

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 597 w/CS Law Enforcement & Correctional Officer Investigations  
**SPONSOR(S):** Allen  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1696

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	7 Y, 0 N	Cole	De La Paz
2) Public Safety & Crime Prevention	15 Y, 0 N w/CS	Cole	De La Paz
3) Local Government & Veteran's Affairs			
4)			
5)			

### SUMMARY ANALYSIS

Current law authorizes \$50,000 to be paid to the beneficiary of any law enforcement officer, correctional officer or correctional probation officer when the officer is accidentally killed in the line of duty<sup>1</sup>. Another \$50,000 is authorized to be paid to the beneficiary when the officer is accidentally killed in the line of duty and the officer was in fresh pursuit or responding to an emergency<sup>2</sup>. A total of \$150,000 is authorized to be paid to the beneficiary if the officer is unlawfully and intentionally killed in the line of duty while the officer was engaged in the performance of their duty<sup>3</sup>. Current law authorizes the educational expenses of the child or spouse to be waived at state institutions if the officers were killed under circumstances outlined in s.112.19(2)(b-c), F.S., but not for officers who were accidentally killed under circumstances outlined in s.112.19(2)(a), F.S.<sup>4</sup>

The CS adds that if an officer was "accidentally killed at the scene of a traffic accident or while enforcing what is reasonably believed to be a traffic law or ordinance" to s.112.19(2)(b), F.S. This category of officers accidentally killed in the line of duty was covered under paragraph a, and their family members were not entitled to education waivers under 122.19(3), F.S. It is unknown how many children or spouses of law enforcement officers who were killed in the line of duty under these circumstances will be provided a free education, plus an additional \$50,000 in benefits.

Current law provides that internal investigations of law enforcement or correctional officers be deemed inactive if they have not been resolved within 45 days. However, there is nothing in law that prohibits an agency from reopening the investigation in the future if it is declared inactive and not officially closed. The CS puts a 180 day deadline on internal investigations from the time the complaint is received until the final recommendation for disposition is made. Several exceptions allow the 180 day deadline to be extended. If a case has been closed and new information is developed either from the officer's testimony, or that was not able to reasonably have been discovered during the investigation, the case can be reopened. The CS requires such reopened cases to be closed within 90 days.

There could be a significant fiscal impact to the state depending on how many law enforcement officers, correctional officers, or correctional probation officers are accidentally killed during traffic stops or in traffic crashes in a given year.

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<sup>1</sup> S.112.19(2)(a), F.S.

<sup>2</sup> S.112.19(2)(b), F.S.

<sup>3</sup> S.112.19(2)(c), F.S.

<sup>4</sup> S.112.19(3), F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0597b.ps.doc  
**DATE:** April 1, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Current law authorizes \$50,000 to be paid to the beneficiary of any law enforcement officer, correctional officer or correctional probation officer when the officer is accidentally killed in the line of duty<sup>5</sup>. Another \$50,000 is also authorized to be paid to the beneficiary of any law enforcement officer, correctional officer or correctional probation officer when the officer is accidentally killed in the line of duty and the officer was in fresh pursuit or responding to an emergency<sup>6</sup>. A total of \$150,000 is authorized to be paid to the beneficiary of any law enforcement officer, correctional officer or correctional probation officer when the officer is unlawfully and intentionally killed in the line of duty while the officer was engaged in the performance of their duty<sup>7</sup>. Current law authorizes the educational expenses of the child or spouse to be waived at state institutions if the officers were killed under circumstances covered in s.112.19(2)(b-c), F.S., but not for officers who were accidentally killed under s.112.19(2)(a), F.S.<sup>8</sup>

The CS adds that if an officer were “accidentally killed at the scene of a traffic accident or while enforcing what is reasonably believed to be a traffic law or ordinance” to s.112.19(2)(b), F.S. This category of officers accidentally killed in the line of duty was covered under paragraph a, and their family members were not entitled to education waivers under 122.19(3), F.S. It is unknown how many children or spouses of law enforcement officers who were killed in the line of duty under these circumstances will now be provided a free education, plus an additional \$50,000 in benefits. Since 1999, eighteen law enforcement officers and one corrections officer have died in the line of duty in circumstances that the CS outlines according to the Florida Department of Law Enforcement. Fulfilling the requirements of the CS would have added \$900,000 to city and county law enforcement agencies, and \$50,000 to the Department of Corrections budgets over those years. FDLE’s records were unclear on how many of these officers were married or had children, so the fiscal impact to the State University System for the education benefit was indeterminate.

Current law mandates an internal affairs investigation of a law enforcement or correctional officer be deemed inactive if no finding is made by the investigating authority within 45 days of the complaint being received<sup>9</sup>. There have been cases where inactive investigations have been brought back active up to two and a half years after the initial complaint was filed. There is currently no provision in law that says internal investigations must come to a conclusion at some definitive date. The Criminal Justice Standards and Training Commission (CJSTC), the body responsible for certifying law enforcement and correctional officers, is required by statute to complete investigations it begins under s. 943.1395(6), F.S., within 6 months.

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<sup>5</sup> S.112.19(2)(a), F.S.

<sup>6</sup> S.112.19(2)(b), F.S.

<sup>7</sup> S.112.19(2)(c), F.S.

<sup>8</sup> S.112.19(3), F.S.

<sup>9</sup> S. 112.533(2)(b), F.S.

The CS creates a new section of law prohibiting any punishment against a law enforcement or correctional officer if the internal investigation is not completed within 180 days of the complaint being received. Several exemptions permit the investigation to proceed past the 180 day deadline. The exemptions are if an officer waives the 180 day limit, an active criminal prosecution is underway, an officer is incapacitated or otherwise unavailable, or extra time is needed to facilitate a multi-jurisdictional investigation. The exemptions authorize an extension of the 180 day period for a reasonable amount of time.

An investigation may be reopened if new evidence comes to light that could influence the outcome of the investigation and that evidence could not have been discovered during the initial investigation or the evidence was discovered during the interview of the officer. The CS requires that any reopened investigation be completed within 90 days, without exception.

The CS will bring closure to internal investigations of law enforcement and correctional officers and not have cases remain open indefinitely. While the bill does create a deadline in which these cases must be completed, it does not allow for legitimate investigations that may take longer than the 180 days unless they fall within the exemptions provided. [See Other Comments].

### **C. SECTION DIRECTORY:**

**Section 1:** Names the bill the "Deputy James M. Weaver Act"

**Section 2:** Amends s.112.19(2)(b), F.S., relating to death benefits for law enforcement officers

**Section 3:** Amends S. 112.532, F.S., relating to the length of internal investigations of law enforcement and correctional officers.

**Section 4:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **FISCAL IMPACT ON STATE GOVERNMENT:**

Revenues:  
None.

Expenditures:  
See Fiscal Comments.

### **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

Revenues:  
None.

Expenditures:

See Fiscal Comments.

### **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

## **FISCAL COMMENTS:**

The fiscal impact of this bill is undetermined because there is no way to know how many law enforcement officers, correctional officers, or correctional probation officers will be killed in the line of duty under the circumstances provided for in the CS. Section 112.19(4)(a), F.S. mandates that these benefits, or the insurance premiums to cover such possible benefits, be paid by the employer of the law enforcement officer, correctional, or correctional probation officer. Section 112.19(4)(b), F.S., states that the benefits, or the premiums, be paid from existing funds otherwise appropriated to the department employing the law enforcement officer, correctional, or correctional probation officer. In 2003, there were two law enforcement officers killed in the line of duty under circumstances outlined in the CS. An extra \$50,000 would have had to be paid out by both the West Palm Beach Police Department and the Orange County Sheriff's Office if the CS were in effect at that time.

## **III. COMMENTS**

### **CONSTITUTIONAL ISSUES:**

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### 2. Other:

This CS may be challenged as violating Florida's constitutional single subject requirement which states that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." Art. III, § 6, Fla. Const. In determining whether an act violates the single subject rule, the Florida Supreme Court in State v. Thompson, 750 So.2d 643, 647 (Fla. 1999) established a test. "[T]he test is whether the provision is a necessary incident to the subject expressed in the title or tends to make effective or promote the object of the legislation." The committee adopted an amendment which changed the requirement for death benefits for officers killed in the line of duty to those officers killed in while at the scene of a traffic accident. The original bill provided a deadline for investigations of law enforcement officers. To the extent that it can be argued that changing the requirement for death benefits for officers killed in the line of duty is not a "necessary incident" to a bill providing deadline for investigation of officers, the bill may violate the single subject requirement of Florida's Constitution.

It is important to note, however, that the "relating to" clause of the bill applies to "law enforcement and correctional officers" and the amendment amends another section within ch. 112, F.S. This may reinforce the argument that the bill does not violate the single subject provision of the Florida Constitution.

### **RULE-MAKING AUTHORITY:**

No exercise of rulemaking authority is necessary to implement the provisions of this bill.

### **DRAFTING ISSUES OR OTHER COMMENTS:**

The CS does not provide for an extension of the 180 day deadline when the internal investigation involves complex issues, multiple parties, or any other legitimate reason an agency may have to need to extend the investigation past that date. The bill allows for an exception to the 180 day deadline if an officer is "otherwise unavailable," but this term is not defined. The bill allows for a closed investigation to be reopened if "evidence could not have reasonably been discovered in the normal course of investigation." The bill does not specify who will decide what evidence could or could not have been discovered during the original investigation.

Section 112.19(2)(a), F.S. states that:

The sum of \$50,000, as adjusted pursuant to paragraph (j), shall be paid as provided in this section when a law enforcement, correctional, or correctional probation officer, while engaged in the performance of the officer's law

enforcement 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. Notwithstanding any other provision of law, in no case shall the amount payable under this subsection be less than the actual amount stated therein.

This statute already awards \$50,000 to the officer's beneficiary if an officer dies under the circumstances outlined in the CS. By adding that if an officer is "accidentally killed at the scene of traffic accident or while enforcing what is reasonably believed to be a traffic law or ordinance" to s. 112.19(2)(b), F.S., the Legislature will be authorizing the waiver of educational expenses for the children or spouse of the deceased officer up to 120 hours in a state vocational-technical school, community college, or state university as authorized under s. 112.19(3), F.S., as well as another \$50,000 death benefit authorized under s.112.19(2)(b), F.S. This waiver is currently allowed only for officers who die in the line of duty during fresh pursuit or while responding to an emergency, or who are unlawfully and intentionally killed in the performance of their lawful duty<sup>10</sup>. The fiscal impact of this policy change is unknown.

**AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES:**

On March 3, 2004, an amendment was adopted by the Criminal Justice Subcommittee that allows law enforcement agencies 90 days to complete investigations that have been reopened. On April 1, 2004, the Public Safety and Crime Prevention Committee adopted the same amendment offered by Rep. Fiorentino.

On April 1, 2004, the Public Safety and Crime Prevention Committee adopted an amendment offered by Rep. Allen that named the CS after Deputy James M. Weaver. Rep. Allen's amendment also amended s. 112.19(2)(b) adding that if an officer is accidentally killed at the scene of a traffic accident or while enforcing what is reasonably believed to be a traffic law or ordinance, then an additional \$50, 000 shall be paid to the officer's beneficiary<sup>11</sup>, and the spouse or the child may attend a state educational institution for free.

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<sup>10</sup> s. 112.19(2)(b-c), F.S.

<sup>11</sup> s.112.19(2)(d), F.S.