

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 278

SPONSOR: Senators Pruitt, Mitchell and others

SUBJECT: Disability in the Line of Duty

DATE: February 27, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill expands the class that benefits from the statutory presumption under s. 112.18(1), F.S., that any condition or impairment of health caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is presumed to have been accidental and to have been suffered in the line of duty. The bill includes in this class any law enforcement officer or correctional officer. The required funding for this provision was enacted by ch. 99-392, L.O.F., when the Special Risk Class rate was increased to fund this benefit.

This bill amends section 112.18(1) of the Florida Statutes.

II. Present Situation:

Chapter 121, F.S., the Florida Retirement System Act, establishes requirements for eligibility in the Florida Retirement System (FRS). The FRS is a multi-employer, non-participatory, defined benefit pension plan that provides vested members a retirement benefit based on a formula determined by years of service, average final compensation, and member classification accrual rates. It includes five membership classes: Regular, Special Risk, Special Risk Administrative Support, Elected State and County Officers, and Senior Management Service.

Section 121.0515(2), F.S., establishes criteria for membership in the Special Risk Class, which is open only to law enforcement officers, firefighters, correctional officers, emergency medical technicians and paramedics. These members are included within special risk because they

. . . perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they

are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other positions and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom. Therefore, as a means of recognizing the peculiar and special problems of this class of employees, it is the intent and purpose of the Legislature to establish a class of retirement membership that awards more retirement credit per year of service than that awarded to other employees. . . .

Accordingly, Special Risk Class members have been given greater career benefits than Regular Class members. A member of the Special Risk Class:

1. Receives 3 percent of average final compensation (AFC), as opposed to 1.60 percent to 1.68 percent for a Regular Class member, for each year of service earned.
2. Reaches normal retirement at an earlier age (55 instead of 62) or with fewer years of service (25 instead of 30) than a Regular Class member.

The Division of Retirement in the Department of Management Services (DMS) serves the 800,000 active and retired employee members of the Florida Retirement System and their 500 state and local government employers. 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 FRS.

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 (including tuberculosis, heart disease, or hypertension) 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 upon whether the disability is found to be due to an injury or illness “suffered in the line of duty”:

Regular Disability - 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 was reduced to 8 years, as provided in ch. 2000-169, L.O.F. The minimum annual regular disability benefit is 25 percent of average final compensation for an Option 1 benefit.

Disability in the Line of Duty - Disability in the line of duty is defined 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.

Eligibility – Unlike regular disability, 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 service before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty. 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 in the FRS, the minimum in-line-of-duty disability benefit is 42 percent of average final compensation.

Threshold Benefit Amount – 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 – 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 or her spouse and minor dependents, will have their entire health insurance premium paid for by his or her employer.

Presumption of Disability in the Line of Duty - A disability may be presumed to have occurred in the line of duty, as well. This presumption 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., any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or state law enforcement officer who has any condition or impairment of health that is caused by specified illnesses and results in total or partial disability or death is presumed to have been accidental and to have been suffered in the line of duty. The contrary may be shown by competent evidence. The specified illnesses that give rise to this presumption are:

1. Tuberculosis;
2. Heart disease; or
3. Hypertension.

In order for the presumption to apply, a firefighter or state law enforcement officer must have successfully passed a pre-employment physical examination that failed to show any evidence of tuberculosis, heart disease, or hypertension.

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.

Subsection (2) of the section authorizes the state, municipalities, counties, port authorities, special tax districts, and fire control districts to negotiate life and disability insurance policies that include accidental death benefits or double indemnity coverage and that contain the presumption for firefighters. The state is also authorized to negotiate this type of coverage on behalf of state law enforcement officers. The presumption explicitly does not apply to benefits under a life or disability insurance policy unless the insurer and the insured have negotiated for these benefits to be included in the policy contract under subsection (1) of the section.

Death Benefits Available Under Ch. 121, F.S. - The FRS also 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 that 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.

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 ch. 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 DMS, under s. 110.123, F.S., operates the State Group Insurance Program. Currently, the program offers an array of 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 and D) and Optional Term Life and AD and 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 and 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 the disability begins. It also provides accidental death or double indemnity benefits, along with other accidental loss benefits, to any enrollee, subject to a 180-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, the existing life insurance contract with Prudential does not cover the benefits described by the bill to firefighters or to any other group of eligible employees.

Differences in Disability Coverage and Benefits - Under the FRS and the chapter 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 average final compensation (AFC) for special risk members and 42 percent of AFC for other members. By contrast, to qualify for non-duty-related disability benefits, a member must have 10 years of service, and the minimum benefit for general disability is 25 percent of AFC. So, it is often to a disabled member’s advantage to have suffered the disability in the line of duty.

Workers’ Compensation – The impact of this presumption on workers’ compensation claims determinations would be similar to the impact on the FRS, except that the presumption could have more impact because the threshold eligibility test for workers’ compensation is whether the disability arose “out of and in the course of employment.” If it did not, the employee is not

eligible for any benefits. There is no provision under ch. 440, F.S., for a non-duty-related disability as may be found in many retirement plans.

Special Disability Trust Fund – The Special Disability Trust Fund (SDTF) was established in 1955 under s. 440.49, F.S., to encourage the employment of workers with permanent impairments. Employers and insurers are reimbursed from the fund for part of the benefits provided and extra expenses incurred when they hire a worker with a recognized impairment who is subsequently injured on the job, and the later injury is affected by the preexisting condition. The SDTF is funded by assessing insurers writing workers' compensation insurance in the state and self-insured Florida employers. Assessments are levied at a specified percentage of the workers' compensation net premiums handled by the carrier/employer. The annual assessment is set at a rate intended to generate enough money to administer the program and maintain the fund, according to a statutory formula. If successful workers' compensation claims increase due to the presumption afforded by this bill, the assessments paid by carriers/employers could rise.

III. Effect of Proposed Changes:

Section 1. The bill expands the class that benefits from the statutory presumption under s. 112.18(1), F.S., that any condition or impairment of health caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is accidental and suffered in the line of duty. The bill includes in this class any law enforcement officers or correctional officers, so long as they have successfully passed a physical examination upon entering service.

Under the bill, the burden of proving that a disability or death was accidental and suffered in the line of duty would be shifted from the affected county law enforcement officer to the officer's employer. Additional law enforcement officers would qualify for workers compensation and for the generally higher in-line-of duty benefits available under the FRS and other Florida plans that cover such employees for disability and death.

Section 2. The bill provides a statement of important state interest in compliance with Article VII, s.18, State Constitution.

Section 3. The bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution, provides that no 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. Several exemptions and exceptions exist. An exception exists for laws that apply to all persons similarly situated or which fulfill an important state interest, or which are approved by two-thirds membership of each house in the Legislature.

The bill would require counties 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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost of this benefit to the FRS has been funded since 1999 with the enactment of ch. 99-392, L.O.F., although it has been available only to firefighters and state law enforcement officers, including state correctional and correctional probation officers. As originally filed, House Bill 1883 (which was codified as ch. 99-392, L.O.F.) would have included 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 to be sufficient to fund inclusion of all Special Risk members under the presumption. When the bill was amended to limit its application to state law enforcement officers only, the corresponding contribution rate was not changed. In 2000, under ch. 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 this expansion to cover all law enforcement officers, including correctional officers, since the FRS benefit has already been funded. It is possible, however, that as more members use in-line-of-duty disability benefits, it would produce actuarial losses that would slowly emerge. If such costs occur, they would have to be funded through contribution rate increases as recommended in future annual valuations of the FRS.

According to the Department of Management Services, the existing life insurance contract with Prudential does not cover the benefits described by the bill to firefighters or to any other group of eligible employees. If such coverage were to be negotiated by the state to eligible state firefighters and law enforcement officers, the estimated recurring fiscal impact would be:

- \$143,505 - \$156,352 per year combined state and employee contribution, for redefined accidental death benefit premium this year.
- \$33,046 - \$231,323 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. According to the DMS, the estimated fiscal impact for the state was estimated for the 2001 plan year only. Future fiscal impact would be determined by future employment numbers, plan enrollment, plan experience, and premium rates.

While the FRS pension plan consequences of this bill are already funded, there are additional issues that present themselves. Most local governments are NOT members of the FRS. Some 500 of them maintain their own pension plans for general employees, police officers and firefighters. Because an application for disability retirement will implicate a workers' compensation claim, there will be additional expenses passed along to those participating units of government whose employees make such claims. For state employees, workers' compensation coverage is self-insured and participating agencies are billed based upon claims made in a prior year. There has already been a premium increase passed along to state agencies as a result of the additional claims experience resulting from the 1999 presumption expansion.

The impact to these local government employers cannot be estimated with accuracy at this time other than to note that most public safety employees are local, not state, government employees. There is already a significant difference of opinion between entities representing public employers and ones representing affected employees on the incidence of these estimated costs. The employers' representative suggests costs six to seven times in excess of those experienced so far by state agencies. The employees' representative suggests, to the contrary, that its survey of local government costs estimates an impact of only 25 percent of the state agency experience.¹

In correspondence dated October 29, 2001, the Director of the (Florida) Division of Risk Management indicated that state law enforcement agencies had incurred \$765,643 in liabilities as a result of the 1999 law change. The Florida Public Employers Relations Association represents that number has risen by another \$125,000 since that date and

¹ The sequential correspondence is: Correspondence dated October 29, 2001, from Mr. R.J. Castellanos, Director of the Division of Risk Management to State Senator Ken Pruitt; correspondence dated November 28, 2001, from Mr. Paul Pillar to Mr. R.J. Castellanos; correspondence dated December 18, 2001, from Ms. Trilly Lester to Mr. Paul Pillar; correspondence dated February 6, 2002, from Mr. Paul Pillar to Representative Bev Kilmer; paper (undated) of Florida Police Benevolent Association.

estimates that its local government members can anticipate future local government, non-FRS cost increases between \$5.3 million and \$6.2 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
