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DATE: April 5, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: CS/HB 249

RELATING TO: Disability in the Line of Duty

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety, Representatives Kilmer and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY (HCC) YEAS 8 NAYS 0
 - (2) STATE ADMINISTRATION
 - (3) FISCAL POLICY AND RESOURCES (FRC)
 - (4) FISCAL RESPONSIBILITY COUNCIL
 - (5)
-

I. SUMMARY:

Under current law, a firefighter or state law enforcement officer, which includes a state police, corrections, or correctional probation officer, who is totally and permanently disabled due to tuberculosis, heart disease, or hypertension is presumed to have suffered an in-line-of-duty disability. This bill expands that legal presumption to include *any* police, corrections, or correctional probation officer, which would then include not only officers employed by the state but also officers employed by local governments as well.

This bill requires any firefighter or law enforcement officer, upon entering into service as a firefighter, law enforcement officer, correctional officer, or correctional probation officer, to successfully pass a physical examination that fails to reveal any evidence of tuberculosis, heart disease, or hypertension. This language is unclear as to whether the correctional officers and correctional probation officers will be required to undergo physical examinations *upon entering* service.

This bill also authorizes government entities to negotiate for additional life and disability insurance benefits for, in addition to firefighters as currently provided, any law enforcement officers and correctional officers who suffer partial or total disability or die in the line of duty.

Local governments that maintain their own pension plans such as cities and special districts would be required to expend an unknown amount of funds to cover additional in-line-of-duty disability benefits as provided by this bill.

This bill could have a fiscal impact upon local governments as a result of the special terms and conditions of their life and disability insurance contracts related to accidental death or disability of law enforcement officers and correctional officers.

This bill does not appear to have a fiscal impact upon Florida Retirement System employers; however, this bill may have a fiscal impact on local governments. See "Fiscal Analysis and Economic Statement" section for further detail.

There is opposition to this bill. See "Other Comments" section of this bill analysis for further detail.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Under the Department of Management Services, the Division of Retirement serves 800,000 statewide retirement system members and oversees approximately 500 local government retirement systems. The division administers all statewide retirement systems, the largest of which is the Florida Retirement System (FRS). The FRS provides disability retirement benefits to its members as an incidental benefit. To claim disability retirement, the member must be totally and permanently disabled. This means that the member is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee. All state and county employees are compulsory members of the FRS, and about 60 Florida cities cover their firefighters, police and general employees or both under the FRS¹. As of June 30, 2000, there were also 411 special districts with members in the FRS.

The *Special Risk Class* is one of five membership classes in the FRS, and is open only to law enforcement officers, firefighters, correctional officers, emergency medical technicians and paramedics who meet the criteria set forth in section 121.0515(2), F.S. Due to the physical and mental demands of their jobs, members of the Special Risk Class are allowed to retire at an earlier age and are eligible to receive higher in-line-of-duty disability benefits than regular class members.

TYPES OF DISABILITY RETIREMENT

Regular Disability is granted for an illness or injury from natural causes or an accident not related to employment. Currently, to be eligible for regular disability, a member must complete 5 to 10 years of creditable service to be entitled to a monthly disability. Effective July 1, 2001, the 10-year service requirement for regular disability benefits will be reduced to 8 years, as provided in Chapter 2000-169, L.O.F. The minimum annual regular disability benefit is 25 percent of average final compensation for an option 1 benefit. (The Option 1 benefit is the maximum retirement benefit payable to the member during his or her lifetime.)

"Disability in line of duty" is defined under Section 121.021(13), F.S., as "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."

¹ According to the Division of Retirement, many cities and special districts have chosen to "opt out" of the FRS for new employees, and some have elected to rejoin the FRS. As of June 30, 2000, about 59 cities had withdrawn from the FRS for new employees and had not rejoined. The remaining cities have 84 plans covering special risk employees under the FRS.

Unlike regular disability, a member is eligible for in-line-of-duty disability benefits from his or her first day of employment. Special Risk Class members receive a minimum annual in line of duty disability benefit of 65 percent of average final compensation for an option 1 benefit. For members of other classes of FRS, the minimum in line of duty disability benefit is 42 percent of average final compensation.

Presumed in line of duty disability applies to persons in specified positions who become disabled as a result of certain diseases the law finds to be incident to employment. Under current law, s. 112.18(1) a firefighter or *state law enforcement officer* who is totally and permanently disabled due to tuberculosis, heart disease, or hypertension is presumed to have suffered an in line of duty disability. The presumption was initially established for firefighters in 1965 and was expanded to include state law enforcement officers in 1999, pursuant to the enactment of Chapter 99-392, L.O.F. To qualify for the presumption under the provisions of s 112.18(1), F.S., firefighters and state law enforcement officers must have successfully passed a preemployment physical examination which failed to reveal any evidence of tuberculosis, heart disease or hypertension.

Note: The Division of Retirement has interpreted “state law enforcement officer” as used in s. 112.18(1), F.S., to include police officers, corrections officers, and correctional probation officers employed by state agencies. The Division of Retirement bases this interpretation on a statement of legislative intent as provided to the State Retirement Director on 8/23/99. This clarification was issued to the Division of Retirement after the Legislature expanded the presumption to cover state law enforcement officers under Chapter 99-392, L.O.F. However, the Division of Retirement has recommended that the law be amended to explicitly cover corrections officers and correctional probation officers.

For firefighters, paramedics, emergency medical technicians, law enforcement officers, or correctional officers who are disabled due to hepatitis, meningococcal meningitis, or tuberculosis, the disability is presumed to have occurred in the line of duty, as provided in s. 112.181, F.S.

Burden of Proof. Unless a legal presumption applies, such as the one provided for firefighters and state law enforcement officers under s. 112.18, F.S., the FRS 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.

IN-LINE-OF-DUTY DEATH BENEFITS

The Florida Retirement System (FRS) provides death benefits for surviving spouses and eligible dependents (or both) of active members. Under s. 121.091(7), F.S., 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 or her job, the member's surviving spouse and eligible dependent(s) or both are entitled to in-line-of-duty death benefits.

Distinctions are made 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.” From 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 or her spouse or eligible dependent(s). Special survivor provisions apply to both in-line-of-duty and non-duty deaths which allows the surviving spouse or eligible dependent to purchase credit for any service, which could have been claimed by the member at the time of his or her death.

Burden of Proof. Unless a legal presumption applies, such as the one provided for firefighters and state law enforcement officers 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.

In addition to the death benefits available under Chapter 121, F.S., special death benefits are provided under s. 112.19, F.S., for law enforcement officers, correctional officers, and correctional probation officers who are killed in the performance of duty. Similar death benefits are available for firefighters dependents under s. 112.191, F.S.

LOCAL PENSION PLANS

Chapters 175 and 185, F.S., provide funding for municipal firefighters' and police officers' plans, and numerous city plans cover firefighters and police officers under these plans. Both chapters provide a "uniform retirement system" for firefighters and police officers and set standards for operation and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers participate in these plans.

Two types of plans are governed by each of these chapters – "chapter plans" and "local law plans." To be considered totally and permanently disabled, "chapter plan" employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer. Under "local law plans," the standards for determining eligibility for disability retirement, death benefits, and the benefits paid, vary widely from one plan to another, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S.

ADDITIONAL LIFE AND DISABILITY INSURANCE BENEFITS

The Department of Management Services operates the State Group Insurance Program under the authority of s 110.123, F.S. The Program offers health, life and other insurance plans to eligible State employees, retirees and their eligible dependents.

The Group Life Insurance plan offers Basic Term Life and Accidental Death and Dismemberment (AD&D) and Optional Term Life and AD&D benefit options. Persons eligible to participate in the life insurance plan include active State officers and employees. This is a fully-insured contract of insurance underwritten by the Prudential Life Insurance Company.

The Life and AD&D Insurance plan has a provision which waives the life insurance premium when any enrollee is totally disabled for a continuous nine month period and is less than 60 years of age at the time that disability begins. It also provides accidental death (also known as double indemnity) benefits, along with other accidental loss benefits, to any enrollee, subject to a 180-day limitation (death or losses must be incurred within 180 days of the accident for most of the defined losses). Benefit terms specifically exclude coverage for any losses as a result of sickness, medical or surgical treatment of sickness, certain infections, certain full-time military duty and other losses.

Under s.112.18(2),F.S., governmental entities are authorized to negotiate policy contracts for life and disability insurance to include accidental death benefits for firefighters who are partially or totally disabled, or die in the line of duty as a result of tuberculosis, heart disease or hypertension. According to the Division of State Group Insurance, the existing life insurance contract with Prudential does **not** cover the benefits described under s. 112.18(2), F.S., to firefighters, or to any other group of eligible employees.

C. EFFECT OF PROPOSED CHANGES:

IN-LINE-OF-DUTY DISABILITY BENEFITS, WORKERS COMPENSATION

The committee substitute amends s. 112.18(1), F.S., to expand the application of the legal presumption, that any condition or impairment of health caused by tuberculosis, heart disease, or hypertension and resulting in total or partial disability or death was accidental and suffered in the line of duty, unless shown otherwise by competent evidence, to cover *all* law enforcement officers as defined in s. 943.10(1), (2) or (3), F.S., as listed below:

943.10 Definitions:

(1) "**Law enforcement officer**" means any person who is elected, appointed, or employed full time by any *municipality or the state or any political subdivision* thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

(2) "**Correctional officer**" means any person who is appointed or employed full time by the *state or any political subdivision* thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

(3) "**Correctional probation officer**" means a person who is employed full time by the *state* whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

Under the provisions of CS/HB 249, the burden of proving that a disability or death was accidental and suffered in the line of duty would be shifted from the affected law enforcement officer to the officer's *employer*. More law enforcement officers who are disabled or die as a result of tuberculosis, heart disease or hypertension would qualify for workers compensation and for the generally higher in-line-of-duty benefits available under the Florida Retirement System (FRS) and other Florida plans that cover such employees for disability and death.

FRS employers already pay the required contribution rate to fund the benefit cost to provide this presumption to their Special Risk employees. (See "Fiscal Comments.")

Section 112.18(1), F.S., requires a firefighter or state law enforcement officer to successfully pass a physical examination upon entering service. This bill requires any law enforcement officer, upon entering into service as a firefighter, law enforcement, correctional officer, or correctional probation officer, to successfully pass a physical examination that fails to reveal any evidence of tuberculosis, heart disease, or hypertension. This language is unclear as to whether the correctional officers and correctional probation officers will be required to undergo physical examinations *upon entering* service, due to the inconsistent references to law enforcement, and later to law enforcement, correctional, or correctional probation officers.

Because the threshold eligibility test for workers' compensation is whether the disability arose "out of and in the course of employment,"² a member who qualifies for disability benefits can qualify for workers' compensation. If the disability did not occur in the course of employment, then the employee is not eligible for the disability benefit presumption provided in s. 112.18(1), F.S. There is no provision under Chapter 440, F.S., on Workers' Compensation, for a *non-duty-related* disability as may be found in many retirement plans.³

Also, Florida courts have expressly stated that the presumption in s. 112.18, F.S., applies to Chapter 440, F.S., on Workers' Compensation.⁴

ADDITIONAL LIFE AND DISABILITY INSURANCE BENEFITS

CS/HB 249 amends 112.18(2), F.S., to authorize government entities to negotiate for additional life and disability insurance benefits for, in addition to firefighters as currently provided, law enforcement officers and correctional officers who suffer partial or total disability or die in the line of duty as a result of tuberculosis, heart disease, or hypertension.

While this bill adds law enforcement officers and correctional officers as eligible classes for additional life and disability insurance benefits under s. 112.18(2), F.S., it does **not** mandate coverage or benefits. However, in the event that the State should decide to contract for the coverage and benefits as provided in this bill, there would be a fiscal impact to the State, the State Group Insurance Program, and employees. (See "Fiscal Analysis and Economic Impact Statement.")

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 112.18(1), F.S., to expand the scope of the in-line-of-duty presumption related to accidental disability or death caused by tuberculosis, heart disease, or hypertension to cover both state and local law enforcement officers, correctional officers and correctional probation officers. Amends s. 112.18(2), F.S., to authorize government entities employing law enforcement officers and correctional officers to negotiate life and disability policy contracts to include benefits which recognize the presumption as proposed.

Section 2: Provides an effective date upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Presumed In-Line-of-Duty Disability Benefits

This benefit will be provided at no cost for Florida Retirement System (FRS) employers, as those employers already pay the required contribution rate to fund the benefit cost.

² Senate Bill Analysis on SB 848, Committee on Governmental Operations and Productivity, March 19, 2001.

³*Id.*

⁴ *South Trail Fire Control District v. Johnson*, 449 So.2d 947 (1984).

The information provided in this analysis represent costs relevant to the FRS only; costs for other pension plans and costs attributable to workers' compensation claims are unknown.

See "Fiscal Comments" section.

Additional Life and Disability Insurance Benefits

CS/HB 249 authorizes government entities to negotiate for life and disability insurance benefits for any law enforcement officers and correctional officers who suffer partial or total disability or death in the line of duty caused by tuberculosis, heart disease or hypertension. This bill adds law enforcement officers and correctional officers as eligible classes, it does not mandate coverage or benefits. However, if the coverage and benefits as provided in this bill were offered to eligible State firefighters, law enforcement officers and correctional officers, the estimated recurring fiscal impact is as follows:

- \$726,240 - \$855,111 per year, combined State and employee contribution, for redefined accidental death benefit premium this year.
- \$229,141 - \$1,603,989 per year, combined State and employee contribution, for redefined waiver of premium benefit this year.

Currently, the State contributes approximately 80 percent of the total premium cost; enrollees contribute the remaining 20 percent.

The estimated fiscal impact is for the current plan year only. Future fiscal impact would be determined by future employment numbers, plan enrollment, plan experience, and premium rates.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Presumed In-Line-of-Duty Disability Benefits

The Division of Retirement reported that local governments that maintain their own pension plans (non FRS plans such as city and special districts) and provide disability and death benefits to affected employees under these plans would be more likely to be required to pay the higher in-line-of-duty amounts for affected employees who become disabled or die as the result of tuberculosis, heart disease, or hypertension. It would be easier for members of these plans to become eligible for benefits, as the burden of proving that the disability or death was not job-related rests with the employer. Such employers could also be more likely to be obligated to pay workers' compensation claims for affected employees for this same reason.

Additional Life and Disability Insurance Benefits

The Division of State Group Insurance reported that there could be a fiscal impact to local governments as a result of the special terms and conditions of their life and disability insurance

contracts related to accidental death or disability caused by tuberculosis, heart disease, and hypertension of firefighters, law enforcement officers and correctional officers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Presumed In-Line-of-Duty Disability Benefits

The cost of the presumed in-line-of-duty disability benefits to the Florida Retirement System (FRS) has been funded since 1999 with the enactment of Chapter 99-392, L.O.F. (House Bill 1883), although it has been available only to firefighters and state law enforcement officers, including state correctional and correctional probation officers. As originally filed, HB 1883 would have expanded the presumption provided under s. 112.18(1), F.S., to cover all law enforcement officers and would have funded the cost through a contribution rate increase of 0.08 percent for the Special Risk Class. This amount was determined by the consulting actuaries for the FRS (Actuarial Special Study 1991-1B) to be sufficient to fund inclusion of all Special Risk members under the presumption. However, when the bill was amended to limit its application to state law enforcement officers only, the corresponding contribution rate increase was not changed.

In 2000, under Chapter 2000-167, L.O.F., the minimum rate paid for in-line-of-duty disabilities for Special Risk Class members was increased from 42 percent to 65 percent, and the cost of this benefit improvement was funded through a contribution rate increase of 0.13 percent for the Special Risk Class and 0.21 percent for the Special Risk Administrative Support Class.

There should be no cost to FRS employers for expanding the presumption under s. 112.18(1), F.S., to cover all law enforcement officers, including correctional officers, since the contribution rates have already been increased to fund this benefit. However, it is possible that as more members use in-line-of-duty disability benefits, it would gradually produce actuarial losses. If such costs occur, they would have to be funded through contribution rate increases as recommended in future annual valuations of the FRS.

At the March 15, 2001 meeting of the Committee on Crime Prevention, Corrections and Safety, the Florida League of Cities, speaking in opposition to the bill, raised concerns about increased workers' compensation claims and the resulting fiscal impact that would occur through the enactment of this legislation. As stated earlier, the information provided in this analysis represent costs relevant to the Florida Retirement System only; costs for other pension plans and costs attributable to workers' compensation claims are unknown. The Department of Insurance, Division of Risk Management, is currently preparing an analysis of the fiscal impact attributable to workers' compensation claims as a result of passage of HB 249.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18, Florida Constitution, excuses local governments from complying with state mandates which impose negative fiscal consequences. Subsection (a) provides, "[n]o county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist. Subsection (a) of Art. VII, Sec. 18, Florida

Constitution, contains an exception for laws which apply to all persons similarly situated, or which fulfill an important state interest, or which are approved by two-thirds membership of each house of the legislature.

This bill as currently drafted would require city and special districts that maintain their own pension plans (non FRS plans) to expend an unknown amount of funds for higher in-line-of-duty amounts for affected employees who become disabled or die as the result of tuberculosis, heart disease, or hypertension. This bill appears to apply to all persons similarly situated, and therefore may be exempt from the requirements of the mandates provision. Also, this bill does not contain a declaration of important state interest.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Florida Public Employer Labor Relations Association opposes the expansion of the presumption as it will raise workers' compensation costs and does not take into account that the diseases could be developed because of lifestyle or other off-the-job causes.⁵

The Florida League of Cities asserts that the presumption expanded by the bill is a "non-rebuttable presumption" due to its application by the state courts, and that the language should be changed so that the presumption is rebuttable.⁶

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Kilmer offered three amendments to HB 249 during the March 15, 2001, meeting of the Committee on Crime Prevention, Corrections and Safety. These amendments clarify provisions in the bill by specifying the terms "correctional officer" and "correctional probation officer." The three amendments were adopted by the committee and the bill was made a committee substitute.

⁵ Paul Piller, representing the Florida Public Employer Labor Relations Association, at the Committee on State Administration meeting, March 27, 2001; opposing a similar bill, HB 649.

⁶ Carol Westmoreland, representing the Florida League of Cities, at the Committee on State Administration meeting, March 27, 2001; opposing a similar bill, HB 649.

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VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY (HCC):

Prepared by:

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Lynn Dodson

David De La Paz

AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

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