

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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: SB 92

INTRODUCER: Senator Fasano

SUBJECT: Retirement/Officer Malcolm Thompson Act

DATE: April 21, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises in-line-of-duty disability standards and post-retirement reemployment requirements for certain members of the Florida Retirement System (FRS) Special Risk Class. Specifically, the bill provides that a Special Risk Class member 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 program administrator. Under current law the member must be prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee (i.e., engaging in *any* gainful employment). The bill effectively provides a less restrictive standard for determining total and permanent in-line-of-duty disability and shifts the burden of proof from the employee to the administrator.

The bill would also relax post-retirement reemployment restrictions for affected Special Risk Class members who qualified for and elected to take an in-line-of-duty disability retirement under the bill's provisions. Any such retiree could return to employment covered under the FRS after 1 calendar month of disability retirement, provided he/she did not resume employment in the *same position* held when injured.

This bill substantially amends section 121.091, Florida Statutes. This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

All state and county employees are compulsory members of the FRS, and as of June 30, 2005, about 151 Florida cities¹ were covering firefighters, police, and/or general employees under the FRS. On that date, there were also 190 independent special districts² with members in the FRS. As of June 30, 2005, state employees (including university employees) represent 22 percent of the FRS membership. Remaining members are employed by local agencies, including all counties (23 percent), district school boards (49 percent), and community colleges (3 percent), as well as cities and special districts (4 percent) that have opted to join the FRS.

The active membership of the FRS is divided into five membership classes: the Regular Class consists of 565,276 members (87 percent of the membership); the Special Risk Class includes 68,466 members (11 percent), the Special Risk Administrative Support Class has 80 members (.012 percent), the Elected Officers' Class has 1,999 members (.31 percent), and the Senior Management Service Class has 6,751 members (1.04 percent). Each class is separately funded based upon the costs attributable to the members of that class.

Disability Benefits - 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. 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 Class³ (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.⁴

Criteria for Disability Determination - Under s. 121.091(4), F.S., any member of the FRS⁵ who is *totally and permanently* disabled due to a condition or impairment of health caused by an injury or illness that occurred before the member terminated employment is entitled to disability benefits. Certain criteria must be met, including:

¹ In January 1, 1996, many cities and special districts were authorized by law to "opt out" of the FRS for new employees. Many chose to do so, and since that time, some have elected to rejoin the FRS. As of June 30, 2005, among the 151 cities participating in the FRS, there are 42 cities that have chosen to withdraw from the system and do not cover new members under the FRS.

² This number includes 15 independent special districts closed to new FRS members since January 1996.

³ Section 121.71(3), F.S.

⁴ Section 121.091(4), F.S.

⁵ Members of both the FRS Pension Plan and the FRS Investment Plan are eligible for disability coverage although the funding provisions differ.

- An FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, the member must have 8 years of creditable service⁶ before becoming disabled in order to receive disability retirement benefits for any disability occurring other than in the line of duty.
- For a member to be deemed “totally and permanently disabled,” the disabling injury or illness must prevent him/her from “performing useful and efficient service as an officer or employee.”
- To further qualify for in-line-of-duty disability benefits, the injury or illness must have arisen out of and in the performance of work-related duties as required by the FRS employer.

Proof of disability is required, including certification by two Florida-licensed physicians⁷ that the member’s disability is total and permanent (i.e., that the member is prevented by reason of a medically determinable physical or mental impairment from engaging in gainful employment). It is the responsibility of the applicant to provide such proof. To qualify to receive the higher in-line-of-duty disability benefits, unless a legal presumption applies (such as is provided under s. 112.18, F.S.), the member must also show by competent evidence that the disability occurred in the line of duty.

Reemployment Restrictions - A service-based retiree of the FRS Pension Plan or FRS Investment Plan can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his or her FRS benefits. However, for a full year after retirement as described below, unless otherwise eligible for a post-retirement reemployment exception, no FRS retiree is permitted to simultaneously receive FRS benefits and salary from an FRS employer:

- To terminate employment, a retiring member must be off all FRS payrolls for 1 calendar month. Any FRS retiree who returns to work for an FRS employer during the first month of retirement voids his/her retirement. All benefits must be repaid to the system and the member must submit another application and establish a later retirement date to retire.
- Any retiree who is employed by an FRS employer in the 2nd through 12th months after retirement must inform the Division of Retirement. For any months worked during the restricted period, retirement benefits must be suspended, unless the retired member qualifies for an exception, as described in the following paragraph. After the first year of retirement, there are no restrictions on reemployment. A retiree participating in the Deferred Retirement Option Program (DROP) is subject to these reemployment limitations as soon as his/her period of DROP participation ends.

⁶ Until July 1, 2001, any member who joined the FRS on or after July 1, 1980, was required to complete 10 years of creditable service to qualify for disability benefits for a disability that was not job-related. Under current law, the 10-year service requirement has been reduced to 8 years.

⁷ In special cases, out-of-state physicians may certify total and permanent disability (*see ch. 2005-134, Laws of Florida*).

After being off all FRS payrolls for 1 calendar month to meet the definition of termination, any eligible FRS retiree reemployed in a qualifying position⁸ is exempt from further reemployment limitations. In addition, limited exceptions are also available under current law for all FRS retirees who are retired for 1 calendar month and are reemployed in a qualifying position⁹ for up to 780 hours in the 2nd through the 12th month following retirement.

Disability Retirement - The law governing the FRS does not permit a disability retiree to receive disability benefits while gainfully employed. Any disability retiree will void his/her retirement by becoming gainfully employed by any employer at any time after termination. Upon returning to any type of gainful employment, public or private, the disability retiree must immediately notify the Division's Disability Determination Section of the reemployment. This restriction applies to all FRS disability retirees. Upon recovery and reemployment in any capacity, disability benefits are terminated.

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.¹⁰

III. Effect of Proposed Changes:

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.

⁸ Any FRS retiree may serve in an elective public office with renewed membership; a retired justice or judge may be employed on temporary assignment to active judicial service pursuant to Article V of the State Constitution (such justices or judges are not eligible for renewed membership and the chief justice must approve temporary assignments totaling more than 60 days per year); and FRS and TRS retirees may return to work in certain eligible positions for a district school board, the Florida School for the Deaf and the Blind, developmental research schools (university lab schools), and charter schools after 1 calendar month of retirement (or after 1 calendar month following conclusion of DROP) and simultaneously receive both salary and benefits without further limitation.

⁹ Qualifying positions include: Part-time, noncontractual adjunct instructors and phased retirement program participants with community colleges; adjunct faculty and phased retirement program participants with the State University System; substitute teachers, substitute residential instructors, or substitute nurses with the Florida School for the Deaf and the Blind; and firefighters or paramedics.

¹⁰ "Wounded Cop Kills Robbery Suspect," Miami Herald, 4 June 1997, p. 2B.

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.”¹¹

The bill increases the retirement contribution rate paid by special risk employers for members of the Special Risk Class, providing for payment of an additional 0.31 percent of gross compensation to fund the benefit improvement.

Finally, the bill provides a short title (the “Officer Malcolm Thompson Act”) and includes a declaration of important state interest.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires cities and counties to expend funds or take action requiring the expenditure of funds. Thus it falls within the purview of Section 18(a), Article VII, Florida Constitution which provides that cities and counties are not bound by certain general laws. However, the bill meets the exception specified in the constitution because the Legislature has determined the bill fulfills an important state interest and the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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:

¹¹ Section 121.0911(4)(b), F.S.

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.”

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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.

The FRS has projected that in the bill will have the following fiscal impact on **local governments**:

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

The FRS has projected that the bill will have the following fiscal impact on **state government**:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its analysis of SB 92 the Department of Management Services identified a number of specific concerns relative to the bill.¹²

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. The Division has inadequate resources to follow the future careers of reemployed disability retirees and enforce this provision. At minimum to discourage potential abuse, it is recommended that the Legislature consider amending the bill to limit any permitted subsequent employment to work with an employer other than the one for whom the member worked when disabled. This bill would require disability “from performing useful and efficient service in the position held.” Without further clarification there could be many interpretations of this statement.

By modifying qualification requirements to shift the burden of proof from the affected member to the System Administrator, the bill makes it far less likely that a disability application could be denied. The System Administrator would have to provide competent evidence to show that the applicant could indeed perform the duties of his/her current job (and would need considerable expertise on numerous and varied types of jobs to be in a position to do this). 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.

As written, the bill does not cover all employee groups in the Special Risk Class¹³, effectively creating 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 (members of other classes who are disabled due to a job-related injury could also seek coverage). The bill would set a precedent for other groups to seek equal treatment, whether they are Special Risk Class members not covered by SB 92 or members of other classes who are injured in the line of duty. Additionally, if challenged, creating different benefit structures in a membership class without creating specific subclasses could jeopardize the status of the FRS as a qualified plan under the Internal Revenue Code.

Section 121.122, F.S., limits dual career eligibility for special risk class credit. A special risk class person receiving disability retirement benefits, under current law, upon subsequent

¹² Department of Management Services, 2006 Substantive Bill Analysis for SB 92, October 14, 2005.

¹³ The special disability provision would apply to members of the Special Risk Class who are law enforcement officers, correctional officers, or correctional probation officers, firefighters, paramedics, or emergency medical technicians. The benefit improvements would not be available to persons included in the Special Risk Class by virtue of employment in a correctional or forensic institution or as a youth custody officer or a forensic worker.

reemployment, even in a covered position, will be presumptively enrolled in the regular class unless otherwise eligible for the senior management class. This bill does not alter that effect. A change to that statute requires a special actuarial study as it produces an unfunded pension benefit increase violative of Art. X, s.14, State Constitution.

The definition of disability used in his bill tracks that used in many of the ch.175 and 185, F.S., local government pension plans for firefighters and municipal police.

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

VIII. Summary of Amendments:

None.

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