

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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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>Nelson</u>	<u>Hamby</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>

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### SUMMARY ANALYSIS

This 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"). Under current law, a member must be prevented from rendering useful and efficient service as an officer or employee to be considered disabled. Thus, the bill creates an easier standard for an injured employee to meet in order to receive a disability benefit, and shifts the burden of proof from the employee to the administrator.

The bill also relaxes post-retirement restrictions—which presently do not permit a disability retiree to receive disability benefits while gainfully employed—for the Special Risk Class members who qualify for in-line-of-duty disability retirement. Reemployment of a disabled officer, firefighter, emergency medical technician or paramedic is authorized:

- by an employer who does not participate in the 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, and will continue to receive his or her disability retirement benefits.

The estimated first-year cost of the bill is \$9,962,000, with increasing costs each year thereafter. The bill does not appropriate additional funding; therefore, costs will be absorbed within existing resources. The benefits provided by the bill are funded by increasing the FRS employer contribution rate for the Special Risk Class from 17.37 percent to 17.68 percent (+0.31 percent).

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill increases the employer contribution rates for the Special Risk Class of the Florida Retirement System.

**Promote personal responsibility** – The bill increases benefits to certain 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 the increased benefits.

**Empower families** – The bill provides for increased disability retirement benefits for certain state and local employees who are injured under certain conditions.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Officer Malcolm Thompson**

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.<sup>1</sup>

##### **Florida Retirement System**

The Florida Retirement System (FRS) is administered by the Department of Management Services through its Division of Retirement. The 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. Currently, employer contribution rates to the FRS Trust Fund are 6.67 percent for the Regular Class and 17.37 percent for the Special Risk Class<sup>2</sup> (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 an individual to be totally and permanently disabled. 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.

Florida law describes “total and permanent disability” for all FRS members as being “if, in the opinion of the administrator,<sup>3</sup> 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.”<sup>4</sup> The member must provide proof of disability, including certification by two licensed physicians that the member’s disability is total and permanent (i.e., that the member is unable to engage in any gainful employment). In order to receive the higher in-line-of-duty disability benefits, the member also must show by competent evidence that the disability occurred in the line of duty (unless a legal presumption applies such as is provided under s. 112.18, F.S.). The general disability benefit is 42 percent of the employee’s average

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

<sup>2</sup> Section 121.71(3), F.S.

<sup>3</sup> Section 121.021(5), F.S., defines the term “administrator” for purposes of ch. 121, F.S., to mean the secretary of the Department of Management Services.

<sup>4</sup> Section 121.0911(4)(b), F.S.

final compensation (AFC). The in-line-of-duty benefit for special risk employees is at least 65 percent of the AFC.<sup>5</sup>

Currently, the law does not allow a FRS disability retiree to receive disability benefits while being gainfully employed. The disability retiree will void his or her disability benefits by becoming employed by any employer—at any time.

### **175/185 Plans**

Chapters 175 and 185, F.S., respectively, refer to local government firefighters' and police officers' retirement plans.<sup>6</sup> These plans are not part of the Florida Retirement System,<sup>7</sup> and they do not cover correctional officers, correctional probation officers, emergency medical technicians or paramedics. The plans only are available to employees of participating municipalities and special fire control districts, and are funded by annual distributions of state premium tax collections on property and casualty insurance policies written within the city/district limits or boundaries.<sup>8</sup> The day-to-day operational control of the individual trust funds is vested in the respective boards of trustees created at the local level, subject to administrative oversight by the Division of Retirement of the Department of Management Services.

Chapter 175 and 185 provide that disability retirement is available for fire fighters and police officers under the following circumstances:

An employee who becomes totally and permanently disabled in the line of duty, regardless of length of service, may receive disability retirement if the employee becomes totally and permanently disabled. An employee is considered totally disabled if, *in the opinion of the board of trustees*, he or she is wholly prevented from rendering useful and efficient service as a firefighter or a police officer; and will be considered permanently disabled if, *in the opinion of the board of trustees*, he or she is likely to remain so disabled continuously and permanently.

No such employee is permitted to retire until he or she is examined by a duly qualified physician or surgeon, *to be selected by the board of trustees for that purpose*, and found to be disabled. These employees may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons, to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

If the board of trustees finds that a firefighter who is receiving a disability retirement income is no longer disabled, the disability retirement income is discontinued. "Recovery from disability" means the ability of the employee to render useful and efficient service as a firefighter or police officer. The benefit payable to a firefighter who retires from service due to total and permanent disability in the line of duty, is the accrued retirement benefit, but not be less than 42 percent of his or her average monthly salary at the time of disability.

The burden of proof remains with the administrator of the 175/185 plans. An individual may be found to be totally and permanently disabled when it is determined that they are unable to provide useful and efficient service as a firefighter or police officer, and there are no specific provisions with regard to reemployment within chs. 175 and 185. Also, the 175/185 plans, as previously mentioned, only cover firefighters and police officers. It is noted that the benefits provided to employees under the FRS and the 175/185 plans are distinct in complex ways. For example, FRS disability retirement recipients receive not less than 65 percent of their average final compensation. A chart detailing these differences is available at <http://www.frs.state.fl.us/frs/mpf/>.

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<sup>5</sup> Section 121.091(4), F.S.

<sup>6</sup> As of September 30, 2005, 225 cities or fire control districts had either 175 or 185 plans.

<sup>7</sup> All state and county employees are compulsory members of the FRS, and as of June 30, 2005, about 151 Florida cities were covering firefighters, police and/or general employees under the FRS.

<sup>8</sup> Further funding for these plans is provided by employee contributions, other revenue sources and employer contributions.

## Effect of Bill

HB 143 establishes a different disability determination criteria for certain FRS Special Risk Class members. 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 the disability benefit.

The bill also relaxes post-retirement restrictions for the Special Risk Class members who qualify for in-line-of-duty disability retirement. Reemployment of a disabled officer, firefighter, emergency medical technician or paramedic is authorized:

- 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 presumably would allow 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. Minimum threshold disability benefits are not considered taxable income,<sup>9</sup> so an affected individual would receive a “tax-free” disability benefit of at least 65% of his or her average final compensation, in addition to any workers’ compensation benefit and/or social security benefit he or she would otherwise be entitled to, as well as any future salary he or she could earn while working in any position other than the one filled at the time of injury.

The bill increases the FRS contribution rates for the Special Risk Class from 17.37 percent to 17.68 percent (+0.31 percent) to fund the benefit improvement. As the affected special risk group is not treated as a separate subclass of the Special Risk Class, the higher contributions would be required for all special risk members, although the benefit improvement would only be available to a limited group.<sup>10</sup>

### C. SECTION DIRECTORY:

Section 1: Provides a short title.

Section 2: Provides a public purpose for the bill, and a declaration of important state interest.

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.

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<sup>9</sup> Only that portion of the benefit that falls within the minimum benefit level—65 percent of AFC, in this case—is tax free; any person who receives a higher benefit based upon years of service must pay income taxes on the portion of the benefit received above the minimum benefit level.

<sup>10</sup> The bill currently excludes the following members of the Special Risk Class: correctional or forensic health care employees in specified positions with the Department of Corrections or the Department of Children and Families who spend 75 percent of their time performing duties involving contact with inmates or patients; youth custody officers employed by the Department of Juvenile Justice; and, forensic workers employed by a law enforcement agency or medical examiner’s office (included in the class by ch. 2005-167, L.O.F., effective October 1, 2005). The bill does not cover members of the Special Risk Administrative Support Class.

## 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.

#### 2. Expenditures:

Year 1	Year 2	Year 3 <sup>11</sup>
<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 <sup>12</sup>
<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 employer 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, with increasing costs each year thereafter. Costs are assumed to increase an additional four percent each year. The bill does not appropriate additional funding; therefore, costs will be absorbed within existing resources.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision of s. 18 (a), Art. VII, of the State Constitution, applies 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 exception applies:

- the bill contains a statement of important state interest; and
- similarly situated persons are required to comply.

#### 2. Other:

#### **Section 14, Art. X of the State Constitution**

<sup>11</sup> 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.

<sup>12</sup> *Id.*

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 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:

1) 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.

2) In addition, the bill provides that a retired law enforcement officer, correctional officer, correctional probation officer, firefighter, emergency medical technician or paramedic 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**

###### Department of Management Services

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 one’s 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.<sup>13</sup>

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<sup>13</sup> Department of Management Services Substantive Bill Analysis, February 28, 2005.

The Department of Management Services has noted that disability coverage under the FRS is intended to provide income for members who are so physically or mentally impaired from injury or illness suffered while actively employed in a covered position that they can no longer be expected to earn income by gainful employment. If later employed, they are considered “recovered,” and the disability benefit stops. This “total and permanent” disability eligibility standard—currently applied equitably across all plans and membership classes of the FRS—has not changed since the plan’s inception in December 1970. By making it significantly easier for certain members of one class to both obtain and keep disability benefits, the bill has the potential to encourage fraud and abuse, the costs for which would ultimately be borne by the taxpayers of Florida. Effective elimination of the reemployment prohibition would exacerbate these problems.

By modifying qualification requirements to shift the burden of proof from the affected member to the administrator, the bill makes it far less likely that a disability application could be denied. The administrator would have to provide competent evidence to show that the applicant could indeed perform the duties of his/her current job. This would be exceedingly difficult, if not impossible. It is recommended that the Legislature consider amending the bill to reinstate the present proof requirement by eliminating the shift of burden of proof from the member to the administrator.

The Department of Management Services also has noted that, under current law, the affected special risk group is not treated as a separate category 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. As the bill does not cover all employee groups in the Special Risk Class, it effectively creates unequal subclasses within the Special Risk Class. Excluded groups could view this as discrimination, which could lead to dissension. Members of the Special Risk Class who are not included in the group proposed to be covered by the bill could argue that they should have been covered. The bill would set a precedent for other groups to seek equal treatment, whether they are Special Risk Class members not covered by HB 143 or members of other classes who are injured in the line of duty.<sup>14</sup>

#### The Florida League of Cities and the Florida Association of Counties

Both the Florida League of Cities and the Florida Association of Counties oppose this bill.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

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<sup>14</sup> *Id.*