

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>4 Y, 0 N, w/CS</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Insurance Committee</u>	<u></u>	<u>Callaway</u>	<u>Cooper</u>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 237 requires law enforcement officers, as well as correctional officers and correctional probation officers who are not currently subject to this requirement, to pass the physical examination that is required prior to employment or appointment 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, by adding an eligibility requirement to the examination required by section 943.13(6), Florida Statutes. To be eligible for the presumption, the bill requires law

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, *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 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 *Cumbe*.

enforcement officers, correctional officers, and correctional probation officers⁹ to successfully pass this required employment/appointment examination with no evidence of tuberculosis, heart disease, or hypertension upon entering into service with the employing agency¹⁰. 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. 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 section 112.18, Florida Statutes, 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.¹¹ For example, adding officers to the list of employees entitled to the statutory presumption was a procedural enactment.¹² 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, 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.¹³ This bill, however, specifically provides the authority to set tobacco-use standards under this section.

C. SECTION DIRECTORY:

- Section 1: Adds paragraph (b) to subsection (6) of section 943.13, Florida Statutes, to revise the operation of the presumption in section 112.18, Florida Statutes.
- Section 2: Amends subsection (1) of section 943.137, Florida Statutes, authorizing the establishment of tobacco use standards.
- Section 3: 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.

2. Expenditures:

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

⁹ Fla. Stat. § 943.10(1), (2), & (3) (2005).

¹⁰ Fla. Stat. § 943.10(4) (2005).

¹¹ *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).

¹² *State v. Reese*, 911 So.2d 1291 (1st DCA 2005)

¹³ Fla. Dep't of Law Enforcement., HB 237 (2006) Staff Analysis (Oct. 27, 2005) (on file with dep't).

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 effect of the change to section 943.13(6)(b) 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Governmental Operations committee adopted a strike-everything amendment which revises and places the two provisions of the bill in separate sections:

- The amendment provides that the physical examination required for employment or appointment as a law enforcement officer, correctional officer, or correctional probation officer must be successfully passed 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.
- The amendment also provides specific authority for employing agencies to set tobacco-use standards.

The bill was reported favorably with committee substitute.