

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 143 Retirement
SPONSOR(S): Brummer
TIED BILLS: None **IDEN./SIM. BILLS:** SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>7 Y, 0 N</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 current employer contribution rates to the Florida Retirement System (FRS) Trust Fund are 6.67 percent for the Regular Class and 17.37 percent for the Special Risk Class. The bill increases the FRS contribution rates for the Special Risk Class from 17.37 percent to 17.68 percent (+0.31 percent).

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, 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 Secretary of the Department of Management Services ("administrator").

The bill shifts the burden of proof from the employee to the administrator, and creates an easier standard for the injured employee to meet in order to receive a higher disability benefit.

The bill authorizes reemployment of that officer, firefighter, emergency medical technician, or paramedic:

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

Subject to the above conditions, the disabled officer, firefighter, emergency medical technician 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 continue to receive his or her in-line-of-duty disability retirement benefit.

The total first-year cost is \$9,962,000, with increasing costs each year thereafter. The bill does not appropriate additional funding; therefore, the additional costs will be absorbed within existing resources.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the retirement contribution rates for the Special Risk Class.

Promote personal responsibility – The bill increases benefits to state and local employees who may be 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 increased 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

The 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 6.67 percent for the Regular Class and 17.37 percent for the Special Risk Class² (the members of which include, but are not limited to, police officers, correctional officers, correctional probation officers, firefighters, emergency medical technicians, and paramedics).

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 percent of the employee’s average final compensation (AFC). The in-line-of-duty benefit for special risk employees is at least 65 percent of the AFC.³

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

² Section 121.71(3), F.S.

³ Section 121.091(4), F.S.

Effect of Bill

The bill provides that a member of the Special Risk Class who is employed as a law enforcement officer, correctional officer, correctional probation officer, firefighter, emergency medical technician, or paramedic is 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 his or her position. The employee will receive the higher in line of duty disability benefit unless the Secretary of the Department of Management Services ("administrator") can provide "competent medical evidence to the contrary." Thus, the burden of proof is shifted from the employee to the administrator, and an easier standard is created for the injured employee to meet in order to receive a higher disability benefit.

The bill authorizes reemployment of the disabled officer, firefighter, emergency medical technician, or paramedic:

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

Subject to the above conditions, the disabled officer, firefighter, emergency medical technician, or paramedic may be reemployed in *any position* other than the one he or she was employed at the time of disability retirement. This allows an employee to return to work in a different position within the same job classification. Thus, a "law enforcement officer" could return to work with the same employer as a "law enforcement officer" as long as that officer was assigned to a different position. The employee would continue to receive his or her in line of duty disability retirement benefits while receiving a salary from subsequent employment. Thus, the bill establishes a different disability determination criteria for certain FRS Special Risk Class members. Current law describes "total and permanent disability" for all FRS members as being "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."⁴

The bill increases the FRS contribution rates for the Special Risk Class from 17.37 percent to 17.68 percent (+0.31 percent). 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 employer contribution rates for the Special Risk Class by 0.31 percent.

Section 5 provides a July 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

⁴ Section 121.0911(4)(b), F.S.

2. Expenditures:

Year 1	Year 2	Year 3 ⁵
<u>FY 06/07</u>	<u>FY 07/08</u>	<u>FY 08/09</u>
\$2,786,000	\$2,897,000	\$3,012,880

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Year 1	Year 2	Year 3 ⁶
<u>FY 06/07</u>	<u>FY 07/08</u>	<u>FY 08/09</u>
\$7,176,000	\$7,463,000	\$7,762,000

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The bill increases the FRS contribution rates for the Special Risk Class from 17.37 percent to 17.68 percent (+0.31 percent). This rate increase translates to a total first-year cost of \$9,962,000, and increasing costs each year thereafter. Costs are assumed to increase an additional four percent each year. The bill does not appropriate additional funding; therefore, the additional costs will be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the 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:

Section 14, Art. X of the State 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 public funds shall not after January 1, 1977, provide any increase in the benefits

⁵ The costs shown are based upon the 2004 FRS Valuation and will be revised when the 2005 Valuation is completed. Department of Management Services 2006 Substantive Bill Analysis, October 11, 2005.

⁶ *Id.*

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 ch. 112, Florida Statutes

Section 14, Art. X, of the State Constitution is implemented by statute under part VII of ch. 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:

Drafting Issues

At the Governmental Operations Committee meeting on October 19, 2005, two issues were raised and drafting recommendations were made. The bill creates disparate treatment of members within the Special Risk Class. As a result, the passage of this bill could jeopardize the qualified status of the entire retirement plan. A private letter ruling by the Internal Revenue Service (IRS) is suggested; however, the IRS cannot provide a ruling until passage of the bill. It is suggested that language be added to the bill that makes the benefits provided contingent upon a private letter ruling by the IRS.

In addition, the bill provides that a retired law enforcement officer, firefighter, correctional officer, emergency medical technician, paramedic, or correctional probation officer may not be reemployed in the position he or she "held" at the time of the disabling illness or injury. According to the Department of Management Services, it is unclear whether a category two officer could be rehired as a category one officer or if both categories would fall under the phrase "position held." As such, it is recommended that the phrase be clarified.

Other Comments

According to the FRS consulting actuaries, changing the standard for total and permanent disability from inability to perform any form of employment to inability to perform your current job, or a limited range of jobs, and shifting the burden of proof from the member to the plan administrator, would increase disability retirements and retirement costs. The higher costs would arise from members becoming eligible for in-line-of-duty disability benefits who would not be eligible for such benefits absent this proposal.⁷

The Department of Management Services also has noted that, under current law, the affected special risk group is not treated as a separate subclass of the Special Risk Class. Therefore, under the existing structure of the FRS, all special risk employers would be required to pay increased rates as a result of this benefit improvement, while the liberalized disability standard would not be available to all special risk employees.⁸

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

⁷ Department of Management Services Substantive Bill Analysis, February 28, 2005.

⁸ *Id.*