

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.)

BILL: SB 1598
 SPONSOR: Senator Smith
 SUBJECT: Retirement
 DATE: March 4, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	BI	_____
4.	_____	_____	AG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that members of the Special Risk Class who are catastrophically injured in the line of duty and unable to perform the duties of their position, as opposed to any employment, will be declared totally and permanently disabled for retirement purposes, unless proven otherwise by the Secretary of the Department of Management Services. The bill funds the benefit increase by an employer-paid increase to the Florida Retirement System and provides a statement of important state interest.

This bill substantially amends s. 121.091, Florida Statutes, and creates two undesignated sections of Florida Law.

II. 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, including the state universities and the state community colleges, are compulsory members of the FRS. Cities and special districts may choose to participate in the FRS and may choose which, or all, of their employee groups participate in the FRS – police, fire, general, or elected.

Under s. 121.091(4), F.S., any member of the FRS who is totally and permanently disabled from useful and efficient service as an officer or employee due to any condition or impairment of health caused by an injury or illness is entitled to disability benefits. Paragraph (4)(b) provides that a

“... member shall be considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.”

The term "officer or employee" is defined in s. 121.021(11), F.S., as

“...any person receiving salary payments for work performed in a regularly established position and, if employed by a city or special district, employed in a covered group.”

If the injury or illness arises out of and in the actual performance of duty required by his job, the member is entitled to in-line-of-duty disability benefits. Section 121.021(13), F.S., defines “disability in-line-of-duty” as

“...an injury or illness arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer.”¹

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.*— An FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, an FRS member must have 8 years of creditable service before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty².
- *Threshold Benefit Amount.*— The level of disability benefit to which a disabled member is minimally entitled depends upon whether his/her 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% 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% 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% of AFC.
- *Burden of Proof.*— 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.

¹ Furthermore, this section provides that disability resulting from drug or alcohol abuse is not to be considered in the line of duty, except when the member is expected to use alcohol in the course of his or her official work in undercover law enforcement, and such use clearly results in the member's disability. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

² Under current law, 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. Effective July 1, 2001, the 10-year service requirement is reduced to 8 years.

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(38), F.S. 2002] - his/her spouse and minor dependent(s) will have their entire health insurance premium paid for by his/her employer.

Non-FRS Pension Plans

Municipal police and firefighter pension plans all have individually negotiated disability income provisions. For a number of plans the inability to render useful and efficient service as an officer itself is the only governing standard. Both chapters 175 and 185, F.S., establish a framework for the development of a benefit package by the more than 500 plans in the state. The actual terms and conditions vary individually.

“Catastrophic Injury”

Chapter 440, F.S., governs the standards for workplace injury and its compensation. Section 440.02(38), F.S. (2002), defined a catastrophic injury as a permanent impairment affecting the spinal cord, limb, brain or head injury, burns, blindness, or

“...any other injury that would otherwise qualify ... an employee to receive disability income benefits under Title II or supplemental 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.”³

However, section 1 of ch. 2003-412, L.O.F., deleted this definition and included much of the substance of the definition in what constitutes “permanent total disability” in s. 440.15(1)(b), F.S.⁴

III. Effect of Proposed Changes:

Section 1 makes a declaration of important state interest in compliance with Article VII, s. 18, State Constitution.

Section 2 amends s. 121.091(4), F.S., to provide that members of the Special Risk Class who are catastrophically injured in the line of duty and unable to perform the duties of their position, as opposed to any employment, may be declared totally and permanently disabled for retirement purposes. Specifically, a Special Risk Class member of the FRS who is employed as a law enforcement, correctional or correctional probation officer; firefighter, emergency medical technician, or paramedic who is catastrophically injured, as defined in s. 440.02, F.S., 2002, in the line of duty shall be considered totally and permanently disabled, unless proven otherwise by the Secretary of the Department of Management Services.

³ The 1992 version of 42 USCS s. 1382c, section (a)(3)(A) provides that “an individual shall be considered to be disabled ... if he is unable to engage in any substantial gainful activity by reason of any medical determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.”

⁴ It does not include the social security eligibility standard.

Section 3 creates an undesignated portion of Florida Law to provide a 2- and 14-basis point (.02 percent and .14 percent) employer paid increase to the Special Risk and Special Risk Administrative Support Classes of the FRS to fund the benefit.

Section 4 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. Subsection (a) provides that all “mandates” must fulfill an important state interest, and must additionally meet one of the following five conditions in order to effectively bind local governments to the general law:

- the Legislature funds the mandated activity or program;
- the Legislature provides a revenue source sufficient to fund the mandate;
- the law passes by 2/3 membership of each house of the Legislature;
- the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; and
- the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision. These exemptions include:

- laws adopted to require funding of pension benefits existing as of 6/11/90;
- criminal and election laws, and laws creating, modifying, or repealing non-criminal infractions;
- general and special appropriations acts;
- laws reauthorizing but not expanding then-existing statutory authority; and
- laws having insignificant fiscal impact.

Section 3 of the bill creates an undesignated portion of Florida Law to provide a 2- and 14-basis point (.02 percent and .14 percent) employer paid increase to the Special Risk and Special Risk Administrative Support Classes of the FRS to fund the benefit. The Division of Retirement (division) of the Department of Management Services estimates that this increase will cost all local governments, to include counties and municipalities, \$406,000 in FY 04/05, and \$426,000 in FY 05/06.

Because the estimate of annual fiscal impact is less than \$1.73 million, it is exempted from the mandates restriction due to its insignificant fiscal impact.

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:

None.

C. Government Sector Impact:

Section 3 of the bill creates an undesignated portion of Florida Law to provide a 2- and 14-basis point (.02 percent and .14 percent) employer paid increase to the Special Risk and Special Risk Administrative Support Classes of the FRS to fund the benefit. The division estimates that this increase will cost all local governments \$406,000 in FY 04/05, and \$426,000 in FY 05/06. In addition, the division estimates that this increase will cost state \$180,000 in FY 04/05, and \$189,000 in FY 05/06.

VI. Technical Deficiencies:

Division staff note that this bill redefines "officer" under s. 121.091(4), F.S. to be limited to those Special Risk Class members eligible for a total and permanent disability presumption proposed in this bill. They suggest that this change could cause confusion and possibly conflict in the application of s. 121.091, F.S. The division recommend that the proposed language be amended to clearly establish a separate standard for total and permanent in-line-of-duty disability for the specified select group of Special Risk Class members.

The division also notes that the bill proposes that the affected Special Risk Class members who are disabled in the line of duty may be considered total and permanent if their injury is catastrophic as defined in s. 440.02(38), F.S., 2002. Under current law, it is likely that an FRS member who was catastrophically injured as defined in s. 440.02(38), F.S., 2002, would already qualify for in-line-of-duty disability retirement. This bill introduces a standard for total and permanent in-line-of-duty disability that was designed for workers' compensation coverage/funding, not the funding assumptions of the FRS.

Finally, it is awkward to reference a definition that does not exist in current statutes. The bill references the term "catastrophically injured as defined in s. 440.02, Florida Statutes 2002..." This definition was deleted in s. 1, ch. 2003-412, L.O.F. The sponsor should consider amending the bill to include a specific definition to "catastrophically injured" in ch. 121, F.S.

VII. Related Issues:

None.

VIII. Amendments:

None.

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