

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123

Claims by Law Enforcement and Correctional Officers

SPONSOR(S): Patterson

TIED BILLS:

IDEN./SIM. BILLS: SB 212

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	11 Y, 0 N	Haug	Williamson
2)	Government Operations Appropriations Committee		Delaney	Topp
3)	Military & Local Affairs Policy Committee			
4)	Full Appropriations Council on Education & Economic Development			
5)				

SUMMARY ANALYSIS

Current law establishes a presumption for state and local firefighters and law enforcement, correctional and correctional probation officers regarding determinations of job-related disability. It provides that certain diseases (tuberculosis, heart disease and hypertension) acquired by such firefighters and officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer the burden of proving by competent evidence that the disabling disease resulted from the person's employment.

Current law also establishes similar presumptions for municipal police officers' pension systems and municipal firefighters' pension systems.

The bill provides that a law enforcement officer, correctional officer or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and who has departed from the prescribed course of treatment loses this presumption. The departure must be shown to have caused an aggravation of the disability causing condition. The change in presumption applies to any claim occurring on or after July 1, 2010.

The bill also provides a definition of "prescribed course of treatment," requires a second medical opinion in certain situations and specifies that only claims made prior to leaving the employment of the employing agency are eligible for a presumptive disability.

An insignificant increase in administrative costs is expected by the Division of Administrative Hearings and the Department of Financial Services; however, the Department noted there would be a small positive overall fiscal impact associated with the imposition of the requirement to follow a "prescribed course of treatment."

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

STORAGE NAME: h0123b.GOA.doc

DATE: 2/11/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND¹

The Florida Retirement System (FRS) was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers and Highway Patrol officers. The Judicial Retirement System was consolidated into the FRS in 1972. The FRS is the fourth largest public retirement system in the United States, covering 668,416 active employees, 289,602 Pension Plan annuitants (retirees and their surviving beneficiaries) and 32,921 participants of the Deferred Retirement Option Program (DROP).

As of June 30, 2009, about 181 Florida cities² are covering firefighters, police or general employees under the FRS and 221 independent special districts³ have members in the FRS. District school boards represent nearly half (48.38 percent) of the FRS membership, with community colleges (2.87 percent) and universities (3.63 percent) bringing the total for educational institutions to approximately 55 percent of the FRS membership. State employees (excluding university employees) represent 17.35 percent of the FRS. Remaining members are employed by local agencies, including counties (23.30 percent) as well as cities and special districts (4.46 percent) that have opted to join the FRS.

The active membership of the FRS Pension Plan is divided into five membership classes. As of June 30, 2009, the Regular Class consists of 582,671 members (87.17 percent of the membership); the Special Risk Class includes 75,640 members (11.32 percent), the Special Risk Administrative Support Class has 76 members (0.01 percent), the Elected Officers' Class has 2,304 members (0.34 percent) and the Senior Management Service Class has 7,725 members (1.16 percent). Each class is funded separately based upon the costs attributable to the members of that class except for the funding of DROP.

¹ Data provided in this section is based on a snapshot of the Florida Retirement System taken on June 30, 2009. These counts include members of the Teachers' Retirement System, State and County Officers and Employees' Retirement System and special retirement programs. [Department of Management Services HB 123 (2010) Substantive Bill Analysis (Jan. 19, 2010) pages 1-3 (on file with the Governmental Affairs Policy Committee).]

² 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, 2009, among the 181 cities participating in the FRS, there are 26 cities that have chosen to withdraw from the system and do not cover new members under the FRS.

³ This number includes 13 independent special districts closed to new FRS members since January 1996.

Special Risk Class

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2009, Special Risk Class membership comprised nearly 11 percent of the active FRS membership (75,640 in the Special Risk Class and 76 members in the Special Risk Administrative Support Class).

The Special Risk Class under the FRS was created as the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention and emergency medical care positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers.⁴ In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to Regular Class members with normal retirement after 30 years of service or age 62 and vested. The comparison of equivalent benefits was determined when 25 years at a 2 percent Special Risk Class accrual value resulted in 50 percent of the average final compensation compared to 48 percent of average final compensation for a Regular Class member with 30 years of service at a 1.60 percent per year accrual value.

The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2009-10 plan years the retirement portion of the employer contribution rate for the Special Risk Class is 19.76 percent.⁵

FRS members must meet specified eligibility requirements to qualify for membership in the Special Risk Class. These requirements limit membership to employees who meet the criteria for Special Risk membership as set forth in applicable s. 121.0515, F.S., and who are employed by an FRS employer in one of the following positions: 1) law enforcement officer; 2) firefighter; 3) correctional officer; 4) correctional probation officer; 5) emergency medical technician; 6) paramedic; 7) youth custody officer; and 8) specified professional health care and forensic positions who spend at least 75 percent of their time performing duties involving inmate or patient contact in the Departments of Corrections and Children and Family Services.

Disability

The FRS provides disability benefits for its active members who are totally and permanently disabled from useful employment. The level of disability benefit to which an eligible disabled member is minimally entitled depends upon membership class and whether the disabling injury or illness was job related. For special risk members retiring on or after July 1, 2000, the minimum in-line-of-duty disability benefit is 65 percent of member's average final compensation (AFC). For members of all other classes, if the disabling injury or illness occurs in the line of duty, the base benefit is 42 percent of the member's AFC as of the disability retirement date. If the disabling injury or illness did not occur in the line of duty, the benefit minimum is 25 percent of AFC, regardless of membership class.⁶

Any member of the FRS 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.⁷ Certain criteria must be met:

- 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 eight years of creditable service before becoming disabled

⁴ Section 121.0515(1), F.S.

⁵ Regardless of whether an individual member elects to participate in the FRS Pension Plan or the FRS Investment Plan, the employer pays the same contribution rate for each class or subclass of membership by blending the rates for both plans as required under the uniformed contribution rate system of the FRS as provided in Part III of Chapter 121. Under the FRS Investment Plan, the amount contributed to an individual member account increases from 9.00 percent to 20.00 percent when the member moves from the Regular Class to the Special Risk Class.

⁶ Section 121.091(4), F.S.

⁷ *Id.*

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 physicians⁸ that the member’s disability is total and permanent (i.e., 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 also must show by competent evidence that the disability occurred in the line of duty.

Existing in-line-of-duty disability presumptions

Section 112.18, F.S., establishes a presumption for state and local firefighters, law enforcement, correctional and correctional probation officers regarding determinations of job-related disability. This statute provides that certain diseases (tuberculosis, heart disease and hypertension) acquired by these officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer the burden of proving by competent evidence that the disabling disease resulted from the person’s employment. The presumption applies to disability determinations under all public retirement systems providing disability coverage for firefighters, law enforcement officers, correctional officers and correctional probation officers, including the Florida Retirement System (FRS) and to disability determinations under the Worker’s Compensation Law (ch. 440, F.S.).

Sections 185.34 and 175.231, F.S., establish similar presumptions for municipal police officers’ pension systems and municipal firefighters’ pension systems.

Section 112.181, F.S., also is similar regarding presumptions as to firefighters, paramedics, emergency medical technicians, law enforcement officers and correctional officers who are disabled or die as a result of contracting hepatitis, meningococcal meningitis, or tuberculosis.

Death benefits also are provided to FRS members, surviving spouses or eligible dependents. Death benefits may be paid for an active member of the FRS who dies before retirement due to an injury or illness (including tuberculosis, heart disease, or hypertension). If the injury or illness arises out of and in the actual performance of duty required by his job, the member’s surviving spouse and/or eligible dependent(s) are entitled to in-line-of-duty death benefits.⁹ There are important differences in the laws applicable to death benefits, depending on whether the death is found to be due to an injury or illness “suffered in the line of duty.”

In-Line-of-Duty Death Benefits. Beginning with the first day of employment, an FRS member is eligible for in-line-of-duty death benefits that will pay a minimum monthly benefit to a survivor equal to half the member’s last monthly salary. If the deceased member would have been entitled to a higher retirement benefit based on service credit, the higher benefit would be payable to his/her spouse or eligible dependent(s).¹⁰

Non-Duty Death Benefits. If the death was NOT job-related:¹¹

- For FRS members who die before vesting, only accumulated member contributions, if any, are payable to designated beneficiaries.
- If the deceased member was eligible for normal retirement, the death benefit is the option 3 benefit amount (paying continuing benefits to a spouse and/or other eligible dependent for life). If the member was not eligible for normal retirement, the benefit is reduced just as if the

⁸ In limited situations certain out-of-state physicians may certify total and permanent disability (see ch. 2005-134, Laws of Florida).

⁹ Section 121.091(7), F.S.

¹⁰ *Id.*

¹¹ *Id.*

member had taken early retirement. However, for survivors of members with 20 years of creditable service at the time of death, a different benefit calculation method applies: Benefits are based on salary at the time of death and the penalty is applied against either the number of years before normal retirement age, or the number of years remaining in a full career of service, whichever affords the better benefit. In any case, the beneficiary can also defer benefits (just as if the member had chosen to defer benefits) in order to reduce or eliminate early retirement penalties.

Special Survivor Provisions. For non-duty and in-line-of-duty deaths, the surviving spouse or eligible dependent may purchase credit for any service, which could have been claimed by the member at the time of his/her death. If a member dies within 1 year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or purchasable service, to purchase enough service credit to vest the member posthumously (and entitle the surviving beneficiary to a death benefit).

Burden of Proof. Unless a legal presumption applies such as the one provided under s. 112.18, F.S., the eligible beneficiary must show by competent evidence that the death occurred in the line of duty to qualify to receive the higher in-line-of-duty death benefits.

Death benefits available under chapters 175 and 185, F.S.

If a police officer or firefighter has less than 10 years of service, his/her beneficiary receives a refund of his/her contributions without interest. If a police officer or firefighter has at least 10 years of service, his/her beneficiary is eligible to receive the member's accrued retirement benefit (a minimum of 2 percent x years of service x AFC) at his/her early (actuarially reduced) retirement date or at his/her normal (not reduced) retirement date for 10 years (120 monthly payments). No consideration is given to whether the death occurred in the line of duty or non-line of duty.

Death benefits available under chapter 112, F.S.

In addition to chapter 121, F.S., death benefits, chapter 112, F.S., contains several laws mandating death benefits for public employees under specified circumstances. Under s. 112.19, F.S., the following special death benefits are provided for law enforcement officers, correctional officers and correctional probation officers who are killed in the performance of duty:

- The sum of \$25,000 is payable for an officer who is accidentally killed in the line of duty.
- Another \$25,000 is payable if the officer is killed in "fresh pursuit" or in an emergency.
- Another \$75,000 is payable if the officer is unlawfully and intentionally killed or dies as a result of an unlawful and intentional act of another.
- If an officer employed by a state agency is killed in the line of duty as the result of an act of violence under riot conditions, \$1,000 is paid toward the funeral and burial expenses.
- If an officer employed by a political subdivision of the state is killed by another while performing his/her law enforcement duties or under riot conditions, the premium of the employer's health insurance plan is paid for the surviving spouse and minor dependent(s).
- Tuition expenses are waived for vocational or undergraduate education of children of officers killed accidentally in the line of duty or unlawfully or intentionally as described above.

Similar death benefits are available for firefighters under s. 112.191, F.S.

PROPOSED CHANGES

The bill adds the term correctional probation officer on lines 24 and 25. The change is a technical change for clarification only and does not impact the implementation of the law. The Division of Retirement has interpreted "state law enforcement" officers as used in s. 112.18, F.S., to include corrections officers and correctional probation officers based on a legislative intent letter dated 8/23/99 sent to the State Retirement Director from Representative Fasano, the sponsor of the legislation expanding the presumption to cover law enforcement officers.¹² Current law does not specify

¹² Department of Management Services HB 123 (2010) Substantive Bill Analysis dated January 19, 2010 (on file with the Governmental Operations Appropriations Committee).

correctional probation officers by name, but does by statutory reference, thus a technical clarification has been proposed.

In addition, the bill provides that a law enforcement officer, correctional officer or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and who has departed from the prescribed course of treatment loses this presumption. The departure must be shown to have caused an aggravation of the disability causing condition. The change in presumption applies to any claim occurring on or after July 1, 2010.

The bill also provides a definition of “prescribed course of treatment,”¹³ requires a second medical opinion in certain situations and specifies that only claims made prior to leaving the employment of the employing agency are eligible for a presumptive disability.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.18, F.S., providing conditions under which a law enforcement, correctional, or correctional probation officer who suffers from a specified medical condition and has materially departed from the prescribed treatment for that condition loses a specified presumption for claims made on or after a specified date.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could create additional administrative expenses. See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could create additional administrative expenses. See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Actuarial Statement of Fiscal Soundness:¹⁴

Actuaries Fiscal Note: There is no new fiscal impact for benefit improvement resulting from HB 123, the correctional probation officers added by this bill have been covered since the presumption for hypertension, heart disease and tuberculosis was expanded to include state law enforcement

¹³ “Prescribed course of treatment” means “prescribed medical courses of action and prescribed medicines for the specific disease or diseases claimed and as documented in the prescribing physician’s medical records.”

¹⁴ Robert Dezube, Enrolled Actuary, Milliamn, Inc., January 4, 2010 [Department of Management Services HB 123 (2010) Substantive Bill Analysis (Jan. 19, 2010) at 8 (on file with the Governmental Affairs Policy Committee)].

officers. There may be additional administrative expenses resulting from this bill; any changes in trends of ILOD disability benefits resulting from this bill will be measured by future valuations and experience studies.

The Division of Administrative Hearings noted that it is unlikely that the bill will have any fiscal impact; however, a small increase in the number of cases may be expected.¹⁵ The Division of Risk Management in the Department of Financial Services projected an increase in litigation as well, but anticipated a small positive fiscal impact overall.¹⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

Actuarial Statement of Fiscal Soundness:¹⁷

- This bill complies with the requirements of Article X, Section 14 of the Constitution.
- This bill complies with the provisions of Chapter 112, Part VII, Florida Statutes.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear if the language contained in lines 39 thru 79, pertaining to departures from a prescribed course of treatment, is intended be limited to workers' compensation claims filed under chapter 440, F.S., or to include to disability retirement claims under chapter 121, F.S. If the intent is to limit to claims filed under chapter 440, F.S., then clarifying language could be added.

In addition, lines 77 thru 79 authorize a second opinion from a physician pursuant to the procedure for an independent medical examination provided in section 440.13(5). This appears to be in conflict with language in that section which limits parties to only one independent medical examination. The conflict could be addressed by removing the language regarding a second opinion and simply direct claims to the process described in section 440.13(5).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

¹⁵ Email dated February 9, 2010 received from Marilyn Lawrence, Budget Officer, Division of Administrative Hearings (on file with the Government Operations Appropriations Committee).

¹⁶ Department of Financial Services HB 123 (2010) Substantive Bill Analysis dated December 21, 2009 (on file with the Governmental Operations Appropriations Committee).

¹⁷ *Id.*