

# 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.)

Prepared By: Criminal Justice Committee

BILL: SB 656

SPONSOR: Senators Haridopolos, Posey, and others

SUBJECT: Deputy James M. Weaver Act

DATE: March 2, 2005

REVISED: 03/09/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/1 amendment
2.			GO	
3.			WM	
4.				
5.				
6.				

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

Senate Bill 656 provides that the sum of \$50,000 in death benefits, adjusted as provided in s. 112.19(2)(j), F.S., shall be paid if a law enforcement, correctional, or correctional probation 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.

The bill, with certain exceptions, provides that no disciplinary action, demotion, or dismissal may be undertaken by an agency against a law enforcement officer or correctional officer for an allegation of misconduct if the investigation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate the investigation of the misconduct. The bill also provides a time limitation for completing an investigation and giving notice when the agency determines disciplinary action is appropriate, and a time limitation for completing a disciplinary action resulting from an investigation that is reopened.

This bill substantially amends sections 112.19 and 112.532, Florida Statutes.

## II. Present Situation:

### Deputy James M. Weaver

According to the Orlando Sentinel, Deputy James Weaver was a four-year veteran with the Orange County Sheriff's Office when he died on November 24, 2003, after suffering head injuries as a result of being hit by an Orlando motorist on November 23, 2003. "Police say farewell to 1 of their own.... *Orlando Sentinel* (December 2, 2003). As reported by the Sentinel, Deputy Weaver was directing traffic at the scene of a vehicle accident. He was not wearing reflective gear. A motorist who did not see Deputy Weaver walk across the road where the accident occurred hit him from behind. Orange deputy critically injured when hit by car. *Orlando Sentinel* (November 24, 2003). According to Florida Today, a survivors fund was set up to assist Deputy Weaver's fiancé and her son, who could not "receive spousal benefits from Weaver's pension." Hundreds mourn fallen deputy. *Florida Today* (December 2, 2003).

### Death Benefits/Section 112.19, F.S.

Section 112.19, F.S., provides for death benefits to be paid to beneficiaries of law enforcement, correctional, or correctional probation officers<sup>1</sup> as follows:

- The sum of \$50,000 shall be paid when an officer, while engaged in the performance of the officer's 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. [s. 112.19(2)(a), F.S.]
- The sum of \$50,000 shall be paid if an officer is accidentally killed and the accidental death occurs as a result of the officer's response to fresh pursuit<sup>2</sup> or to the officer's response to what is reasonably believed to be an emergency. This sum is in addition to the \$50,000 provided for in s. 112.19(2)(a), F.S. [s. 112.19(2)(b), F.S.]
- The sum of \$150,000<sup>3</sup> shall be paid if an officer, while engaged in the performance of the officer's duties, is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act. [s. 112.19(2)(c), F.S.]

These benefits are paid by the employer of the officer.<sup>4</sup> Payments, which are in addition to any worker's compensation or pension benefits, are exempt from the claims and demands of the deceased officer's creditors. s. 112.19(e), F.S.

<sup>1</sup> s. 112.19(1)(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> The amount of death benefits is 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. Rule 2A-8.005, F.A.C., states that the 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) and (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 s. 112.19(2)(c), F.S.

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

Current law provides that the state must waive certain educational expenses incurred by the officer's spouse or children while obtaining post-high school education, subject to restrictions, limitations, and requirements. This waiver applies if the officer is killed under circumstances described in s. 112.19(2)(b) or (c), F.S., – in other words, during fresh pursuit or an emergency or if the officer is unlawfully and intentionally killed.<sup>5</sup> The law does not provide for the payment of educational expenses if the officer is killed under circumstances described in s. 112.19(2)(a), F.S., – in other words, as a result of an accident.

In limited circumstances, payments for burial expenses of the deceased officer and health insurance premiums of the officer's spouse and dependent children are required. s. 112.19(2)(f)-(h), F.S.

### **Law Enforcement Officers' Bill of Rights**

Part VI of Chapter 112, F.S., is commonly known as the "Law Enforcement Officers' Bill of Rights." Section 112.532, F.S., grants a law enforcement officer<sup>6</sup> and correctional officer<sup>7</sup> specific rights when either officer is under investigation by members or his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal. The section provides that an officer cannot be dismissed, demoted, transferred, reassigned, or otherwise punished unless the officer is notified of the action and the reason for the action. Upon request, an officer who is subject to disciplinary action (suspension with loss of pay, demotion, or dismissal) must be provided with a complete copy of the investigative report and supporting documents and with an opportunity to address the findings in the report prior to the imposition of disciplinary action. s. 112.532(4)(b), F.S.

If an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties. s. 112.534, F.S.

Section 112.533, F.S., makes a complaint filed against a law enforcement officer or correctional officer who is employed by an agency, and all information obtained pursuant to the investigation of the complaint, confidential and exempt from public records laws until the investigation ceases to be active or the investigation is otherwise concluded. For purposes of determining whether an investigation is active and the record is therefore confidential and exempt, an investigation is presumed to be inactive if no finding is made within 45 days after the complaint is filed. There is no statutory requirement that an investigation be completed within a set period of time.

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<sup>5</sup> s. 112.19(3), F.S.

<sup>6</sup> The term "law enforcement officer" is defined as "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>7</sup> The term "correctional officer" is defined as "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), F.S. However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

### III. Effect of Proposed Changes:

Senate Bill 656 provides that the act shall be known by the popular name the “Deputy James M. Weaver Act.”

The bill amends s. 112.19(2)(b), F.S., by adding to that category officers who are “accidentally killed at the scene of a traffic accident or while enforcing what is reasonably believed to be a traffic law or ordinance.” As a result, death benefits for an officer who is killed at the scene of a traffic accident or while enforcing a traffic law or ordinance will be treated in the same manner as death benefits for an officer who is killed during fresh pursuit or during response to an emergency. (But see “Technical Deficiencies” section of this analysis.) Beneficiaries of officers who are killed in this manner will be eligible for both the increased monetary benefits and for waiver of educational expenses (see “Present Situation” section of this analysis).

The bill also amends s. 112.532, F.S., to provide that no disciplinary action, demotion, or dismissal shall be undertaken by an agency against an officer for any act, omission, or other allegation of misconduct if the investigation is not completed within 180 days after the date the agency receives notice of the allegation. If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the officer of its intent to proceed with disciplinary action, along with a proposal of the action sought. This notice must be provided 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 multijurisdictional 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 has been discovered that is likely to affect the outcome of the investigation and the evidence could not have reasonably been discovered in the normal course of the investigation. Any disciplinary action resulting from a reopened investigation must be completed within 90 days after the investigation is reopened.

Provided is an excerpt of an analysis of the bill provided by staff of the Florida Department of Law Enforcement:

While internal investigations are required to be completed in a timely manner, the proposed change to F.S. 112.532 establishing [a] 180-day limit could have negative impact on internal investigations of sworn members, especially if the complainant(s),

victim(s), or witness(es) are from another country. The exceptions to the mandatory time limit do not appear to be sufficient to address such a case, especially in consideration of the extent of our tourist industry in Florida. The bill tolls periods of incapacity of an officer but not of an investigator, victim, or witness, etc.

This bill has no impact on the Criminal Justice Professionalism Program, nor would it impact the Criminal Justice Standards and Training Commission. The limitation on disciplinary actions refers to internal investigations, rather than the disciplinary process conducted by the Criminal Justice Professionalism Program.

The bill reenacts ss. 110.123(4)(e) (as amended by chapter law), 112.19(3) (as amended by chapter law), 250.34(4), 285.18(2)(c), 943.04(2)(d), and 943.68(2), F.S., to incorporate the amendment to s. 112.19, F.S., in references to the section.

The bill takes effect July 1, 2005, and applies to actions arising on or after that date.

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

A. Municipality/County Mandates Restrictions:

See discussion in "Government Sector Impact" section of this analysis.

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:

The 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.

C. Government Sector Impact:

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. The bill would include officers killed at the scene of a traffic accident or while enforcing a traffic law in the group of officers for whom education costs will be waived.

According to staff of 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<sup>8</sup> at the scene of a traffic accident or while enforcing a traffic law and it is also uncertain how many children or spouses 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. The bill could also have a fiscal impact on municipalities and counties. However, 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 and counties would be insignificant.

#### **VI. Technical Deficiencies:**

The bill, as currently written, is grammatically constructed so that it does not link the additional death benefit to s. 112.19(2)(a), F.S. (Staff contacted Bill Drafting, which confirmed staff's presentation of this construction.) By not providing that linkage, it is possible that an officer not engaged in his or her official duties when he or she was accidentally killed at the scene of a traffic accident would have to be paid the additional death benefit. Additionally, the amendatory language could be read to apply in cases in which the officer is actually involved in the traffic accident and dies at the scene of the accident.

Staff has been informed by the bill sponsor's staff that the sponsor intends to file an amendment to correct these deficiencies.

#### **VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>8</sup> Data provided by staff of the Florida Department of Law Enforcement (FDLE) appears to indicate that as many as 27 officers may have been "killed at the scene of a traffic accident" from 1999 to the present date. However, as FDLE staff stated last year regarding a similar bill, this data must be read with a cautionary note: "There are very few traffic-related deaths, and some on the list may not fall into the scope of the bill. However, the way the amendment is phrased, it seems that any officer killed in a car accident could be considered to have been 'killed at the scene of a traffic accident.'"

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## VIII. Summary of Amendments:

### **Barcode 450274 by Criminal Justice:**

Clarifies that the beneficiary of the law enforcement officer accidentally killed will receive an additional death benefit if the officer was engaged in his or her official duties when accidentally killed and was either 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.

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