

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 237 Continued Employment Requirements for Law Enforcement Personnel
SPONSOR(S): Berfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Mitchell	Williamson
2) Insurance Committee			
3) Fiscal Council			
4) State Administration Council			
5) _____			

SUMMARY ANALYSIS

HB 237 allows employing agencies to require law enforcement officers, as well as correctional officers and correctional probation officers who are not currently subject to this requirement, to pass a physical examination prior to or immediately upon employment in order to be eligible for 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.

HB 237 also provides specific authority for employing agencies to set tobacco-use standards for law enforcement officers, correctional officers, and correctional probation officers.

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

This bill does not appear to have a fiscal impact on state or local governments.

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, Florida Statutes, 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,¹ law enforcement officers,² correctional officers,³ or correctional probation officers.⁴ This presumption may be rebutted by “competent evidence.”⁵

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

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.⁸

The potential conflict between the two interpretations becomes particularly evident in light of section 943.13(6), Florida Statutes, 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.

HB 237 resolves the potential conflict in the timing of the examination for purposes of the presumption in section 112.18, Florida Statutes, through the creation of a new subsection (5) to section 943.135,

¹ The firefighter must be a Florida state, municipal, county, port authority, special tax district, or fire control district firefighter.

² Fla. Stat. § 943.10(1) (2005).

³ Fla. Stat. § 943.10(2) (2005).

⁴ Fla. Stat. § 943.10(3) (2005).

⁵ Fla. Stat. § 112.18(1) (2005).

⁶ *State v. Reese*, 911 So.2d 1291 (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).

⁷ Fla. Stat. § 112.18(1) (2005).

⁸ There appears to be only one case which has interpreted this examination requirement, *Cumbie v. City of Milton*, 496 So.2d 923 (1st DCA 1986). In *Cumbie*, a firefighter who did not undergo a physical examination “upon entering his employment” was not entitled to the statutory presumption in section 112.18, Florida Statutes. 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 *Cumbie*.

Florida Statutes. Section 943.135, Florida Statutes, sets forth requirements for continued employment for officers.⁹

The new subsection (5) permits an employing agency¹⁰ to require law enforcement officers, correctional officers, or correctional probation officers¹¹, who are employed full time, to successfully pass a physical examination in order to be eligible for the presumption in section 112.18, Florida Statutes.¹² As officers are already required to have a physical examination for employment or appointment, HB 237 allows an employing agency to make this physical examination applicable to the presumption in section 112.18, Florida Statutes. This change is particularly significant for correctional officers and correctional probation officers, who are not currently required to have physical examinations in order to receive the presumption in section 112.18, Florida Statutes.

HB 237 provides that the changes to the operation of the presumption in section 112.18, Florida Statutes, do not apply to law enforcement officers, correctional officers, or correctional probation officers who are currently employed by an employing agency.¹³

Tobacco Use Standards

Section 943.137, Florida Statutes, allows employing agencies to establish qualifications and standards for employment, appointment, training, or promotion of officers that exceed certain minimum requirements. According to the Florida Department of Law Enforcement, employing agencies can establish tobacco-use policies under the authority of this section.¹⁴ The authority to set tobacco-use policies is not, however, specifically provided.

HB 237 creates a new subsection (6) within section 943.135, Florida Statutes¹⁵, to specifically authorize an employing agency to set tobacco-use standards for full time law enforcement officers, correctional officers, and correctional probation officers.

C. SECTION DIRECTORY:

Section 1: Adds subsections (5) and (6) to section 943.135, Florida Statutes, to allow employing agencies of law enforcement officers, correctional officers, or correctional probation officers to require certain physical examinations and to set tobacco-use standards.

Section 2: Provides an effective date of October 1, 2006.

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.

⁹ Fla. Stat. § 943.10(14) (2005) (“any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer”).

¹⁰ Fla. Stat. § 943.10(4) (2005).

¹¹ Fla. Stat. § 943.10(1), (2), & (3) (2005).

¹² The new subsection (5) further requires that this physical examination be performed prior to or immediately upon the employment of the officer.

¹³ Amendments to statutes which affect the application of the Workers’ Compensation Act in chapter 440, Florida Statutes, are either “procedural” or “substantive.” Procedural amendments apply retroactively since there is no vested right in any given procedure. *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). To the extent that this change can be characterized as a “burden of proof enactment,” it would be a procedural change and 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 anyway.

¹⁴ Fla. Dep’t of Law Enforcement., HB 237 (2006) Staff Analysis (Oct. 27, 2005) (on file with dep’t).

¹⁵ This section provides the requirements for continued employment for officers.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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 an expenditure for local governments.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The 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 (5) is to change the operation of the presumption provided in section 112.18, Florida Statutes. As such, the sponsor may wish to consider making these changes directly in section 112.18, Florida Statutes.

Drafting Issue: Placement in Section 943.135, Florida Statutes

Assuming a preference for making these changes in chapter 943, Florida Statutes, instead of section 112.18, Florida Statutes, it is important to note that these two new subsections are not per se "requirements for continued employment" or similar to the existing provisions in section 943.135, Florida Statutes. As such, the sponsor may wish to consider making these two changes in section 943.13(6), Florida Statutes, and section 943.137, Florida Statutes, respectively.

Drafting Issue: Scope of Prospective Operation

A provision in subsection (5) provides that the change in the operation of the presumption provided in section 112.18, Florida Statutes, does not apply for law enforcement officers, correctional officers, or correctional probation officers who are currently employed by an employing agency. This provision could be read to apply beyond the current employment of those officers, correctional officers, or correctional probation officers. If that is not the intent of the sponsor, the sponsor may wish to add a limitation to the provision: "for the period of employment with the current employing agency."

Drafting Issue: "Full Time"

The reference to "full time" in subsection (5) is duplicative as law enforcement officers, correctional officers, and correctional probation officers are full time by definition in section 943.10, Florida Statutes. The sponsor may wish to consider removing this reference.

Drafting Issue: Mirror Examination Language in Section 112.18, Florida Statutes

Given the potential effect of subsection (5) to change the operation of the presumption provided in section 112.18, Florida Statutes, the sponsor may wish to more closely mirror the examination language in that section.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.