

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 451 Law Enforcement Fair Defense Act
SPONSOR(S): Negron
TIED BILLS: None **IDEN./SIM. BILLS:** SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>18 Y, 0 N</u>	<u>Cole</u>	<u>De La Paz</u>
2) <u>Appropriations</u>	<u></u>	<u>DeBeaugrine</u>	<u>Baker</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 451 generally expands authority and responsibility of agencies that employ law enforcement personnel to pay for legal representation that arises out of civil and criminal actions taken against officers who are acting in the course of their official duties.

Specifically, correctional officers and correctional probation officers are added to the definition that currently exists in s. 111.065, F.S. of officers that are eligible for assistance from their agency.

In addition, the bill requires the employing agency to provide an attorney and pay legal fees and costs in criminal cases under certain circumstances. In the event that an agency determines that the officer is not eligible to have the agency provide legal counsel or the officer chooses to hire his or her own attorney, the officer may request the employing agency to reimburse reasonable attorney fees and costs if the officer is ultimately exonerated or not prosecuted.

The fiscal impact of the bill is indeterminate.

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:

The bill revises s. 111.065, F.S. to include correctional officers (CO's) and correctional probation officers (CPO's) within the definition of law enforcement officers as it is used in this section. This change effectively allows agencies that employ CO's and CPO's to pay legal fees for officers that are charged with crimes or face civil lawsuits arising from the performance of their official duties under certain circumstances. Those circumstances are that the plaintiff requests dismissal of the civil suit or that the officer is found to be not guilty or not liable. Current law limits eligibility for this optional benefit to officers whose primary responsibility is the prevention and detection of crime and enforcement of the penal, traffic or highway laws of the state.

In addition, the bill provides that the agency must provide an officer being prosecuted on criminal charges with an attorney upon request of the officer if the agency makes the following determination:

- occurred in response to what the officer reasonably believed to be an emergency, or reasonably believed necessary to protect from death or bodily harm, or during apprehension of a suspect that the officer reasonably believed to have perpetrated or attempted to perpetrate a forcible felony or the offense of escape;
- arose within the course and scope of the officer's duties; and,
- were not acts of omission or commission which constituted a material departure from the employing agency's written policies and procedures or generally recognized criminal justice standards.

The bill further provides that if the agency determines that these conditions are not met or the officer wishes to choose his or her own attorney, the officer may request the agency to reimburse reasonable attorney's fees and costs if the prosecution does not result in a finding of guilt, a guilty plea or a plea of nolo contendere.

The bill provides guidelines for determining the amount of reasonable attorney's fees and costs as follows:

- The officer submits detailed application for payment within 30 days of the end of the case. The application must contain detailed information to justify the requested payment.
- The agency and officer then have 30 days to agree upon a reasonable amount. If there is no agreement or the agency fails to pay, the officer may submit the application to the court having jurisdiction over the criminal action within 30 days after the termination of the prosecution, failure to reach agreement, or failure to pay the fees and costs, whichever is later.
- The agency will have the ability to respond to the officer's application to the court for attorney's fees and costs. The court will retain jurisdiction and determine entitlement and amount of reasonable attorney's fees based on whether the officer's actions met the three

criteria set forth in the bill for agency assistance (see bullet points above) and local market rates for similar legal services.

- The bill prohibits the use of a lodestar or fee multiplier and limits overall awards to \$100,000.

In addition, section 3 of the bill corrects a cross-reference in s. 633.175, F.S. to maintain the current application of subsection (1) to the more narrow definition of officers whose primary responsibility is the prevention and detection of crime and the enforcement of the penal, criminal, traffic or highway laws of the state.

The bill would become effective upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Providing a popular name for the act as "Law Enforcement Fair Defense Act."

Section 2. Amends S. 111.065 relating to civil or criminal actions against law enforcement officers.

Section 3. Amends S. 633.175 relating to the definition of law enforcement officer.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Indeterminate. See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The fiscal impact on state and local government is indeterminate since it is not known how often officers would face criminal prosecution and would meet the criteria set in the bill for legal assistance. A survey of local jurisdictions by the Legislative Committee on Intergovernmental Relations generated a 28% response rate from municipalities and an 18% response rate from counties. Two cities and one county reported criminal actions against officers but it is not known whether these officers would meet the criteria established in this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill may require municipalities and counties to expend funds to provide an attorney or reimburse legal fees and costs in certain instances. If the aggregate required spending is insignificant, the bill would be exempt from the mandates provision.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None