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DATE: April 17, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 649
RELATING TO: Law Enforcement Officers' Disabilities
SPONSOR(S): Representative (s) Bilirakis 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 YEAS 5 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 11 NAYS 0
 - (4) COUNCIL FOR HEALTHY COMMUNITIES YEAS 13 NAYS 0
 - (5)
-

I. SUMMARY:

Under current law, a firefighter or state law enforcement officer, or a police, corrections, or correctional probation officer employed by the State, 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 *county* law enforcement officers.

This bill requires county law enforcement officers, upon entering into service as a county law enforcement officer, to successfully pass a physical examination, showing no evidence of tuberculosis, heart disease, or hypertension.

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.

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:

FLORIDA RETIREMENT SYSTEM

The Division of Retirement, within the Department of Management Services 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 all of the above under 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 s. 121.0515(2), F.S., such as duties that include: the pursuit, apprehension, and arrest of law violators or suspected law violators, or, membership of a bomb disposal unit—for law enforcement; on-the-scene fighting of fires or direct supervision of firefighting units—for firefighters; the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported—for correctional officers; and, on-the-scene emergency medical care—for emergency medical technicians and paramedics.

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 in s. 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.” 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), F.S., a firefighter or state law enforcement officer (police, corrections and correctional probation officers employed by the State) 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 pre-employment physical examination which failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

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. 112.18(2), 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(1), F.S., the FRS member must show by competent evidence that the disability occurred in-line-of-duty to qualify to receive the higher in-line-of-duty disability benefits.

In *Caldwell v. Division of Retirement*, the court states that “[t]o rebut the statutory presumption, it is necessary . . . [to] show that the disease causing disability or death was caused by a specific, non-work related event or exposure.”¹ The Florida League of Cities asserts that because it is extremely difficult to prove that a disease is developed on or off the job, this case law has effectively created a non-rebuttable presumption.²

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 due to an injury or illness “suffered in the line of duty.” From the first day of employment, an FRS

¹ *Caldwell v. Division of Retirement, Florida Department of Administration*, 372 So.2d 438, 441 (Fla. 1979).

² Disability Presumption Reform Issue Brief, Florida League of Cities, March 16, 2001.

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 allow 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(1), 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. See also *Caldwell v. Division of Retirement*, at 441.

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.

Workers' Compensation

Chapter 440, F.S., sets forth the Workers' Compensation law in Florida. This chapter specifies, in part, notice requirements and Workers' Compensation coverage requirements. More particularly, s. 440.09, F.S., states that "[t]he employer shall pay compensation or furnish benefits required by this chapter if the employee suffers an accidental injury or death arising out of work performed in the course and the scope of employment." Because the threshold eligibility test for workers' compensation is whether the disability arose "out of and in the course of employment,"³ a member that qualifies for disability benefits can also qualify for workers' compensation.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 112.18(1), F.S., to expand the presumption to cover *county* law enforcement officers. Under this bill, because county law enforcement officers who are disabled or die as a result of tuberculosis, heart disease or hypertension would fall under the presumption that those diseases occurred in-line-of-duty, more of those officers could qualify for workers' compensation and for the generally higher in-line-of-duty benefits available under the Florida Retirement System (FRS).

This bill amends s. 112.18(1), F.S., to require *county* law enforcement officers, upon entering into service as a county law enforcement officer, to successfully pass a physical examination that fails to reveal any evidence of tuberculosis, heart disease, or hypertension.

All county employees are compulsory members of the FRS. This bill should have no fiscal impact, because 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.)

The expansion of this presumption has an impact on workers' compensation claims determinations, more so than on the FRS, because the threshold eligibility test for workers' compensation is whether the disability arose "out of and in the course of employment."⁴ If the disability did not occur in the course of employment, the employee is not eligible for any disability benefits under the above

³ s. 440.09(b)

⁴ Senate Bill Analysis on SB 848, Committee on Governmental Operations and Productivity, March 19, 2001.

presumption. 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.⁵

This bill does not authorize governmental entities to negotiate for additional life and disability insurance benefits for *county* law enforcement officers who suffer partial or total disability or death in the line of duty as a result of tuberculosis, heart disease, or hypertension, as is currently authorized for firefighters under s. 112.18(2), F.S.

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:

None.

The expanded benefits contained in this bill will not cost FRS employers, because those employers already pay the required contribution rate to fund the benefit.

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.

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The Department of Management Services states that local government entities could be impacted financially 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 and law enforcement officers.⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁵*Id.*

⁶ Bill Analysis of HB 649, Department of Management Services, March 8, 2001, at 4.

D. FISCAL COMMENTS:

Disability Benefits

Chapter 99-392, L.O.F., House Bill 1883, increased the employer contributions for the Special Risk Class, thereby funding the cost of the newly presumed in-line-of-duty disability benefits to the Florida Retirement System (FRS), although 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 *county* law enforcement officers, since the applicable employer contribution rates have already been increased. However, it is possible that as more members use in-line-of-duty disability benefits, it would increase actuarial losses gradually. If such costs occur, they would have to be funded through contribution rate increases as recommended in future annual valuations of the FRS.

Workers' Compensation

Because the threshold eligibility test for workers' compensation is whether the disability arose "out of and in the course of employment,"⁷ 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.⁸

This analysis addresses costs relevant to the Florida Retirement System only; costs attributable to workers' compensation claims are unknown. What the fiscal impact will be on workers' compensation claims as a result of adding county law enforcement officers to the s. 112.18(1), F.S., presumption is indeterminate.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require counties or municipalities to spend funds or take action requiring the expenditure of funds. However, if the fiscal impact is not significant (over \$1.6 million), the bill is exempt from the mandates requirements.

⁷ Senate Bill Analysis on SB 848, Committee on Governmental Operations and Productivity, March 19, 2001.

⁸*Id.*

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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 this bill, in part, because expanding the presumption 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.⁹

The Florida League of Cities opposes this bill, and 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.¹⁰

The Florida Sheriff's Association supports this legislation, and indicated that, according to the Department of Insurance, Workers Compensation Division, there has been no significant increase in disability claims as a result of the statutory presumption.¹¹

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Lynn Dodson

David De La Paz

⁹ Paul Piller, representing the Florida Public Employer Labor Relations Association, at the Committee on State Administration meeting, March 27, 2001.

¹⁰ Carol Westmoreland, representing the Florida League of Cities, at the Committee on State Administration meeting, March 27, 2001.

¹¹ Frank Messersmith, Florida Sheriff's Association, at the Council for Healthy Communities meeting, March 17, 2001.

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AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

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