.S.

⁷ The term "correctional officer" is defined as follows: "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." s. 112.531(2), F.S.

- The running of the limitations period shall be tolled if the officer being investigated is incapacitated or otherwise unavailable.
- In a multi-jurisdictional investigation, the limitations period may be extended for a period of time reasonably necessary to facilitate the coordination of the agencies involved.

The bill also provides that an investigation may be reopened if significant new evidence has been discovered that is likely to affect the outcome of the investigation and the evidence could not have reasonably been discovered in the normal course of the investigation. Any disciplinary action resulting from a reopened investigation must be completed within 90 days after the investigation is reopened.

C. SECTION DIRECTORY:

Section 1. Provides that act shall be known by the popular name the "Deputy James M. Weaver Act."

Section 2. Amends s. 112.19, F.S. to provide death benefits for law enforcement, correctional and correctional probation officers if the officer is accidentally killed at the scene of a traffic accident or enforcing a traffic law.

Section 3. Amends s. 112.532, F.S. to provide limitation period for disciplinary actions.

Section 4. Reenacts s. 110.123(4)(e), F.S. to incorporate the amendment to s. 112.19, F.S. by reference

Section 5. Reenacts s. 112.19(3), F.S. as amended by chapter law to incorporate amendment to s. 112.19, F.S. by reference.

Section 6. Reenacts s. 112.19(3), F.S. as amended by chapter law to incorporate amendment to s. 112.19, F.S. by reference.

Section 7. Reenacts s. 250.34, F.S. to incorporate amendment to s. 112.19, F.S. by reference.

Section 8. Reenacts s. 285.18, F.S. to incorporate amendment to s. 112.19, F.S. by reference.

Section 9. Reenacts s. 943.04(2)(d), F.S. to incorporate amendment to s. 112.19, F.S. by reference.

Section 10. Reenacts s. 943.68(2), F.S. to incorporate amendment to s. 112.19, F.S. by reference.

Section 11. Provides effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Currently, certain educational expenses at a state institution which are incurred by a child or spouse of an officer who is killed in the line of duty are waived. An amount up to the cost of tuition and matriculation and registration fees for a total of 120 credit hours must be waived for attendance at a state career center, state community college or state university. This provision does not apply when an officer is killed as a result of an accident. HB 183 would result in cases in which an officer is killed at the scene of a traffic accident or while enforcing a traffic law being included in the list of circumstances in which education costs will be waived.

According to staff of the Department of Education, information on how often education expense waivers have been granted in the past is not maintained by the department but is maintained at each educational institution. Because it is uncertain how many officers will be killed annually at the scene of a traffic accident or while enforcing a traffic law and it is also uncertain how many children or spouses of these officers would claim the educational benefits to which they would be entitled, the fiscal impact of the educational expense waiver provision is indeterminate.

The bill also increases the amount of death benefits paid to the beneficiaries of officers who are killed in certain circumstances. This amount is to be paid by the employing agency. Payments of benefits to beneficiaries of state employees are paid from existing funds otherwise appropriated to the department employing the officer. s. 112.19(4)(b), F.S. See further discussion under local government impact below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Currently, the beneficiaries of an officer who was accidentally killed in the performance of the officer's duties are entitled to receive \$50,000 in death benefits pursuant to s. 112.19(2)(a). The beneficiaries of officers who are accidentally killed as a result of the officer's response to fresh pursuit or an emergency are entitled to receive \$100,000 in death benefits (\$50,000 under paragraph (a) and \$50,000 under paragraph (b) of s. 119.19(2), F.S.). This bill would add to the latter category, officers who are killed at the scene of a traffic accident or while enforcing a traffic law. As a result, the beneficiaries of officers who are killed in this manner would be entitled to receive \$100,000 rather than \$50,000. These benefits are paid by the employing agency. s. 112.19(4), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may result in beneficiaries of slain law enforcement officers receiving additional death benefits and may result in an increased number of beneficiaries receiving educational benefits.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 183 requires additional death benefits to be paid to beneficiaries of law enforcement officers who are accidentally killed at the scene of a traffic accident or while enforcing a traffic law or ordinance. Currently, in such circumstances, the beneficiaries would receive \$50,000. Under the provisions of this bill, the beneficiaries would receive \$100,000. This could have a fiscal impact on municipalities. However, although the total number of officers who are killed annually in the manner described in the bill is unknown, it appears likely that the aggregate impact on municipalities would be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Correctional officers or correctional probation officers do not normally respond to scenes of traffic accidents, nor do they enforce traffic laws and ordinances. Therefore, it is not clear why this bill provides their beneficiaries with additional death benefits when those officers are killed in those instances.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

As originally filed, the bill provided for increased death benefits in cases where an officer is “accidentally killed at the scene of a traffic accident”. The Criminal Justice Committee amended this provision to clarify that it applied to circumstances in which an officer is killed while *responding* to a traffic accident rather than circumstances in which an officer is involved in a traffic accident then dies at the scene of the accident.