



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – This bill changes the entitlement that law enforcement officers, correctional officers, and correctional probation officers have to the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Disability Presumptions**

Section 112.18, F.S., provides that “any condition or impairment of health” caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is presumed to be accidental and to have been suffered in the line of duty for firefighters,<sup>1</sup> law enforcement officers,<sup>2</sup> correctional officers,<sup>3</sup> or correctional probation officers.<sup>4</sup> This presumption may be rebutted by “competent evidence.”<sup>5</sup>

Correctional officers and correctional probation officers are entitled to this presumption without a physical examination.<sup>6</sup> Firefighters and law enforcement officers, however, must successfully pass a physical examination “upon entering into such service” as a firefighter or law enforcement officer.<sup>7</sup>

The timing of the “upon entering into such service” examination requirement generally is interpreted in one of two ways: (1) the *first* point in time when a person first begins to work as a firefighter or law enforcement officer; or (2) the point in time when a person begins to work for a particular agency or employer as a firefighter or law enforcement officer.<sup>8</sup>

The potential conflict between the two interpretations becomes particularly evident in light of s. 943.13(6), F.S., which requires officers to pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner. Although this section is silent as to the timing of the examination, the Criminal Justice Standards and Training Commission is authorized to establish the “specifications” for the examination, which it has done through rule 11B-27.002(1)(d), *Florida Administrative Code*, requiring the completion of a physician’s assessment with each new employment or appointment of an officer. This rule also prohibits an employing agency from using a physician’s assessment that was prepared for another employing agency.

The bill resolves the potential conflict in the timing of the examination for purposes of the presumption in s. 112.18, F.S., by adding an eligibility requirement to the examination required by s. 943.13(6), F.S. To be eligible for the presumption, the bill requires law enforcement officers, correctional officers, and

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<sup>1</sup> The firefighter must be a state, municipal, county, port authority, special tax district, or fire control district firefighter.

<sup>2</sup> Fla. Stat. § 943.10(1) (2006).

<sup>3</sup> Fla. Stat. § 943.10(2) (2006).

<sup>4</sup> Fla. Stat. § 943.10(3) (2006).

<sup>5</sup> Fla. Stat. § 112.18(1) (2006).

<sup>6</sup> *State v. Reese*, 911 So.2d 1291 (Fla. 1st DCA 2005) (holding that the plain language of the statutes does not require completion of a pre-employment physical as a condition precedent to the entitlement to the statutory presumption as is the case with firefighters and law enforcement officers).

<sup>7</sup> Fla. Stat. § 112.18(1) (2006).

<sup>8</sup> There appears to be only one case which has interpreted this examination requirement, *Cumbe v. City of Milton*, 496 So.2d 923 (1st DCA 1986). In *Cumbe*, a firefighter who did not undergo a physical examination “upon entering his employment” was not entitled to the statutory presumption in s. 112.18, F.S. Yet, interpreting the phrase “upon entering into such service” as “upon entering his employment” does not resolve the two conflicting timing interpretations since both points of time were the same in *Cumbe*.

correctional probation officers<sup>9</sup> to successfully pass this required employment/appointment examination with no evidence of tuberculosis, heart disease, or hypertension upon entering into service with the employing agency.<sup>10</sup> This change is particularly significant for correctional officers and correctional probation officers, who currently are not required to have physical examinations in order to receive the presumption in s. 112.18, F.S. The bill also prohibits the use of a physical examination from a former employing agency for purposes of claiming the presumption.

### **Application of the Revised Eligibility Requirements**

Although the bill is silent as to whether the changes that effect the operation of s. 112.18, F.S., apply retroactively or prospectively, these changes are classified as either “procedural” or “substantive.” Procedural amendments apply retroactively since there is no vested right in any given procedure.<sup>11</sup> For example, adding officers to the list of employees entitled to the statutory presumption was a procedural enactment.<sup>12</sup> Thus, to the extent that this change can be characterized as a “burden of proof enactment,” it is a procedural change and will apply retroactively unless otherwise limited. Yet, to the extent this change affects duties and rights or impacts benefits that may be received or the entitlement to services, it may be substantive and only apply prospectively.

### **Tobacco Use Standards**

Section 943.137, F.S., allows employing agencies to establish qualifications and standards for employment, appointment, training, or promotion of officers that exceed the minimum requirements set by law. The qualifications of an employing agency that exceed the minimum employment or basic recruit training course established by the Criminal Justice Standards and Training Commission are binding on individuals affected and must be recognized by the commission. This bill, however, specifically provides the authority to set tobacco-use standards under this section.

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

Section 1 amends s. 943.13, F.S., to revise the operation of the presumption in s. 112.18, F.S.

Section 2 amends s. 943.137, F.S., to authorize the establishment of tobacco-use standards.

Section 3 provides an effective date of October 1, 2007.

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

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

##### **1. Revenues:**

This bill does not appear to create, modify, amend, or eliminate a state revenue source.

##### **2. Expenditures:**

This bill could have a positive fiscal impact on state expenditures.

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

##### **1. Revenues:**

<sup>9</sup> Fla. Stat. § 943.10(1), (2), & (3) (2006).

<sup>10</sup> Fla. Stat. § 943.10(4) (2006).

<sup>11</sup> *Litvin v. St. Lucie County Sheriff's Dep't*, 599 So.2d 1353 (Fla. 1st DCA), rev. denied, 613 So.2d 6 (Fla. 1992), cert. denied, 508 U.S. 913, 113 S.Ct. 2350, 124 L.Ed.2d 258 (1993).

<sup>12</sup> *State v. Reese*, 911 So.2d 1292 (1st DCA 2005).

This bill does not appear to create, modify, amend, or eliminate a revenue source for local governments.

2. Expenditures:

This bill does not appear to create, modify, amend, or eliminate local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

According to the Department of Financial Services (DFS), 184 claims have been filed since January 1, 2006, under the presumption given law enforcement and correctional officers under s. 112.81, F.S. Of the reported claims, 142 are from employees of the Department of Corrections (DOC) and 56 are litigated. As of December 31, 2006, the DOC claims have an incurred value of \$3,892,239. The total amount of the incurred value of the presumption claims filed during the same period is \$4,512,288.<sup>13</sup>

Correctional officers are the only employment class who are not required to have a pre-employment physical exam to meet the presumption. The requirement of a pre-employment physical exam for correctional officers should have a positive fiscal impact on the Risk Management Fund and should reduce the filing of claims. The amount of this fiscal impact is unknown because correctional officers currently are not required to have a pre-employment examination to qualify for the "presumption". Therefore, DFS is unable to determine how many officers would not, as a result of the physical examination, qualify for the "presumption" due to a pre-existing condition.<sup>14</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Drafting Issue: Changing Section 112.18, Florida Statutes, Instead**

The potential effect of subsection 943.13(6), F.S., is to change the operation of the presumption provided in section 112.18, F.S. As such, the sponsor may wish to consider making these changes directly in section 112.18, F.S.

**Other Comments: Department of Management Services**

The Department of Management Services states:

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<sup>13</sup> Dept. of Financial Services SB 472 (2007) Agency Bill Analysis (on file with department and the Committee on State Affairs).

<sup>14</sup> *Id.*

The inclusion of tobacco-use standards in the minimum qualifications for appointment, training, and promotion of currently employed bargaining unit members of the Security Services, Special Agent and Law Enforcement collective bargaining units have an impact on the terms and conditions of employment for the subject employees. Although agencies have the management right to establish minimum tobacco-use standards, the impact of such change will need to be collectively bargained.<sup>15</sup>

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.

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<sup>15</sup> Dept. of Management Services HB 547 (2007) Agency Bill Analysis (on file with department and the committee).