

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1696

SPONSOR: Governmental Oversight and Productivity Committee and Senators Haridopolos and Posey

SUBJECT: Law Enforcement and Correctional Officers' Rights

DATE: March 24, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/1 amendment
2.	Wilson	Wilson	GO	Fav/CS
3.			ACJ	
4.			AP	
5.				
6.				

## I. Summary:

Committee Substitute for Senate Bill 1696 (CS/SB 1696) places a restriction of 180 days for the completion of an internal investigation by an agency of a complaint against a law enforcement or correctional officer if it results in a disciplinary action. The bill also provides certain exceptions to the time limit. The bill also expands the payment of death benefits on behalf of a deceased public safety officer who is accidentally killed while enforcing a traffic accident scene or law or ordinance.

This bill substantially amends the following section of the Florida Statutes: ss. 112.19 and 112.532.

## II. Present Situation:

Under the provisions of ss. 112.531 through 112.535, F.S., law enforcement officers and correctional officers are accorded certain rights when they are faced with an investigation by their own agency. This part of chapter 112, F.S., is commonly referred to as the "Law Enforcement Officers' Bill of Rights."

Section 112.532(1), F.S., sets forth the conditions under which an officer may be interrogated "whenever a law enforcement officer or correctional officer is under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal."

Section 112.532(2), F.S., sets forth the requirements for composition of a Complaint Review Board.

Section 112.532(3), F.S., governs civil suits brought by officers under certain circumstances.

Section 112.532(4), F.S., provides for notification to the officer subject to dismissal, demotion, transfer, reassignment, or other personnel action which might be considered a punitive measure, prior to the effective date of the action. If the officer is subject to a disciplinary action consisting of suspension without pay, demotion, or dismissal, he or she must be provided with a complete investigative report and supporting documents, and be given an opportunity to address the findings before the imposition of the disciplinary action.

Section 112.532(5), F.S., prohibits retaliation or threat of retaliation against an officer who exercises his or her rights set forth in this “Bill of Rights.”

Section 112.19, F.S., provides for the payment of death benefits to designated public safety officers who are killed in the line of duty. The benefits, separate and apart from those payable from retirement, worker’s compensation and other employment based insurance, provide cash payment to the survivors of the officer and any children. In its present form the law conditions payment on the basis of accidental death related to the officers’ response. Incidental acts do not qualify if the underlying response was not an emergency event.

### **III. Effect of Proposed Changes:**

The CS/SB 1696 amends s. 112.19, F.S., to provide for the employer payment of the additional sum of \$50,000 to the survivors of a designated public safety officer accidentally killed in the line of duty when the event to which the officer responded was enforcement of a traffic accident or other traffic law or ordinance. The amended provision is named the “Deputy James M. Weaver Act.”

The CS/SB 1696 also provides additional rights to law enforcement and correctional officers in s. 112.532, F.S., by creating a new subsection (6).

The new subsection provides that no disciplinary action, demotion, or dismissal shall be undertaken against an officer if the investigation of the allegation is not completed within 180 days of the receipt of the allegation by a person authorized by the officer’s agency to initiate an investigation of the allegation. Should the agency determine that disciplinary action is necessary, it must notify the officer of the proposed action within that 180 day period.

The exceptions to the general provisions set forth above are:

- the 180 days may be tolled for a period of time specified in a written waiver by the officer;
- the 180 days shall be tolled during the pendency of a criminal investigation or prosecution connected with the alleged misconduct;
- the 180 days shall be tolled during the time when the officer under investigation is incapacitated or otherwise unavailable;
- the time limitation may be extended for a period of time reasonably necessary to coordinate agencies involved in a multijurisdictional investigation.

Further, notwithstanding the 180 day time limitation for commencing a disciplinary action, an investigation may be *reopened* and any disciplinary action resulting therefrom must be completed within 90 days of the reopening of the investigation. The investigation may be reopened if:

- significant new evidence is found that is likely to affect the outcome; and
- the evidence could not have reasonably been discovered in the normal course of investigation, or the evidence resulted from the predisciplinary response of the officer.

The bill becomes affective on July 1, 2004, and applies to actions arising after that date.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The employer of an officer affected by s. 1 of the bill is required to make a \$50,000 payment to the survivors if the qualifying event is the result of an accidental death resulting from enforcement of a traffic law or ordinance. Dependent children under the age of 25 are also eligible for free college, post-graduate or vocational-technical tuition and fees, not to exceed 120 credit hours. Under certain other circumstances the surviving spouse and dependent children are also eligible for free health insurance.

While it is not likely that the cumulative impact of this benefit extension would implicate the thresholds used for purposes of calculating an impact under s.18, Art. VII, State Constitution, there is some probability that only a few such cases in any one fiscal period could reach a \$1.6 million impact using the ten-cent per capita convention. This results from the supplemental cross references to additional benefits contained in s. 112.19, F.S., that are not readily apparent from the text of this bill. Most law enforcement officers in the State of Florida are employees of cities and counties and are the first responding officers to traffic enforcement.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The \$50,000 is payable by the public employer and may be in the form of cash, self-insurance or additional insurance coverage purchased on the employer's behalf. State agency employers must assume the cost of the benefit from existing funds otherwise appropriated.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

There are two collective bargaining agreements involving state employees that are affected by the provisions of this bill. The first of these agreements has as parties the State of Florida as the employer and the International Union of Police Associations, as the employee representative. The officers represented are sworn, uniformed employees in state agencies other than the special agents in the Department of Law Enforcement and the Department of the Lottery. Article 7 of the labor agreement deals with internal affairs investigations and conforms to the provisions of s. 112.535, F.S. Internal investigations, not of a criminal nature, are to be completed within 45 days but may not exceed 120 days without the approval of the agency head. An investigation expected to last longer than 120 days must be accompanied by written notice to the affected officer.

Somewhat similar provisions are contained in the collective bargaining agreement between the State of Florida and the Security Services Unit of the Florida Police Benevolent Association on behalf of correctional officers. That agreement provides a customary investigative closure date of 60 days with an upper limit of 120 days. Written employee notification is required when the investigation is concluded.

**VIII. Amendments:**

None.