

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 183 CS

Law Enforcement and Correctional Officers

**SPONSOR(S):** Allen

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 656

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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>6 Y, 0 N</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>

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### 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 officers as follows:

- (1) \$50,000 when an officer is accidentally killed while engaged in the performance of his or her duties.<sup>1</sup>
- (2) \$50,000 if an officer is accidentally killed while in response to fresh pursuit<sup>2</sup> or an emergency. This sum is in addition to the \$50,000 provided for in instances described above.<sup>3</sup>
- (3) \$150,000<sup>4</sup> if an officer is intentionally killed while engaged in the performance of his or her duties.<sup>5</sup>

Current law requires<sup>6</sup> 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 the circumstances described in (2) or (3). Current law does not provide for the payment of educational expenses if the officer is killed under circumstances described in (1).

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

<sup>2</sup> 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.

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

<sup>4</sup> 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.

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

<sup>6</sup> s. 112.19(3), F.S.

Law Enforcement Officers' Bill of Rights:

Current law allots law enforcement officers<sup>7</sup> and correctional officers<sup>8</sup> specific rights<sup>9</sup> when the officer is under investigation by members or his or her agency. However, there exists no limitation period for disciplinary action as to when an agency must complete an investigation of misconduct.

**Effect of Bill**

Death Benefits

This bill increases death benefits paid for 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.

As a result, beneficiaries of officers who are killed in this manner will be eligible for \$100,000<sup>10</sup> in death benefits rather than the \$50,000 death benefit that is currently provided. Beneficiaries of officers killed in this manner will receive a waiver for educational expenses described above.

Law Enforcement Officers' Bill of Rights:

The bill limits investigations to 180 days after an agency receives an allegation of misconduct. If the agency determines that disciplinary action is appropriate, written notice must be given to the officer 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.
- 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 is discovered that is likely to affect the outcome of the investigation, and the evidence could not have been reasonably discovered in the normal course of the investigation. Any disciplinary action resulting from a reopened investigation must be completed within 90 days.

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 expand death benefits for law enforcement officers.

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

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<sup>7</sup>The 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.

<sup>8</sup> 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.

<sup>9</sup> s. 112.532, F.S.

<sup>10</sup> Adds traffic related deaths to 112.19(2)(b), F.S.

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 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 and which beneficiaries 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:

The increase in death benefits provided for eligible beneficiaries of officers who are killed could have a fiscal impact on municipalities. 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.