

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 147 CS Retirement
SPONSOR(S): Brummer and others
TIED BILLS: HB 1201 **IDEN./SIM. BILLS:** SB 984

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Local Government Council</u>	<u></u>	<u></u>	<u></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

The bill provides that a Special Risk Class member of the Florida Retirement System (FRS) who is a law enforcement officer, correctional officer, correctional probation officer, firefighter, emergency medical technician (EMT), or paramedic, is considered totally and permanently disabled if he or she has a job-related injury that causes physical or mental impairment and is unable to perform the duties of his or her position, unless proven otherwise by the administrator. The bill shifts the burden of proof from the employee to the administrator.

The bill authorizes reemployment of that officer, firefighter, EMT, or paramedic:

- By an employer who does not participate in FRS; or
- After 1 calendar month of retirement, by an FRS employer.

The disabled officer, firefighter, EMT, or paramedic may be reemployed in any position other than the one he or she was employed at the time of disability retirement. The employee will still continue to receive his or her in line of duty disability retirement benefit.

The bill increases the FRS contribution rates for the Special Risk Class; however, the actual percentage point increase is not included in the bill because current figures were not yet available.

The fiscal impact to state and local governments is indeterminate until completion of an actuarial study. The actuarial study will not be complete until April 13, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the retirement contribution rates for the Special Risk and Special Risk Administrative Support classes.

Promote personal responsibility – The bill increases benefits to state and local employees who are injured due to the intentional acts of another, without requiring the responsible party to pay the costs of such increased benefit.

Empower families – The bill provides for improved disability retirement benefits for certain public safety workers at the state and local levels who are injured under certain conditions, enabling them to continue to provide for themselves and their families.

B. EFFECT OF PROPOSED CHANGES:

Officer Malcolm Thompson

Background

In 1997, Officer Malcolm Thompson of Kissimmee was shot several times in the head, neck, and stomach by a suspect wanted for armed robbery and carjacking. Despite his severe injuries, he shot and killed the suspect.¹

Effect of Bill

This bill names the act the “Officer Malcolm Thompson Act.”

Florida Retirement System

Background

The Florida Retirement System (FRS) provides retirement and disability benefits for state and county employees and for employees of those cities and special districts that choose to participate in the FRS. The current employer contribution rates to the FRS Trust Fund are for the Regular Class, 6.73%; Special Risk Class (the members of which include but are not limited to police officers, firefighters, emergency medical technicians, and paramedics), 17.34%; and Special Risk Administrative Support Class, 8.81%.

Limited disability benefits are payable to FRS-covered employees for illnesses or injuries causing the individual to be totally and permanently disabled. To receive disability benefits, the individual must prove that he or she is prevented by reason of a medically determinable physical or mental impairment from rendering useful and efficient service in any regularly-established position with the employer. For injuries not occurring in the line of duty, an employee must have five to 10 years of creditable service before the disability to be eligible for this benefit. However, if the injury occurs in the line of duty, the employee qualifies for an increased disability benefit regardless of his or her years of service. The general disability benefit is 42% of the employee’s average final compensation (AFC). The in line of duty benefit for special risk employees is at least 65% of the AFC.²

¹ “Wounded Cop Kills Robbery Suspect”, *Miami Herald*, 4 June 1997, p. 2B.

² Section 121.091(4), F.S.

Section 121.091(9)(b)11., F.S., provides that a firefighter or paramedic who has retired under the FRS may be re-employed as a firefighter or paramedic by an FRS employer after the individual has been retired for one month. During the first year after retirement, the individual is limited to working a maximum of 780 hours. Individuals who violate this provision forfeit certain retirement benefits.

Effect of Bill

The bill provides that members of the Special Risk Class are considered totally and permanently disabled in the line of duty if he or she is prevented, by reason of a medically determinable physical or mental impairment caused by a job-related injury, from performing useful and efficient service in the his or her position. Specifically, an FRS Special Risk Class member who is employed as a law enforcement officer, correctional officer, correctional probation officer, firefighter, emergency medical technician (EMT), or paramedic is considered totally and permanently disabled, unless proven otherwise by the administrator. That employee will receive the higher in line of duty benefit unless the administrator can prove that the employee can still "render useful and efficient service." Thus, an easier standard is created for the injured employee to meet in order to receive a higher disability benefit, and represents a shift in the burden of proof from the employee to the administrator.

The bill authorizes reemployment of that officer, firefighter, EMT, or paramedic:

- By an employer who does not participate in FRS; or
- After 1 calendar month of retirement, by an FRS employer.

The disabled officer, firefighter, EMT, or paramedic may be reemployed in any position other than the one he or she was employed at the time of disability retirement. The employee will still continue to receive his or her in line of duty disability retirement benefit.

The bill increases the FRS contribution rates for the Special Risk Class; however, the actual percentage point increase is not included in the bill because current figures were not yet available. It also provides a declaration of important state interest.

C. SECTION DIRECTORY:

Section 1 provides a popular name.

Section 2 declares a public purpose for this bill.

Section 3 amends s. 121.091, F.S., relating to in line of duty disability benefits and reemployment after retirement.

Section 4 increases the contribution rates for the Special Risk Class.

Section 5 provides a July 1, 2005, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, or eliminate a state revenue source.

2. Expenditures:

Indeterminate. An actuarial study is being performed for this bill, but the study has not been completed. The projected completion date is April 13, 2005.³ As such, the projected costs are unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, or eliminate a local revenue source.

2. Expenditures:

Indeterminate. An actuarial study is being performed for this bill, but the study has not been completed. The projected completion date is April 13, 2005.⁴ As such, the projected costs are unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill increases the in line of duty disability for certain officers, firefighters, emergency medical technicians, and paramedics, resulting in local government FRS participants being required to expend funds; however, the following exceptions apply:

- The bill contains a statement of important state interest; and
- Similarly situated persons are all required to comply.

2. Other:

The bill does not appear to comply with the requirements of s. 14, Art. X of the State Constitution. A study is currently being performed in order to make the necessary changes to the bill that will ensure compliance.

Article X, s. 14, Florida Constitution

Since 1976, the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by

³ Telephone conversation with the Division of Retirement, April 1, 2005.

⁴ *Id.*

public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of chapter 112, F.S.

Article X, s. 14 of the Florida Constitution is implemented by statute under part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to "prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An amendment is needed to update the rate increases found in the bill; however, the needed rate increase will not be available until April 13, 2005.⁵

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 6, 2005, the Governmental Operations Committee adopted two amendments and reported the bill favorably with committee substitute. The amendments:

- Name the act the "Officer Malcolm Thompson Act."
- Provide that an officer, firefighter, EMT, or paramedic is totally and permanently disabled in the line of duty if he or she is prevented, by reason of a physical or mental impairment caused by a job-related injury, from performing his or her job.
- Remove reference to "catastrophically injured."
- Authorize reemployment of that officer, firefighter, EMT, or paramedic by an employer who does not participate in FRS.
- Authorizes reemployment of that officer, firefighter, EMT, or paramedic by an FRS employer, after 1 calendar month of retirement.

⁵ *Id.*