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DATE: January 22, 2002

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

BILL #: HB 5
RELATING TO: Disability in Line of Duty
SPONSOR(S): Representative(s) Kilmer and Bilirakis

TIED BILL(S):

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

- (1) STATE ADMINISTRATION
- (2) FISCAL POLICY & RESOURCES
- (3) FISCAL RESPONSIBILITY COUNCIL
- (4)
- (5)

I. SUMMARY:

Current law provides that 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 law enforcement officer, probation officer, or correctional probation officer. This presumption would then apply not only to officers employed by the state but also officers employed by local governments.

Currently, firefighters and state law enforcement officers are required to pass a physical examination that fails to reveal any evidence of tuberculosis, heart disease, or hypertension. The bill applies this requirement to all law enforcement officers. However, the bill as filed is unclear as to whether correctional officers and correctional probation officers will be required to undergo physical examination upon entering service to fulfill the condition precedent.

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 officer or correctional officer who suffers partial or total disability or dies in the line of duty. The bill does not specifically list correctional probation officers as a class of local agency employees for which a local government would have to provide the additional benefits.

This bill does not appear to have a fiscal impact upon employers (the State, counties, certain municipalities and special districts) participating in the Florida Retirement System. For those cities and special districts not in the Florida Retirement System, the bill would require these local governments to expend an unknown amount of funds to cover additional in-line-of-duty disability benefits to employees in the listed classes as provided by this bill. This bill could also fiscally impact local governments as a result of the special terms and conditions of the life and disability insurance contracts these governments maintain related to accidental death or disability of law enforcement officers and correctional officers.

The sponsor has filed an amendment to correct the inconsistent references in the bill to law enforcement officers, correctional officers, and correctional probation officers that are discussed herein.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

The bill provides for an expansion of disability and retirement benefits to certain classes of government employees when it is presumed that these employees contract tuberculosis or develop hypertension or heart disease in the line of work. This expansion of benefits is paid for by the public employer of these employee classes.

The bill reduces the personal responsibility of these employees by reducing the opportunity of these employees to seek private disability insurance that would apply in the event employees in those classes contract tuberculosis or develop hypertension or heart disease in the line of work.

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. The division reports that 113 Florida cities either wholly or separately cover firefighters, police and general employees under the FRS. There are 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 s. 121.0515(2), F.S. Membership in the Special Risk Class allows those persons to retire at an earlier age and make them 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 8 years of creditable service to be entitled to a monthly disability. The minimum annual regular disability benefit is 25 percent of average final compensation for the benefit that is payable to the member during his or her lifetime.

Disability in line of duty is defined under 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 the 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 the benefit that is payable to the member during his or her lifetime. For members of other classes of FRS, the minimum in line of duty disability benefit is 42 percent of average final compensation.

Section 112.18, F. S. 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 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 extended to state law enforcement officers in 1999. To qualify for the presumption, 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.

Section 112.181, F.S. This section creates the legal presumption that an emergency rescue or a public safety worker, as defined in s. 112.181(1)(b), F.S., who is disabled due to hepatitis, meningococcal meningitis, or tuberculosis, acquired that disease in the line of duty.

Burden of Proof. Unless a legal presumption applies, such as the one provided under ss. 112.18, or 112.181, 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 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 the member’s job, the member’s surviving spouse and eligible dependents or both are entitled to in-line-of-duty death benefits.

The law distinguishes on the application of 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 the decedent’s spouse or eligible dependents. 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 death.

Burden of Proof. Unless a legal presumption applies, such as the one provided under ss. 112.18, or 112.181, 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 mechanisms for municipal firefighters' and police officers' plans respectively. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating 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 may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S., respectively.

ADDITIONAL LIFE AND DISABILITY INSURANCE BENEFITS

The Department of Management Services operates the State Group Insurance Program under the authority found in 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.

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 for state employees does not provide the benefits described under s. 112.18(2), F.S., to firefighters or any other group of eligible employees.

C. EFFECT OF PROPOSED CHANGES:

The sponsor has filed an amendment to correct the inconsistent references in the bill to law enforcement officers, correctional officers, and correctional probation officers that are discussed below.

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

Application of the statutory presumption. The bill 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 (not just state law enforcement officers) defined in s. 943.10(1) [law enforcement officers], (2) [correctional officers] or (3)[correctional probation officers], F.S. This change would extend the presumption to include law enforcement officers employed by local agencies. Although the bill does provide citation to the definition of a correctional probation officer, it does not list that class as one for which the presumption is to apply.

The burden of disproving that a disability or death was accidental and suffered in the line of duty shifts from the affected officer to the officer's employer. This shift would probably increase the number of officers who are disabled or die as a result of tuberculosis, heart disease or hypertension that would qualify for workers compensation and for the generally higher in-line-of-duty benefits available under the Florida Retirement System and city and special district plans that cover such employees for disability and death.

Pre-employment physical examination. 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 applies this requirement to any law enforcement officer. Upon entering into service, a law enforcement officer must successfully pass a physical examination that fails to reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill as currently drafted is unclear as to whether the correctional officers and correctional probation officers, who will benefit from the application of the presumption, will be required to undergo physical examinations upon entering service. In the bill, these classes are not referred to in the second sentence of s. 112.18(1), F.S., that mandates the pre-employment physical examination.

Workers compensation plans. In its analysis of SB 848 (2001), the companion bill to last year's version of this bill (HB 249), Senate staff indicated the following:

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

In South Trail Fire Control District v. Johnson, 449 So.2d 947 (Fla. 1984), the Florida Supreme Court expressly stated that the presumption in s. 112.18, F.S., applies to Chapter 440, F.S., on Workers' Compensation.

ADDITIONAL LIFE AND DISABILITY INSURANCE BENEFITS

This bill 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.

Again, the bill as filed is inconsistent in its reference to the affected classes. It adds law enforcement officers and correctional officers, which would include all officers in these classes employed by state and local agencies. It does not reference, either by name or citation to the statutory definition, correctional probation officers.

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.

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 law enforcement officers (not just state law enforcement officers) and correctional officers.

The bill requires that prior to employment, law enforcement officers successfully pass a physical examination that fails to reveal any evidence of tuberculosis, heart disease, or hypertension.

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 a declaration of an important state interest.

Section 3: 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

The Division of Retirement reports that in 1999, when state law enforcement officers were added to the list of employees for which the presumption found in s. 112.81, F.S., would apply, the contribution rate increase was set at a level that would cover all employees qualified for the FRS special risk category. However, the 1999 legislation extended the application of the section only to state law enforcement officers. Therefore, extension of the presumption to all law enforcement officers, correctional officers, and correctional probation officers would not require an increase in the contribution rate. The effect would only be that the remainder of the 1999 rate increase would be applied to cover the employees that are in the FRS special risk category not currently covered.

The Department of Insurance indicates that bill would initially impact the State Self-Insurance Fund by \$26 million. The department arrives at this figure by estimating on average, 35 employees each year would make a claim against the state and that each claim would cost on average of \$75,000. The department also notes that for each of these claims, the state would have to consider the outgoing years' on-going medical and indemnity costs associated with each claim. These costs are indeterminate.

Additional Life and Disability Insurance Benefits

The bill 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. While this bill adds law enforcement officers and correctional officers as eligible classes, it does not mandate coverage or benefits.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Presumed In-Line-of-Duty Disability Benefits

The Division of Retirement reported in 2001 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 will be easier for members of these plans to become eligible for benefits, because 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 in 2001 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. However, the impact is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 and which apply to all persons similarly situated.

This bill appears to 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 provides a statement of an important state interest to that effect; therefore an exception may apply which would then make the provisions of this bill enforceable against local governments.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Legislative History

This bill was filed as HB 249 in the 2001 Regular Session. It was reported favorably as a committee substitute by the Committee on Crime Prevention, Corrections & Public Safety. Representatives of local governments stated their opposition to the bill and raised concerns about the impact the application of the bill would have on these governments' worker compensation plans.

It was reported favorably by the Committee on State Administration and died in the Committee on Fiscal Policy.

Other Comments

The Division of Retirement interprets 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. This clarification was issued by the Division of Retirement after ascertaining the legislative intent of the Chapter 99-392, L.O.F., which expanded the presumption to cover state law enforcement officers. The Division of Retirement has recommended that the law be amended to explicitly cover corrections officers and correctional probation officers. This bill, in part, codifies that interpretation.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

David M. Greenbaum

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