

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: Governmental Oversight and Productivity Committee

BILL: CS/SB 410

INTRODUCER: Criminal Justice Committee and Senator Baker

SUBJECT: Law Enforcement Personnel/Employment

DATE: April 7, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Section 112.18(1), F.S., as it pertains to any law enforcement officer, correctional officer, or correctional probation officer, provides that any condition or impairment of health of such officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary is shown by competent evidence. A law enforcement officer shall have successfully passed a physical examination upon entering into any such service as law enforcement officer, which examination failed to reveal any evidence of any such condition. The statute does not specify that correctional officers and correctional probation officers must take this exam as a condition precedent to entitlement to the disability presumption.

Senate Bill 410 amends s. 943.13, F.S. (minimum qualifications for employment), to provide that, in order to be eligible for the presumption set forth in s. 112.18, F.S., while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer shall have successfully passed the physical examination required by s. 943.13, F.S., upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination failed to reveal any evidence of tuberculosis, heart disease, or hypertension. In no event may a law enforcement officer, correctional officer, or correctional probation officer use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18, F.S., against the current employing agency.

The bill also amends s. 943.137, F.S. (establishment of qualifications and standards above the minimum), to specifically authorize an employing agency to establish tobacco-use standards.

This bill substantially amends ss. 943.13 and 943.137, F.S.

II. Present Situation:

Section 112.18(1), F.S., provides that any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer or correctional officer as defined in s. 943.10(1), (2), or (3), F.S.,¹ caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer shall have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition.² This presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

This section is to be construed to authorize such governmental entities to negotiate policy contracts for life and disability insurance to include accidental death benefits or double indemnity coverage which shall include the presumption that any condition or impairment of health of any firefighter, law enforcement officer, or correctional officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty, unless the contrary be shown by competent evidence.

Pursuant to s. 943.13, F.S., one of the minimum qualifications for a person who, on or after October 1, 1984, is employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, is employed as a full-time, part-time, or auxiliary correctional probation officer; or on or after October 1, 1986, is employed as a

¹ Section 943.10(1), F.S. defines a “law enforcement officer” as “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.”

Section 943.10(2), F.S., defines a “correctional officer” as “any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.”

Section 943.10(3), F.S., defines a “correctional probation officer” as “a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.”

² The plain language of the statute does not require completion of a pre-employment physical by correctional officers or correctional probation officers as a condition precedent to the entitlement to the disability presumption in s. 112.18, F.S., as is the case with firefighters and law enforcement officers. See *State v. Reese*, 911 So.2d 1291 (1st DCA 2005).

full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services, is that such person shall have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the Criminal Justice Standards and Training Commission (CJSTC).

As provided in s. 943.137, F.S., an employing agency³ is not precluded from establishing qualifications and standards for employment, appointment, training, or promotion of officers that exceed the minimum requirements set by ss. 943.13 and 943.17, F.S. This section further provides that the qualifications of an employing agency that exceed the minimum employment or basic recruit training course established by the commission are binding on individuals affected and shall be recognized by the CJSTC.

III. Effect of Proposed Changes:

The bill amends s. 943.13, F.S. (minimum qualifications for employment), to provide that, in order to be eligible for the presumption set forth in s. 112.18, F.S., while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer shall have successfully passed the physical examination required by s. 943.13, F.S., upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer⁴ with the employing agency, which examination failed to reveal any evidence of tuberculosis, heart disease, or hypertension. In no event may a law enforcement officer, correctional officer, or correctional probation officer use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18, F.S., against the current employing agency.

The bill also amends s. 943.137, F.S. (establishment of qualifications and standards above the minimum), to specifically authorize an employing agency to establish tobacco-use standards.

The bill takes effect October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³ Section 943.10(4), F.S., defines an “employing agency” as “any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility.”

⁴ As previously noted in Note 2, s. 112.18, F.S., does not specify that completion of a pre-employment physical by correctional officers and correctional probation officers is required as a condition precedent to the entitlement to the disability presumption in that statute, as is the case with firefighters and law enforcement officers. However, were the bill to become law, the completion of the physical by correctional officers and correctional probation officers would be a condition precedent to the entitlement to this disability presumption.

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 Department of Financial Services and the Florida Department of Law Enforcement estimate that SB 410 (as filed) would not have a fiscal impact on the private sector.

C. Government Sector Impact:

The National Council on Compensation Insurance, Inc. (NCCI)⁵ analyzed HB 237 (as filed), the companion to SB 410. In its assessment, subsection 5 (physical exam provision) of the House bill “would have no impact to the law enforcement class codes or to the Workers Compensation system.” Further, in its assessment, the impact of subsection 6 (tobacco-use standards provision) of the House bill “cannot be determined.”⁶

The Department of Financial Services also analyzed HB 237 (as filed) and estimated the bill would not have a fiscal impact on state agencies. The department stated that the bill “will basically not have any impact on Risk Management. Possibly some small positive impact.” The department’s comments regarding potential impact of the bill on local governments were: “Probably none - possibly some small positive impact.”⁷

The Florida Department of Law Enforcement analyzed SB 410 (as filed) and estimated the bill would not have a fiscal impact on state agencies or local governments.⁸

VI. Technical Deficiencies:

None.

⁵ The NCCI states that it is the “ratemaking entity responsible for proposing adjustments to workers compensation rates in Florida.” *NCCI Analysis of Florida House Bill 237 as of January 17, 2006* (prepared January 17, 2006).

⁶ *Id.*

⁷ Fiscal analysis of HB 237 by the Florida Department of Financial Services (dated January 31, 2006).

⁸ Fiscal analysis of SB 410 by the Florida Department of Law Enforcement (dated November 3, 2005).

VII. Related Issues:

Section 447.209, F.S., establishes the right of a public employer to “. . . set standards of services to be offered to the public and exercise control and discretion over its organization and operations” Section 2 of the bill authorizes a public employer to establish tobacco-use standards. The language chosen is non-judgmental: it neither proscribes nor sanctions tobacco possession or use. The context of tobacco standards in other public safety professions suggests, however, that an employer will establish limits. The means of setting such limits will assume the form of agency rules or their jurisdictional equivalent and will impact ch. 120, F.S., for state agencies subject to its provisions. It is quite likely that any action taken by an employer on this subject will subject the parties involved to the collective bargaining provisions of ch. 447, F.S., as it affects the terms and conditions of employment. In the absence of a certified bargaining agent an employee may present grievances directly to the public employer.⁹ Employers and employees should anticipate and plan for the administrative and contractual consequences attendant to the making of discretionary policy in this area.

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

⁹ Section 447.301(4), F.S.

VIII. Summary of Amendments:

None.

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