

STORAGE NAME: h0341.sa.doc
DATE: March 19, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 341
RELATING TO: Disability Retirement
SPONSOR(S): Representative(s) Attkisson and others
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4) COUNCIL FOR SMARTER GOVERNMENT
 - (5)
-

I. SUMMARY:

The Florida Retirement System (FRS) provides disability benefits for its active members who are totally and permanently disabled from useful employment. All state and county employees are compulsory members of the FRS, and about 60 Florida cities cover their firefighters, police, and/or general employees under the FRS as well.

Under current law, any member of the FRS who is totally and permanently disabled 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 required by his job, the member is entitled to in-line-of-duty disability benefits. Also, current law provides funding for municipal firefighters' and police officers' plans, and numerous city plans cover firefighters and police officers under these plans.

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 municipal firefighter' and police officer members. The minimum benefit for general disability is 25 percent of AFC for FRS, as well as municipal firefighter' and police officer members.

This bill amends s. 121.091(4)(b), F.S., to expand the definition of "total and permanent disability" to include Special Risk members of the FRS who are law enforcement officers, correctional officers, and correctional probation officers, who are injured in-line-of-duty as a result of a felonious act of another, if the injury is catastrophic.

This bill also amends s. 185.18, F.S., to expand the definition of "total and permanent disability" so it includes officers who suffer a catastrophic injury as a result of a felonious act of another. In addition, this bill also increases the threshold benefit amount for such officers from 42 percent to 80 percent of the officer's average monthly retirement benefit.

This bill does not appear to have a fiscal impact on state government. However, this bill appears to have a fiscal impact on local governments, which it does not fund. Affected local governments could view this bill as an unfunded state mandate, and therefore the benefits provided in this bill could raise constitutional concerns. See "Applicability of the Mandates Provision" 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:

Disability benefits available to FRS members

The Florida Retirement System (FRS) provides disability benefits for its active members who are totally and permanently disabled from useful employment. All state and county employees are compulsory members of the FRS, and about 60 Florida cities cover their firefighters, police, and/or general employees under the FRS¹ as well. As of June 30, 2000, there were also 411 special districts with members in the FRS.²

Under s. 121.091(4), F.S., any member of the FRS who is totally and permanently disabled 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 required by his job, the member is entitled to in-line-of-duty disability benefits.

There are several important differences in the laws applicable to disability benefits, depending on whether the disability is found to be due to an injury or illness “suffered in the line of duty.”

- *Eligibility.*— An FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, an FRS member must have from 5 to 10 years of creditable service³ before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty.⁴

¹ Since January 1, 1996, many cities and special districts were authorized by law to “opt out” of the FRS for new employees. Many have chosen to do so, and since that time, some have elected to rejoin the FRS. As of June 30, 2000, about 59 cities had withdrawn from the FRS for new employees and have not rejoined. The remaining cities have 84 plans covering special risk employees under the FRS. 2001 Bill Analysis on HB 341, Department of Management Services, February 27, 2001.

² Based on a count of the Division of Retirement, Bureau of Local Retirement, published in *The Florida Local Government Retirement Systems Annual Report*, Appendix J.

³ Under current law, any member with less than 5 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 job-related. Otherwise, 5 years of creditable service is required to qualify for a non-duty disability benefit. Effective July 1, 2001, the 10-year service requirement is reduced to 8 years.

⁴ s. 121.091(4)(a), F.S.

- *Threshold Benefit Amount.*⁵— The level of disability benefit to which a disabled member is minimally entitled depends upon whether his/her 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. For Special Risk members retiring on or after July 1, 2000, the in-line-of-duty disability benefit threshold is 65 percent of AFC as of the disability retirement date. If the disabling injury or illness did not occur in the line of duty, the benefit threshold is 25 percent of AFC.
- *Burden of Proof.*⁶— Unless a legal presumption applies such as the one provided under s. 112.18, F.S., 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.

Under s. 112.19(2)(h), F.S., any full-time law enforcement, correctional, or correctional probation officer who suffers catastrophic injury, as defined in s. 440.02(37), F.S., and his/her spouse and minor dependent(s) will have their entire health insurance premium paid for by his/her employer.

Local pension plans for firefighters/police officers

Chapters 175 (Firefighter Pensions) and 185 (Municipal Police Pensions), F.S., provide funding for municipal firefighters' and police officers' plans, and numerous city plans cover firefighters and police officers under these plans. Special fire control districts became eligible to participate under Chapter 175 in 1993. 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.⁷ Most Florida firefighters and local police officers participate in these plans.⁸

Each of these chapters governs two types of plans — "chapter plans" and "local law plans." To be found totally and permanently disabled, "chapter plan" employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer.⁹ Under "local law plans" the standards for determining eligibility for disability retirement and/or death benefits, and the benefits paid, vary widely from plan to plan, although Chapter 99-1, L.O.F., imposed minimum benefits and standards for all plans operating under chapters 175 and 185, F.S.¹⁰ Any plan that did not meet the minimum "chapter" standard is required to make such improvement as the increase in the state premium tax revenues, over and above the amount collected for calendar year 1997, become available.¹¹

In addition to the pension plans governed by chapters 175 and 185, F.S., there are numerous other local plans that provide coverage for firefighters/police officers for disability and death.¹² Under these plans, the standards for determining eligibility for disability retirement and/or death benefits, and the benefits paid, vary widely from plan to plan. This proposal does require that these minimum benefits be included in these local pension plans.

⁵ s. 121.091(4)(f), F.S.

⁶ s. 121.091(4)(c), F.S.

⁷ Bill Analysis on HB 341, at 2.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Differences in disability coverage and benefits

Under the FRS and the Chapters 175 and 185 plans, members are covered for disability suffered "in the 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 FRS¹³ and a minimum of 42 percent for the Chapters 175 and 185 members.¹⁴ By contrast, to qualify for nonduty-related disability benefits, a member must have 10 years of service, and the minimum benefit for general disability is 25 percent of AFC for FRS, as well as the Chapters 175/185 plan members.¹⁵

Workers' Compensation

Section 440.02(37), F.S., provides that

"Catastrophic injury" means a permanent impairment constituted by:

- a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;
- c) Severe brain or closed-head injury as evidenced by:
 1. Severe sensory or motor disturbances;
 2. Severe communication disturbances;
 3. Severe complex integrated disturbances of cerebral function;
 4. Severe episodic neurological disorders; or
 5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs 1.-4.;
- d) Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands;
- e) Total or industrial blindness; or
- 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.

Catastrophic injury as defined in s. 440.02(37), F.S.,¹⁶ is not directly related to the determination of total and permanent disability under the FRS and the Chapters 175/185 plans. The other local plans that provide coverage to firefighters and police officers may, or may not, already incorporate this definition of catastrophic injury in their eligibility for total and permanent in-line-of-duty disability retirement. There is no provision under Chapter 440, F.S., for a nonduty-related disability, as may be found in many retirement plans.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 121.091(4)(b), F.S., to expand the definition of "total and permanent disability" to include Special Risk members of the FRS who are officers under s. 943.10(1), (2), and (3), F.S.,¹⁷

¹³ s. 121.091(4)(f), F.S.

¹⁴ ss. 175.191(5), and 185.18(5), F.S.

¹⁵ ss. 121.091(4)(f), 175.191(5), and 185.18(5), F.S.

¹⁶ Bill Analysis on HB 341, at 3.

¹⁷ Law enforcement officers, correctional officers, and correctional probation officers, respectively.

who are injured in the line of duty as a result of a felonious act of another, if the injury is catastrophic, as defined in s. 440.02(37), F.S.

Under current law, a FRS member who is catastrophically injured would already qualify for in-line-of-duty disability retirement. The Department of Management Services states that

[a]ny FRS member who suffers a catastrophic injury within the scope of their employment due to the felonious act of another person should qualify for this expanded definition of total and permanent in-line-of-duty disability retirement, not just those specified in this bill. Therefore, as this proposed change applies to the FRS the impact will be negligible.

Also, a member of the either of the Chapter 175 or Chapter 185, F.S., plans who is catastrophically injured, would probably already qualify for in-line-of-duty disability retirement. *Currently, disability retirement provisions in both of those chapters are identical, this bill would create a disparity between those chapters.*

Also, granting increased benefits to some of the Special Risk members, will effectively create a subclass of Special Risk. This could have implications under the IRS regulations regarding retirement benefits.

This bill also amends s. 185.18, F.S., to expand the definition of "total and permanent disability" so it includes officers who suffer a catastrophic injury as a result of a felonious act of another. In addition, this bill also increases the threshold benefit amount for such officers from 42 percent to 80 percent of the officer's average monthly retirement benefit. Affected local governments could view this as an unfunded state mandate.

Article VII, Section 18 of the Florida Constitution invalidates any law that would require counties or municipalities to spend funds or limit their ability to raise revenue or receive state tax revenue, unless certain conditions are met. First, the Legislature must have determined that the law fulfills an important state interest. The law must also meet one or more additional criteria, including that the "expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments."

This bill appears to be a "mandate," because it requires local governments to fund an increase in retirement benefits for certain Special Risk members. However, this bill may meet the one of the exemptions to the mandates provision, which is for bills that have an "insignificant fiscal impact", which means an impact under \$1.6 million of aggregate cost to cities and counties.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Management Services states that the “specified Special Risk Class members who suffer a catastrophic injury resulting from a person committing a felonious act may already qualify for total and permanent in-line-of-duty disability retirement under existing law.”¹⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The Department of Management Services provides that the cost of providing these benefits will be determined by the Division of Retirement and by the actuaries of the local law plans.¹⁹ The police officers 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.²⁰ The resulting costs would be passed along to the local government employer sponsoring the plan.

This bill does not provide any funding source, or specify that this bill serves an important state interest to exempt it from restrictions on unfunded state mandates.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Management Services states that “Officer Malcolm Thompson was a member of the Kissimmee Police Officers' Retirement Fund, a Chapter 185, local law plan. The cost impact for adding this benefit enhancement to their local plan was 0.1% of payroll or about \$5,002.”²¹

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 of the Florida Constitution invalidates any law that would require counties or municipalities to spend funds or limit their ability to raise revenue or receive state tax revenue, unless certain conditions are met. First, the Legislature must have determined that the law fulfills an important state interest. The law must also meet one or more additional criteria, including that the “expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.”

This bill appears to be a “mandate,” because it requires local governments to fund an increase in the retirement benefit for certain Special Risk members. However, this bill may be exempt from the

¹⁸ Bill Analysis on HB 341, at 5-6.

¹⁹ *Id.* at 6.

²⁰ *Id.*

²¹ *Id.*

mandates provision because of an “insignificant fiscal impact”, which means a fiscal impact under \$1.6 million of aggregate cost to cities and counties.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This 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:

See “Applicability of the Mandates Provision.”

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Jennifer D. Krell, J.D.

J. Marleen Ahearn, Ph.D., J.D.