

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 936

INTRODUCER: Senator Gainer

SUBJECT: Disability Retirement Benefits

DATE: January 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Favorable
2.	_____	_____	MS	_____
3.	_____	_____	RC	_____

I. Summary:

SB 936 amends the certification requirements for proof of disability for Florida Retirement System benefits. Specifically, the bill allows a member of the Florida Retirement System who is receiving care at a federal Veterans Health Administration facility to offer certification by two of that facility’s physicians as proof of the member’s total and permanent disability, regardless of where such physician is licensed. Under current law, such a member is required to receive certification from physicians licensed in Florida or the state in which the member works.

The bill is not expected to impact state or local revenues or expenditures.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Retirement System - Disability Retirement

Benefits from the Florida Retirement System may not be paid unless the member has ended employment.¹ A member who becomes “totally and permanently disabled” in the line of duty or after completing 5 years of service is entitled to disability benefit.² A member is considered totally and permanently disabled if, “in the opinion of the administrator, he or she is prevented, by reason of medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.”³ The Division of Retirement has adopted rules for required documentation of a member’s termination of employment and establishment of disability in order to approve disability retirement.⁴

¹ Section 121.091, F.S.

² Section 121.091(4), F.S.

³ Section 121.091(4)(b), F.S.

⁴ Section 121.091(4)(a)2., F.S.

Proof of disability is provided by certification of the member's total and permanent disability by two licensed physicians of the state, as well as other evidence required by the administrator.⁵ A member whose employment requires the member to work full time outside the state, but within the United States, may include certification by two physicians licensed in the state where the member works.⁶

In situations where the member is being treated at a federal veterans health facility, physicians licensed in other states frequently provide the health services. In these circumstances, in order to prove disability, the member must go outside of their primary care facility to receive their required disability certification from Florida licensed physicians. This process may increase the time and expense to receive disability benefits for many veterans in the state.

The physician must document that the member's medical condition occurred or became symptomatic during the member's employment, that the member was totally and permanently disabled at the time they terminated employment, and that the member has not been employed following the termination.⁷ If the application is for in-line-of-duty disability, the physician must also document by competent medical evidence that the disability was caused by a job-related illness or accident during the member's employment.⁸

The administrator may require periodic reexaminations at the expense of the retirement fund.⁹ If it is found that the member has recovered from their disability prior to their regular retirement date, the disability retirement benefits are discontinued.

Veterans Health Administration Physicians

The U.S. Department of Veterans Affairs has three main administrations: the Veterans Health Administration (VHA), the Veterans Benefits Administration, and the National Cemetery Administration.¹⁰ The VHA operates medical facilities that provide services to nearly 9 million veterans nationwide. The VHA is responsible for ensuring that physicians at its facilities are properly credentialed but gives broad discretion to each facility director in hiring and credentialing.¹¹

VHA physicians must be licensed for unrestricted practice in one U.S. state to practice with the agency.¹² Such state license must be full, active, current, and unrestricted. A physician who has had his license revoked for misconduct, incompetence, or substandard care is not eligible for VHA work unless fully restored by the state licensing board. Physicians must also provide the VHA with employment history, pre-employment references, and details of past involvement with

⁵ Section 121.091(4)(c)1., F.S.

⁶ *Id.*

⁷ Section 121.091(4)(c)2., F.S.

⁸ Section 121.091(4)(c)3., F.S.

⁹ Section 121.091(4)(h), F.S.

¹⁰ United States Government Accountability Office, *Greater Focus on Credentialing Needed to Prevent Disqualified Providers from Delivering Patient Care*, Feb. 2019, Page 5.

¹¹ *Id.*, at 7-8.

¹² Veterans Health Administration Handbook 1100.19, Page 14.

malpractice allegations. The VHA also consults the National Practitioner Data Bank, which provides a background check for each new hire.

III. Effect of Proposed Changes:

Section 1 amends Section 121.091(4)(c)1, F.S., to allow a member of the Florida Retirement System who is receiving care at a federal Veterans Health Administration facility to offer two of that facility's physicians' certifications as proof of the member's total and permanent disability, regardless of where such physician is licensed.

Section 2 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article X, Section 14 of the State Constitution requires that any governmental unit increasing Florida Retirement System benefits must concurrently provide for the funding of the increase on a sound actuarial basis. Because this bill does not increase benefits, no actuarial study is required, and no additional funding is necessary.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

FRS members receiving care at VHA facilities will no longer need to leave such facility and seek consultation with Florida licensed physicians before receiving their disability benefits. This will have a positive fiscal impact due to the saved expenses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In the early 2000's, the Department of Management Services accepted certifications from VHA physicians. The agency's legal office encountered some difficulties in obtaining records and deposition testimony, as the VHA asserted immunity to state subpoenas.¹³

VIII. Statutes Affected:

This bill substantially amends section 121.091, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹³ Department of Management Services, 2020 Agency Legislative Bill Analysis (on file with Senate Committee on Governmental Oversight and Accountability).