

**STORAGE NAME:** h0925a.fpr.doc

**DATE:** February 14, 2002

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FISCAL POLICY & RESOURCES  
ANALYSIS**

**BILL #:** HB 925

**RELATING TO:** Officer Malcolm Thompson Act

**SPONSOR(S):** Representative(s) Attkisson

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 13 NAYS 0
- (3) FISCAL RESPONSIBILITY COUNCIL
- (4)
- (5)

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I. SUMMARY:

Under current law, any member of the Florida Retirement System (FRS) who is totally and permanently disabled due to any condition or impairment of health caused by an injury or illness is entitled to disability benefits. If the injury or illness arises out of and in the actual performance of a member's job, the member is entitled to in-line-of-duty disability benefits.

This bill creates the Officer Malcolm Thompson Act, which expands the current definition of total and permanent disability to include Special Risk members of the FRS who are law enforcement officers, correctional officers, correctional probation officers, firefighters, emergency medical technicians, and paramedics who are catastrophically injured in-line-of-duty as a result of a felonious act of another.

This bill also amends the statutory provisions regulating local firefighters' and police officers' retirement plans to expand the definition of total and permanent disability to include local law enforcement officers, correctional officers and correctional probation officers, firefighters, emergency medical technicians, and paramedics who suffer a catastrophic injury as a result of a felonious act of another. In addition, the bill increases the threshold benefit amount from 42 percent to 80 percent of the employee's average monthly retirement benefit.

On February 14, 2002, the committee on Fiscal Policy and Resources adopted one amendment. This amendment allows a Sheriff to reemploy a retired member as a deputy on a contractual basis after the retired member has been retired for one calendar month. There are stipulations provided in the amendment as to how this may be accomplished.

The bill takes effect upon becoming a law.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | 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. PRESENT SITUATION:

**Disability benefits available to FRS members**

The Florida Retirement System (FRS) provides disability benefits for its active members who are totally and permanently disabled from useful employment. All state and county employees are compulsory members of the FRS. The Division of Retirement reports that 113 Florida cities either wholly or separately cover firefighters, police and general employees under the FRS. There are also 411 special districts with members in the FRS.

Under s. 121.091(4), F.S., any member of the FRS who is totally and permanently disabled due to any condition or impairment of health caused by an injury or illness is entitled to disability benefits. If the injury or illness arises out of and in the actual performance of duty, the member is entitled to in-line-of-duty disability benefits.

There are several important differences in the laws applicable to disability benefits, depending on whether the disability is found to be due to an injury or illness suffered in the line of duty.

Eligibility — Section 121.091(4)(a)1, F.S., provides that an FRS member is eligible for in-line-of-duty disability benefits from the first day on the job. In contrast, an FRS member must have 5 to 10 years of creditable service<sup>1</sup> before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty.

Threshold Benefit Amount — Section 121.091(4)(f), F.S., provides that the level of disability benefit to which a disabled member is minimally entitled depends upon whether the disabling injury or illness was job related. If the disabling injury or illness occurs in the line of duty, the benefit will be at least 42 percent of the member's average final compensation (AFC) as of the disability retirement date. For Special Risk members retiring on or after July 1, 2000, the in-line-of-duty disability benefit threshold is 65 percent of AFC as of the disability retirement date. If the disabling injury or illness did not occur in the line of duty, the benefit threshold is 25 percent of AFC.

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<sup>1</sup> Section 121.091(4), F.S., provides that any member with less than 5 years of creditable service on July 1, 1980, or any person who joins the FRS on or after that date must complete 10 years of creditable service to qualify for disability benefits for a disability that is not job-related. Otherwise, 5 years of creditable service is required to qualify for a non-duty disability benefit. Chapter 2000-169, L.O.F., reduced the 10 year service requirement to 8 years.

Burden of Proof.— Section 121.091(4)(c), F.S., provides that unless a legal presumption applies such as the one provided under s. 112.18, F.S., the member must show by competent evidence that the disability occurred in the line of duty to qualify to receive the higher in-line-of-duty disability benefits.

Under s. 112.19(2)(h), F.S., any full-time law enforcement, correctional, or correctional probation officer who suffers catastrophic injury, as defined in s. 440.02(37), F.S., spouse, and minor dependent(s) will have their entire health insurance premium paid for by the officer's employer.

### **Local pension plans for firefighters/police officers**

Chapters 175 (firefighter) and 185 (municipal police), F.S., provide funding for municipal firefighters' and police officers' retirement plans. Special fire control districts became eligible in 1993 to participate under chapter 175, F.S. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for the operation and funding of pension systems through a trust fund supported by a tax on insurance premiums.

Both chapters govern two types of plans: chapter plans and local law plans. To be found totally and permanently disabled, chapter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer. Under local law plans the standards for determining eligibility for disability retirement and/or death benefits, and the benefits paid, vary widely from plan to plan, although chapter 99-1, L.O.F., imposed minimum benefits and standards for all plans operating under chapters 175 and 185, F.S. Any plan that did not meet the minimum chapter standard is required to make such improvement as the increase in the state premium tax revenues, over and above the amount collected for calendar year 1997, become available.

In addition to the pension plans governed by chapters 175 and 185, F.S., there are numerous other local plans that provide coverage for firefighters/police officers for disability and death. Under these plans, the standards for determining eligibility for disability retirement and/or death benefits, and the benefits paid, vary widely from plan to plan.

### **Differences in disability coverage and benefits**

Under the Florida Retirement System (FRS) and the chapters 175 and 185 plans, members are covered for disability suffered in-line-of-duty from the first day of employment. The minimum in-line-of-duty disability benefit is 65 percent of average final compensation (AFC) for Special Risk Class members and 42 percent of AFC for other members in the FRS,<sup>2</sup> and a minimum of 42 percent for the chapters 175 and 185 members.<sup>3</sup> By contrast, to qualify for nonduty-related or general disability benefits, a member must have 10 years of service, and the minimum benefit for general disability is 25 percent of AFC for both FRS members and members of Chapters 175 and 185 plans.<sup>4</sup>

### **Workers' Compensation**

Chapter 440, F.S., the Workers' Compensation Law, defines catastrophic injury, in s. 440.02(37), F.S., to mean a permanent impairment caused by:

- a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

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<sup>2</sup> s. 121.091(4)(f), F.S.

<sup>3</sup> ss. 175.191(5), and 185.18(5), F.S.

<sup>4</sup> ss. 121.091(4)(f), 175.191(5), and 185.18(5), F.S.

- b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;
- c) Severe brain or closed-head injury as evidenced by:
  - 1. Severe sensory or motor disturbances;
  - 2. Severe communication disturbances;
  - 3. Severe complex integrated disturbances of cerebral function;
  - 4. Severe episodic neurological disorders; or
  - 5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs 1.-4.
- d) Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands;
- e) Total or industrial blindness; or
- f) Any other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.

Catastrophic injury is not directly related to the determination of total and permanent disability under the FRS and the chapters 175 and 185 plans. The other local plans that provide coverage to firefighters and police officers may, or may not, already incorporate this definition of catastrophic injury in their eligibility for total and permanent in-line-of-duty disability retirement. There is no provision under the workers compensation law for a nonduty-related disability, as may be found in many retirement plans.

**C. EFFECT OF PROPOSED CHANGES:**

See the Section-by-Section analysis, below.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Provides for a short title, the "Officer Malcolm Thompson Act."

**Section 2:** Provides a declaration by the Legislature that the activities of firefighters, paramedics, emergency medical technicians, and police officers are vital to public safety, and that therefore, it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of these persons.

**Section 3:** Florida Retirement System (FRS) Disability Retirement. Amends s. 121.091(4)(b), F.S., to expand the definition of total and permanent disability to include Special Risk members of the Florida Retirement System (FRS) who are officers under s. 943.10(1) [law enforcement officers], (2)[correctional officers], and (3)[correctional probation officers], F.S., and who are firefighters, emergency medical technicians, and paramedics who are injured in the line of duty as a result of a felonious act of another, if the injury is catastrophic, as defined in s. 440.02(37), F.S.

Under current law, a FRS member who is catastrophically injured would already qualify for in-line-of-duty disability retirement. The Department of Management Services indicated in its analysis of HB 349 (2001) that "[a]ny FRS member who suffers a catastrophic injury within the scope of their employment due to the felonious act of another person should qualify for this expanded definition of total and permanent in-line-of-duty disability retirement, not just those specified in this bill." Therefore, as this proposed change applies to the FRS, the impact will be negligible.

Applying this analysis to local sworn officer pension plans, a member of either of a firefighter pension or municipal police pensions plan created under chapters 175 and 185, F.S., respectively, who is catastrophically injured, would probably already qualify for in-line-of-duty disability retirement.

**Section 4:** Firefighter Pensions Disability Retirement. Amends s. 175.191, F.S., to expand the definition of "total and permanent disability" so it includes firefighters, emergency medical technicians, and paramedics who suffer a catastrophic injury as a result of a felonious act of another. In addition, The bill also increases the threshold benefit amount for such persons from 42 percent to 80 percent of the officer's average monthly retirement benefit.

**Section 5:** Municipal Police Pensions Disability Retirement. Amends s. 185.18, F.S., to expand the definition of "total and permanent disability" so it includes officers who suffer a catastrophic injury as a result of a felonious act of another. As done for personnel participating in a pension plan created under chapter 175, F.S., the bill increases the threshold benefit amount for such officers from 42 percent to 80 percent of the officer's average monthly retirement benefit.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown.

According to the Department of Management Services:

The fiscal impact to state and local pension plans for firefighters/police officers covered by chapters 175 and 185, F.S., is unknown and will require a study by each plan.

The Special Risk Class and Special Risk Administrative Support Class employer contribution rates for FRS-covered employers will increase by 0.02% and 0.14%, respectively, if this bill provides a liberalized definition of total and permanent for a select group of Special Risk Class members. These costs are based upon a special actuarial study performed by Milliman USA, Consulting Actuaries. The Special Risk Class employer contribution rate increases and costs shown in the expenditure impact below assume that the disability experience becomes twice the current experience for the FRS. If this change is enacted, actual experience and related cost changes would be reflected in future valuations of the FRS. The required funding for this FRS benefit improvement is not provided in this bill.

2. Expenditures:

Year 1	FY 02-03	\$174,000
Year 2	FY 03-04	\$183,000
Year 3	FY 04-05	\$192,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Section III, A.1.

2. Expenditures:

Year 1	FY 02-03	\$358,000
Year 2	FY 03-04	\$376,000
Year 3	FY 04-05	\$394,000

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Management Services:

*Florida Retirement System* — The cost of providing these benefits will be determined in future valuations of the Florida Retirement System, assuming the basis for total and permanent disability is based upon current law – disabled from all useful and efficient service as an officer or employee. The specified Special Risk Class members who suffer a catastrophic injury resulting from a person committing a felonious act may already qualify for total and permanent in-line-of-duty disability retirement under existing law.

If the requirements for total and permanent disability for the specified special risk members are liberalized and defined as unable to perform the duties of their positions, as opposed to any employment, there will be a fiscal impact to the FRS. The employer contribution rate for the Special Risk Class would increase by 0.02% and the rate for the Special Risk Administrative Support Class would increase by 0.14% to fund these benefits. (Based upon a special study 2001(j) performed by Milliman USA, Consulting Actuaries.)

*Local pension plans for firefighters/police officers* — The cost of providing these benefits will be determined by the Division for the chapter plans and by the actuaries for the local law plans. The police officers, firefighters, paramedics, or emergency medical technicians suffering a catastrophic injury resulting from a person committing a felonious act may already qualify for total and permanent in-line-of-duty disability retirement but this group would qualify for a significantly higher minimum benefit (80% versus 42%). Resulting costs would be passed along to the local government employer sponsoring the plan. The bill does not provide any funding source but it does specify that this bill serves an important state interest to exempt it from restrictions on unfunded state mandates.

Officer Malcolm Thompson was a member of the Kissimmee Police Officers' Retirement Fund, a Chapter 185 local law plan. The cost impact for adding this benefit enhancement to their local plan was 0.1% of payroll. The annual cost for fiscal year 1998 was about \$5,002.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill requires counties and municipalities to expend funds to implement its provisions. The bill contains a Legislative determination of an important state interest. Therefore, this bill appears to meet one or more of the exceptions to the local government mandate provisions.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

See above, "Applicability of the Mandates Provision."

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

**Legislative History**

This bill's provisions were contained in last year's CS/HB 341 (2001). It was reported favorably by the Committees on State Administration, Crime Prevention, Corrections & Safety, and Criminal Justice Appropriations, as well as the Council for Smarter Government. It died on the calendar. HB 925, as filed, contains the provisions of CS/HB 341.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the committee on Fiscal Policy and Resources adopted one amendment. This amendment allows a Sheriff to reemploy a retired member as a deputy on a contractual basis after the retired member has been retired for one calendar month. There are stipulations provided in the amendment as to how this may be accomplished.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

David M. Greenbaum

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

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