

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 257  
**SPONSOR(S):** Attkisson  
**TIED BILLS:**

Retirement

**IDEN./SIM. BILLS:** SB 2910

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u>7 Y, 0 N</u>	<u>Cámara</u>	<u>Williamson</u>
2) <u>Government Efficiency &amp; Accountability Council</u>	<u>12 Y, 0 N</u>	<u>Camara</u>	<u>Cooper</u>
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Currently, under the Florida Retirement System (FRS) and the chapters 175 and 185 plans, members are covered for disability suffered in-line-of-duty from the first day of employment. The minimum in-line-of-duty disability benefit is 65 percent of the Average Final Compensation (AFC) for Special Risk Class members and 42 percent of AFC for other members in the FRS, and a minimum of 42 percent for the chapters 175 and 185 members. By contrast, to qualify for non duty-related or general disability benefits, a member must have eight years of service, and the minimum benefit for general disability is 25 percent of AFC for both FRS members and members of chapters 175 and 185 plans.

This bill creates the Officer Malcolm Thompson Act. It expands the current definition of total and permanent disability to include Special Risk Class members of the FRS who are law enforcement officers, correctional officers, correctional probation officers, firefighters, emergency medical technicians and paramedics who are catastrophically injured in the line of duty as a result of a felonious act of another.

The bill increases the monthly retirement benefit for firefighters, emergency medical technicians, paramedics, and police officers who retire due to total and permanent disability as a result of a catastrophic injury suffered in the line of duty as a result of a felonious act of another. The benefit amounts to the accrued retirement benefit at the time of disability, or to 80 percent of the average monthly salary at time of disability, whichever yields the higher benefit.

The bill increases the retirement contribution rates applicable to the FRS defined benefit program by 0.02 percent for the Special Risk Class. This increased contribution is intended to offset the additional costs incurred by the FRS for the benefits afforded by this bill. It does not provide a funding mechanism for the chapters 175 and 185 plans.

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 provide any increase in benefits to members unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis. An actuarial study is required to determine the fiscal impact on the FRS and the chapters 175 and 185 plans. As such, this bill does not appear to satisfy the constitutional requirements.

Based on the 0.02 percent rate increase to the Special Risk Class, the recurring impact to the state funds in Fiscal Year 2007-08 is \$211,000 (\$128,710 from General Revenue and \$82,290 from trust funds). The recurring impact to local governments in Fiscal Year 2007-08 is \$552,000.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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**DATE:** 3/28/2007

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the provisions providing disability coverage to members of the Special Risk Class of the Florida Retirement System and to members of chapters 175 and 185 plans.

### 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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup> Members of the FRS belong to one of five membership classes:

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

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.<sup>10</sup>

##### 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,<sup>11</sup> may need to retire at an earlier age with less service than other types

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<sup>1</sup> Section 121.025, F.S.

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

<sup>3</sup> *Id.*

<sup>4</sup> Section 121.021(12), F.S.

<sup>5</sup> Section 121.0515, F.S.

<sup>6</sup> Section 121.0515(7), F.S.

<sup>7</sup> Section 121.052, F.S.

<sup>8</sup> Section 121.055, F.S.

<sup>9</sup> Dept. of Mgmt. Svcs. HB 257 (2007) Substantive Bill Analysis (Mar. 1, 2007) (on file at dept. and the Committee on State Affairs) at 6 and 7 [hereafter referred to as DMS Analysis].

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

of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.<sup>12</sup> Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.<sup>13</sup> 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.<sup>14</sup>

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

### 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 disabled<sup>21</sup> 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 disability<sup>22</sup> benefits.<sup>23</sup>

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.

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

<sup>12</sup> 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.

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

<sup>14</sup> 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).

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

<sup>16</sup> Ch. 99-392, L.O.F., s. 23.

<sup>17</sup> Ch. 2000-169, L.O.F., s. 29.

<sup>18</sup> *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)

<sup>19</sup> Ch. 2001-125, L.O.F., s. 43.

<sup>20</sup> 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).

<sup>21</sup> 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.

<sup>22</sup> 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., may also be used.

<sup>23</sup> Section 121.091(4)(a)1., F.S.

Eligibility – An FRS member is eligible for in-line-of-duty disability benefits from the first day on the job.<sup>24</sup> In contrast, an FRS member must have from five to 10 years of creditable service<sup>25</sup> before 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.<sup>26</sup> 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.<sup>27</sup> If the disabling injury or illness did not occur in the line of duty, the benefit threshold is 25 percent of the AFC.<sup>28</sup>

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

Any full-time law enforcement, correctional, or correctional probation officer who suffers catastrophic injury,<sup>31</sup> as defined in the Florida's Workers Compensation Code in s. 440.02, F.S. (2002), has the entire health insurance premium paid for by the officer's employer, including that of the spouse and dependent(s).<sup>32</sup>

#### Local pension plans for firefighters/police officers

Chapters 175 (firefighter)<sup>33</sup> and 185 (municipal police), F.S., provide funding for municipal firefighters' and police officers' retirement plans.<sup>34</sup> Both chapters provide a uniform retirement system for firefighters and police officers and set standards for the operation and funding of pension systems through a trust fund supported by a tax on insurance premiums<sup>35</sup> (further funding is provided by employee contributions, other revenue sources, and employer contributions<sup>36</sup>). Both chapters govern two types of plans:

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<sup>24</sup> *Id.*

<sup>25</sup> 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.

<sup>26</sup> Section 121.091(4)(f)1.a., F.S.

<sup>27</sup> Section 121.091(4)(f)1.b., F.S.

<sup>28</sup> Section 121.091(4)(f)2., F.S.

<sup>29</sup> 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.

<sup>30</sup> Section 121.091(4)(c), F.S.

<sup>31</sup> Section 440.02, F.S. (2002), defines "catastrophic injury": A permanent impairment constituted by: spinal cord injury involving severe paralysis of an arm, a leg or the trunk; amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage; severe brain or closed-head injury (evidenced by: severe sensory, motor or communication disturbances, complex integrated disturbances of cerebral function, severe episodic neurological disorders or other severe brain and closed-head injury conditions at least as severe in nature as any condition provided above); second or third-degree burns of 25 percent or more of the body or third-degree burns of at least five percent to the face and hands; total blindness; any other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.

<sup>32</sup> Section 112.19(2)(g) and (h), F.S.

<sup>33</sup> Special fire control districts gained eligibility in 1993 to participate under chapter 175, F.S.

<sup>34</sup> As of January 22, 2007, 359 municipalities or fire control districts had either ch. 175 or ch. 185 plans. ([http://dms.myflorida.com/human\\_resource\\_support/retirement/municipal\\_police\\_and\\_fire/facts\\_figures](http://dms.myflorida.com/human_resource_support/retirement/municipal_police_and_fire/facts_figures))

<sup>35</sup> Sections 175.101 and 185.08, F.S., authorizes state excise taxation on casualty insurance premiums.

<sup>36</sup> Sections 175.091 and 185.07, F.S.

- Chapter plans – plans that meet the minimum provisions of the Florida Statutes.
- Local law plans – plans that are created by a special act, local ordinance, or fire district resolution that must meet the minimums, but may provide benefits in excess of the chapter provisions.<sup>37</sup>

### Differences in disability coverage and benefits

Under the FRS and the chapters 175 and 185 plans, members are covered for disability suffered in-line-of-duty from the first day of employment. The minimum in-line-of-duty disability benefit is 65 percent of AFC for Special Risk Class members and 42 percent of AFC for other members in the FRS,<sup>38</sup> and a minimum of 42 percent for the chapters 175 and 185 members.<sup>39</sup> By contrast, to qualify for non duty-related or general disability benefits, a member must have eight years of service, and the minimum benefit for general disability is 25 percent of AFC for both FRS members and members of chapters 175 and 185 plans.<sup>40</sup>

### 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. In honor of Officer Thompson, the City Commission of the City of Kissimmee adopted an ordinance in 1999 amending the Police Officers' Retirement Plan to improve the minimum disability benefit from 42 percent to 80 percent of the member's AFC, for any police officer who is:

[D]isabled in-line of duty [if] the disability resulted from the perpetration of an intentional act of violence directed toward the Police Officer and the Board reasonably believes the perpetrator intended to cause great bodily harm or permanent disfigurement of the Police Officer.<sup>41</sup>

## **PROPOSED CHANGES**

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

### FRS – Special Risk Class members

The bill expands the definition of total and permanent disability to include certain Special Risk Class members of the FRS who are catastrophically injured in the line of duty as a result of a felonious act of another. It shifts the burden of proof from the employee to the administrator. Eligible members of the Special Risk Class include:

- Law enforcement officers, correctional officers, and correctional probation officers as defined in s. 943.10(1), (2) and (3), F.S., respectively.
- Firefighters as defined in s. 633.30(1), F.S.
- Emergency medical technicians as defined in s. 401.23(11), F.S.
- Paramedics as defined in s. 401.23(17), F.S.

The bill also removes provisions authorizing limited reemployment of FRS retirees as firefighters and paramedics in the first year of retirement.

<sup>37</sup> DMS Analysis at 12.

<sup>38</sup> Section 121.091(4)(f), F.S.

<sup>39</sup> Sections 175.191(5) and 185.18(5), F.S.

<sup>40</sup> A chart detailing the differences in minimum benefits between the 175/185 plans and the FRS is available at: [http://dms.myflorida.com/human\\_resource\\_support/retirement/municipal\\_police\\_and\\_fire/facts\\_figures](http://dms.myflorida.com/human_resource_support/retirement/municipal_police_and_fire/facts_figures)

<sup>41</sup> DMS Analysis at 12.

## Chapters 175 and 185 plans

The bill increases the monthly retirement benefit for firefighters, emergency medical technicians, paramedics, and police officers who retire due to total and permanent disability as a result of a catastrophic injury suffered in the line of duty as the result of a felonious act of another. The benefit amounts to the accrued retirement benefit at the time of disability, or to 80 percent of the average monthly salary at time of disability, whichever yields the higher benefit.

### Funding

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 employer contribution rates are increased for the Special Risk Class by 0.02 percent. The bill also directs the Division of Statutory Revision to adjust the contribution rates accordingly, although the benefit improvement would only be available to a limited group. The Department of Management Services states an actuarial special study is required to determine the cost of the benefit improvement proposed by this bill and its fiscal impact on the system (See fiscal comments).

The bill does not provide a funding mechanism for the chapters 175 and 185 plans.

#### C. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 provides a statement 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 FRS who are injured in the line of duty, and deleting the provision authorizing reemployment of a retired member as a firefighter or paramedic in the first year of retirement.

Section 4 amends s. 175.191, F.S., providing minimum retirement benefits payable to firefighters, emergency medical technicians, and paramedics who are totally and permanently in the line of duty.

Section 5 amends s. 185.18, F.S., providing minimum retirement benefits payable to police officers who are totally and permanently disabled in the line of duty.

Section 6 provides contribution rate increases to fund benefits provided to certain Special Risk Class members.

Section 7 provides for an effective date of July 1, 2007.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

An actuarial study of this bill is currently underway, but it may not be final until April 20, 2007. However, based on the 0.02percent rate increase to the Special Risk Class mandated in the bill, the recurring payroll expenditures for state government will increase. The impact is estimated as follows for the next three years:

	FY 2007-08	FY 2008-09	FY 2009-10
General Revenue Fund	\$128,710	\$133,590	\$139,080
Trust Funds	<u>82,290</u>	<u>85,410</u>	<u>88,920</u>
Totals	\$211,000	\$219,000	\$228,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

An actuarial study of this bill is currently underway, but it may not be final until April 20, 2007. However, based on the 0.02 percent rate increase to the Special Risk Class mandated in the bill, the recurring payroll expenditures for local governments will increase. The impact is estimated as follows for the next three years:

	FY 2007-08	FY 2008-09	FY 2009-10
Local Governments	\$552,000	\$574,000	\$597,000

The funding source for the impact on local pension plans under chapters 175 and 185, F.S., that are impacted by these increased benefits have not been addressed as required by the State Constitution.

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 comment:

The liberalization of the standards for determining total and permanent disability and effective removal of post-retirement reemployment restrictions would make it easier for the specified special risk members to obtain and continue receiving disability benefits. Once initiated, disability benefits would continue to be paid even after recovery as long as the retiree did not obtain employment in the job held when the disabling injury occurred. The benefit improvement would increase FRS in-line-of-duty disability retirements and thereby have a fiscal impact on the FRS. The employer contribution rate for the Special Risk Class is proposed to increase by 0.02% to fund these benefits. These proposed rates are based on the results of Actuarial Special Study 2001-J, dated April 20, 2001, by Milliman USA, Consulting Actuaries for the FRS. However, these results are no longer valid. Since the funding proposed by the bill is based on an outdated actuarial study with a different basis, **a new special study is required**<sup>42</sup> to determine appropriate funding.

It is possible that by removing the reemployment exception for firefighters and paramedics, some dollars may be saved long-term. However, any changes to the demographics and actuarial experience of the Special Risk Class that result in additional fiscal impact will be reflected in future valuations and experience studies of the FRS.

<sup>42</sup> A new study was requested on March 8, 2007. The estimated completion date is April 20, 2007.

**Local Pension Plans for firefighters/police officers.** – The cost of providing these benefits will be determined by the Division for the chapter plans and by the actuaries for the local law plans. The police officers, firefighters, paramedics, or emergency medical technicians suffering a catastrophic injury resulting from a person committing a felonious act may already qualify for total and permanent in-line-of-duty disability retirement, but this group would qualify for a significantly higher minimum benefit (80% versus 42%). Resulting costs would be passed along to the local government employers sponsoring the plans. The bill does not provide any funding source, but it does include a declaration of important state interest to exempt it from restrictions on unfunded state mandates.<sup>43</sup>

### 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 or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.<sup>44</sup> Although the bill requires the contribution rate that applies to the Special Risk Class to be increased by 0.02 percentage points to fund this benefit increase, according to the Department of Management Services, this figure is based on a 2001 actuarial study that is no longer valid and a new actuarial study is required to determine appropriate funding.<sup>45</sup> Therefore, this bill does not appear to satisfy the requirements of Article X, section 14 of the State Constitution.

*The sponsor requested an actuarial study on March 8, 2007, and the anticipated completion date for the study is April 20, 2007.*

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Issues

The Department of Management Services offered the following drafting concerns:

- *Definition of "officer"* – As proposed in HB 257, the term 'officer' as used under s. 121.091(4), F.S., appears to be limited to those Special Risk Class members who are eligible for the disability presumption proposed in this bill. This change could cause confusion because the

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<sup>43</sup> DMS Analysis at 14 and 15.

<sup>44</sup> 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.

<sup>45</sup> DMS Analysis at 16.



existing definition of “officer or employee”<sup>46</sup> covers other members of the FRS. As generally understood, the term ‘officer’ refers to elected officers, agency heads, or senior management staff, as opposed to other employees of an agency. The proposed change could be construed to narrow the scope of this term, making it unclear if, or how, total and permanent disability provisions would apply to an ‘officer’ as the term is currently understood.

- *Reference to statutes not related to retirement* – The bill identifies covered groups by reference to ss. 943.10(1), (2), or (3), 633.30(1), and 401.23(11) and (17) – statutes that fall outside the administrative jurisdiction of the retirement agency and are only indirectly related to the FRS. This is a problem for two reasons:
  1. First, in comparing affected laws, it is not always apparent whether a given employee group currently in the Special Risk Class would be covered under the bill’s provisions.
  2. Second, the outlying statutes could be modified for reasons unrelated to retirement. Such potential future changes to these statutes could be interpreted to include or exclude certain employee groups under the special disability criteria, which could affect FRS costs.
- *Application of current disability standards* – As drafted, it isn’t clear whether a Special Risk Class member/officer who meets the standard for total and permanent in-line-of-duty disability under current law, but who was not “catastrophically injured” due to the felonious act of another as the bill stipulates, would still be eligible for special risk in-line-of-duty disability benefits under the proposed language.
- *Definition of “catastrophically injured”* – The term “catastrophically injured” is defined by reference to subsection (38) of s. 440.02 of the 2002 Florida Statutes, under the Workers’ Compensation Act. Paragraph (f) of that subsection would include:
  - (f) Any other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.

This provision would be extremely difficult to administer and would lead to challenges. It would require the FRS administrator to apply social security eligibility standards from 1992 that differ substantially from the eligibility standards otherwise applicable under the FRS or current laws pertaining to Workers’ Compensation injuries. This paragraph references a 15-year old federal law, the interpretation and application of which was in the hands of a federal agency, not the Florida Legislature or the administrator of the FRS. This “catch-all” provision may have been considered appropriate for workers’ compensation at one time, but it was deliberately removed from the Workers Compensation Act in 2003 and would create problems of interpretation and administration under the FRS.<sup>47</sup>

### Other Comments – Differential Treatment of Class Members

This bill provides increased in-line-of-duty disability benefits only for firefighters, paramedics, emergency medical technicians, law enforcement officers, correctional officers, and correctional probation officers. Yet, the Special Risk Class also includes youth custody officers, certain employees whose duties involve contact with patients or inmates in a correctional or forensic facility or institution, and employees of a law enforcement agency or medical examiner’s office who are engaged in a forensic discipline.<sup>48</sup> As such, all employers who participate in the FRS and who have Special Risk Class employees will be funding the benefit increase for the affected members of the Special Risk Class even if they or their employees are not eligible to take advantage of these benefits. The Department of Management Services notes that excluded members could argue that they too should

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<sup>46</sup> Section 121.021(11), F.S.: “Officer or employee” means any person receiving salary payments for work performed in a regularly established position and, if employed by a city or special district, employed in a covered group.

<sup>47</sup> DMS Analysis at 4 and 5.

<sup>48</sup> Section 121.0515(2), F.S.

be covered.<sup>49</sup>

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.

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<sup>49</sup> DMS Analysis at 6.