

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 133 Retirement
SPONSOR(S): Nelson and others
TIED BILLS: IDEN./SIM. BILLS: SB 488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Government Efficiency & Accountability Council		Cámara	Cooper
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Under current law, qualified members of the Florida Retirement System who are totally and permanently disabled due to any condition or impairment of health caused by an injury or illness are entitled to disability benefits. If the injury or illness arises out of and in the actual performance of a member's job, the member is entitled to in-line-of-duty disability benefits, which bestow an increased rate of disability retirement benefits.

This bill expands qualification for total and permanent in-line-of-duty disability benefits to law enforcement officers, firefighters, correctional officers, emergency medical technicians, paramedics, and community-based correctional probation officers who are prevented from performing useful and efficient service *in the position held* due to a job-related injury, unless proven otherwise by the plan administrator, thus creating an easier standard for an injured employee to meet in order to receive the higher disability benefit, and shifting 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. Subject to certain conditions, the disabled officer, firefighter, emergency medical technician, or paramedic may be reemployed in any position *other than the one held* at the time of disability, and will continue to receive disability benefits.

FISCAL IMPACT

The bill increases the retirement contribution rates applicable to the Florida Retirement System by 0.31 percent for the Special Risk Class. This increased contribution is intended to offset the additional costs incurred by the Florida Retirement System for the benefits afforded by this bill.

The bill is estimated to create recurring costs of approximately \$3.3 million for the state and \$8.6 million for local government employers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill expands provisions providing disability coverage to certain members of the Special Risk Class of the Florida Retirement System.

Empower Families – The bill provides law enforcement officers, first responders, and their families with increased financial assistance to help weather the many financial drawbacks that arise from a job-related injury.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Florida Retirement System

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 158 cities and 192 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 600,000 active members, 252,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program participants.³ Members of the FRS belong to one of five membership classes:

1. Regular Class ⁴	583,213 members	87.73% of membership
2. Special Risk Class ⁵	72,078 members	10.84% of membership
3. Special Risk Administrative Support Class ⁶	74 members	0.01% of membership
4. Elected Officers' Class ⁷	2,195 members	0.33% of membership
5. Senior Management Service Class ⁸	7,259 members	1.09% of membership ⁹

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.¹⁰

¹ Section 121.025, F.S.

² Fla. Dept. of Mgmt. Svcs., *Florida Division of Retirement Main Page* (visited Feb. 12, 2007) <www.frs.state.fl.us>

³ *Id.*

⁴ Section 121.021(12), F.S.

⁵ Section 121.0515, F.S.

⁶ Section 121.0515(7), F.S.

⁷ Section 121.052, F.S.

⁸ Section 121.055, F.S.

⁹ Dept. of Mgmt. Svcs. HB 133 (2007) Substantive Bill Analysis at 5-6 (Feb. 26, 2007) (on file with the department and the Government Efficiency & Accountability Council) [hereafter referred to as DMS Analysis].

¹⁰ *See, e.g.*, s. 121.055(3)(a)1., F.S.

Special Risk Class

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,¹¹ may need to retire at an earlier age with less service than other types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.¹² Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹³ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2006, and 21.96 percent, effective July 1, 2007.¹⁴

Special Risk Class membership includes: law enforcement officers, correctional officers, and firefighters;¹⁵ emergency medical technicians and paramedics;¹⁶ community-based correctional probation officers;¹⁷ certain employees of correctional or forensic facilities or institutions;¹⁸ youth custody officers;¹⁹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²⁰

Disability benefits available to FRS members

The FRS provides disability benefits for its active members who are totally and permanently disabled from useful employment. Any member of the FRS who is totally and permanently disabled²¹ due to any condition or impairment of health caused by an injury or illness is entitled to disability benefits. If the injury or illness arises out of and in the actual performance of duty, the member is entitled to in-line-of-duty disability²² benefits.²³

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 the first day on the job.²⁴ In contrast, an FRS member must have from five to 10 years of creditable service²⁵ before

¹¹ Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

¹² Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

¹³ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁴ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2006, and 9.55 percent effective July 1, 2007, for Regular Class members).

¹⁵ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁶ Ch. 99-392, L.O.F., s. 23.

¹⁷ Ch. 2000-169, L.O.F., s. 29.

¹⁸ *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietician; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DRC; pharmacist; certain senior pharmacists; dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager).

¹⁹ Ch. 2001-125, L.O.F., s. 43.

²⁰ Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification).

²¹ Section 121.091(4)(b), F.S., defines "total and permanent disability": 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.

²² Section 121.021(13), F.S., defines "disability in line of duty": 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. Disability resulting from drug or alcohol abuse shall not 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, F.S., also may be used.

²³ Section 121.091(4)(a)1., F.S.

²⁴ *Id.*

becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty. Effective July 1, 2001, the 10 year requirement was reduced to eight years.

Threshold Benefit Amount – The level of disability benefit to which a disabled member is entitled depends upon whether the 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 percent of the member's average final compensation (AFC) as of the disability retirement date.²⁶ For Special Risk Class members retiring on or after July 1, 2000, the in-line-of-duty disability benefit threshold is 65 percent of the AFC as of the disability retirement date.²⁷ If the disabling injury or illness did not occur in the line of duty, the benefit threshold is 25 percent of the AFC.²⁸

Burden of Proof – Unless a legal presumption applies such as the one provided under s. 112.18, F.S.,²⁹ 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.³⁰

Reemployment of Retirees

Anyone who is retired and receiving benefits from the FRS may be reemployed by any employing agency provided that:

1. The member did not retire under the disability retirement provisions;³¹ and
2. For the first 12 months immediately after retirement, that the employer is not a participant in a state-administered retirement plan. After 12 months from the date of retirement, a retiree may be both employed by an employing agency that participates in the FRS and receive retirement benefits.³²

Unless retired under the disability retirement provisions, a retired firefighter or paramedic may be reemployed in the same capacity by an employer after one month from the date of retirement. Reemployment of a retired firefighter or paramedic is limited to no more than 780 hours during the first 12 months of retirement. The Division of Retirement must be given timely notice that hours of employment are expected to exceed 780 hours during the first 12 months of retirement so that benefits may be suspended upon reaching the 780-hour threshold. Any retirement benefits paid to a member whose employment exceeds 780 hours during the 12 months subsequent to retirement must be reimbursed to the FRS by the member.³³ If employed by an employing agency participating in a state-administered retirement program, the employer must pay retirement contributions as directed in s. 121.091(9)(b)7, F.S. (2006).

Officer Malcolm Thompson

Officer Malcolm Thompson was a member of the Kissimmee Police Officers' Retirement Fund, a local law plan under chapter 185, F.S. According to news reports, in 1997 Officer Thompson was shot several times in the head, neck, and chest, and was nearly killed while trying to arrest an armed robbery suspect.³⁴

²⁵ Section 121.091(4)(a)1., F.S., provides that any member with less than five 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 in the line of duty. Otherwise, five years of creditable service is required to qualify for a non-duty disability benefit.

²⁶ Section 121.091(4)(f)1.a., F.S.

²⁷ Section 121.091(4)(f)1.b., F.S.

²⁸ Section 121.091(4)(f)2., F.S.

²⁹ Section 112.18, F.S., provides that tuberculosis, heart disease, or hypertension that results in total or partial disability is presumed to have been accidental and suffered in the line of duty, unless the contrary is determined by competent evidence.

³⁰ Section 121.091(4)(c), F.S.

³¹ Section 121.091(9), F.S. (2006).

³² *Id.*

³³ Section 121.091(9)(b)11., F.S. (2006).

³⁴ Department of Management Services HB 257 (2007 similar bill) Substantive Bill Analysis at 12. (Mar. 1, 2007) (on file with the department and the Government Efficiency & Accountability Council)

PROPOSED CHANGES

This bill is named the "Officer Malcolm Thompson Act."

This bill expands qualification for in-line-of-duty disability benefits to law enforcement officers, firefighters, correctional officers, emergency medical technicians, paramedics and community-based correctional probation officers who, due to an illness or injury related to, but not necessarily in the line of duty or directly in the actual performance of, their employment³⁵ are prevented from performing useful and efficient service *in the position held*, as opposed to the current standard which requires inability to engage in any type of gainful employment.³⁶

The bill provides that an affected employee will receive the higher in-line-of-duty disability benefit unless the plan administrator ("administrator") can provide "competent medical evidence to the contrary;" thus, shifting the burden of proof from the member to the administrator.

This bill also allows disabled members who retire under these circumstances to be reemployed in any position other than the position which the member was employed at the time of the disabling illness or injury without limiting or restricting disability benefits payable to that person. 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 receiving the in-line-of-duty disability retirement benefit while receiving a salary from subsequent employment. Because minimum threshold disability benefits are not considered taxable income,³⁷ an affected individual would receive a "tax-free" disability benefit of at least 65 percent of the average final compensation in addition to any worker's compensation benefit and/or social security benefit said individual would be entitled to, as well as any future salary earned while working in any position other than the one filled at the time of injury.

Disabled members may be reemployed by any employer not participating in a state-administered retirement system at any time or must wait a period of one month following retirement in order to be reemployed by any employer participating in a state-administered retirement program. If employed by an agency participating in a state-administered retirement program, the employer must pay retirement contributions as directed in s. 121.091(9)(b)7., F.S.

The bill provides concurrent funding for the FRS defined benefit program to offset the additional costs associated with the new benefits afforded under this bill. Specifically, the contribution rates for *all* members of the Special Risk Class will increase by 0.31 percent; however, the benefit improvement would only be available to a limited group³⁸ (see "Fiscal Comments").

C. SECTION DIRECTORY:

Section 1 designates the act as the "Officer Malcolm Thompson Act."

Section 2 provides a declaration of important State interest.

Section 3 amends s. 121.091, F.S., revising provisions relating to benefits payable for total and permanent disability for certain Special Risk Class members of the Florida Retirement System who are

³⁵ Currently, in order to qualify for an "in-line-of-duty" disability benefit, the injury or illness must occur in the line of duty, as defined in s. 121.021(13), F.S.

³⁶ Section 121.091(4)(b), F.S.

³⁷ Only the portion of the benefit that falls within the minimum benefit level, or 65 percent, 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 and beyond the minimum benefit level.

³⁸ The bill excludes members of the Special Risk Administrative Support Class, as well as those members of the Special Risk Class in s. 121.0515(2)(f), (g) and (h), F.S., respectively: health professionals in correctional or forensic institutions, youth custody officers, and forensic workers employed by law enforcement agencies or medical examiners' offices.

injured in the line of duty, and authorizing reemployment of certain persons retiring with in-line-of-duty disability benefits.

Section 4 increases employer contribution rates.

Section 5 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill creates a negative recurring fiscal impact on state government expenditures:³⁹

FY 07/08 (Year 1): \$3,265,000

FY 08/09 (Year 2): \$3,396,000

FY 09/10 (Year 3): \$3,531,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill creates a negative recurring fiscal impact on local government expenditures:⁴⁰

FY 07/08 (Year 1): \$8,558,000

FY 08/09 (Year 2): \$8,900,000

FY 09/10 (Year 3): \$9,256,000

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services offered the following fiscal note:

The benefit improvement would increase FRS in-line-of-duty disability retirements and thereby have a fiscal impact on the FRS. The bill proposes to increase the retirement contribution rate paid by employers for members of the Special Risk Class by 0.31% of gross payroll to fund the cost of the benefit improvement (raising the rate from 22.01% to 22.32%). This rate is based on Actuarial Special Study 2005-I, dated April 15, 2005, by Milliman Inc., consulting actuaries for the FRS. This rate increase translates to a total first-year cost of \$11,823,000 statewide and increasing costs each year thereafter.⁴¹

In the annual valuation of the FRS, estimated system costs for disability coverage are partially based on the number and cost of projected in-line-of-duty disability retirements... the proposed liberalization of eligibility standards would significantly increase the number of in-line-of-duty disability retirements for the affected group, and the liberalization of reemployment criteria would increase the likelihood that such members could maintain their disabled status, which

³⁹ DMS Analysis at 11.

⁴⁰ *Id.*

⁴¹ *Id.*

consequences would by themselves increase the cost of providing disability coverage for the Special Risk Class. In addition, the valuation currently assumes that members retiring on disability will have shortened life expectancies when compared to members taking a service-based retirement due to being permanently disabled from all employment. It is possible that liberalizing the standards for determining eligibility for in-line-of-duty disability would reduce the projected differences in relative life expectancies between disabled and non-disabled retirees. If this did happen, long term costs would be even higher.⁴²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of Article VII, section 18 of the State Constitution.

2. Other:

Article X, section 14 of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members who beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.⁴³ Because the bill increases the employer contribution rate by 0.31 percentage points for the Special Risk Class to fund this benefit increase, it appears to satisfy this constitutional requirement.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Management Services offered the following items for consideration:

- 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 any gainful employment (public or private). 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, HB 133 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. Since the eligibility is related to disability from a “position” as opposed to all employment, the ability to identify accurately would be difficult and labor intensive. Currently we monitor other state and federal government reporting to see if disability retirees become reemployed, but these tools only cover reported wages and do not address

⁴² *Id* at 12.

⁴³ Part VII of chapter 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” was adopted by the Legislature to implement the provisions of article X section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

unreported cash-based employment. If other employment is identified, then there would need to be a determination of whether the retiree's current employment is different from the position held at retirement. Secondly, the Division would have to determine comparability of "position" held for enforcement under the proposed bill ... The Division does not currently have enough staff or budget to perform the additional research that could be required to monitor these disabled retirees returning to work.⁴⁴

- The Department of Management Services administers the FRS disability program through the Division of Retirement. By modifying qualification requirements to shift the burden of proof from the affected member to the Division, the bill makes it far less likely that a disability application could be denied. The Division would have to provide competent evidence to show that the applicant could indeed perform the duties of his/her current job (and would require varied types of jobs to make such and [sic] evaluation). The substantial increase in the administrative burden to administer this would be exceedingly difficult. It is recommended that the Legislature consider amending the bill to reinstate the present proof requirement by eliminating the provision in the bill that shifts the burden of proof from the member to the administrator.⁴⁵
- As written, the bill does not cover all employee groups in the Special Risk Class,⁴⁶ 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) ... Additionally, if challenged under federal discrimination prohibitions, 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 if reviewed by the Internal Revenue Service.⁴⁷

D. STATEMENT OF THE SPONSOR

House Bill 133 amends the FRS definition of total and permanent disability for Special Risk members, to mirror the current statutory provisions found in Chapter 175 and 185 of the Florida Statutes, relating to Local Firefighter and Police Officer Pension Plans.

The proposed legislation provides that when a Special Risk Member suffers an in-line of duty disability, and the severity of that disability prevents that member from continuing to perform the job duties of their special risk position, then they are considered to be totally and permanently disabled for retirement purposes.

The legislation is strongly supported by the Florida Professional Firefighters Association, the Florida Police Benevolent Association and the Florida Fraternal Order of the Police

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

⁴⁴ DMS Analysis at 3.

⁴⁵ *Id.* at 4.

⁴⁶ The bill excludes members of the Special Risk Administrative Support Class, as well as those members of the Special Risk Class in s. 121.0515(2)(f), (g) and (h), F.S., respectively: health professionals in correctional or forensic institutions, youth custody officers, and forensic workers employed by law enforcement agencies or medical examiners' offices.

⁴⁷ DMS Analysis at 5.