

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 677 Retirement
SPONSOR(S): Gardiner and others
TIED BILLS: IDEN./SIM. BILLS: SB 294

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on State Affairs, 9 Y, 0 N, Camara, Williamson.

SUMMARY ANALYSIS

Current law provides a definition of compensation for purposes of calculating the retirement benefit for a member of the Florida Retirement System (FRS). This bill expands the definition of "compensation" for firefighters, paramedics, and emergency medical technicians to allow any salary supplement received to be considered compensation for retirement purposes if the said supplement is for employer-approved educational training or for other additional job-related duties and responsibilities.

This bill also amends the definition of "average final compensation" (AFC) to provide that the AFC for members of the Special Risk Class at time of retirement is calculated using the average of the highest three fiscal years' salaries, instead of the average of the highest five fiscal years' salary.

This bill increases, from two percent to three percent, the accrual rate at which Special Risk Class members may upgrade certain past service. The bill also expands the qualifying past service to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

Under current law, qualified members of the FRS who are totally and permanently disabled due to any condition or impairment of health caused by an injury or illness are entitled to disability benefits. If the injury or illness arises out of and in the actual performance of a member's job, the member is entitled to in-line-of-duty disability benefits, which bestow an increased rate of disability retirement benefits. This bill expands qualification for total and permanent in-line-of-duty disability benefits to law enforcement officers, firefighters, correctional officers, emergency medical technicians, paramedics, and community-based correctional probation officers who are prevented from performing useful and efficient service in the position held due to a job-related injury, unless proven otherwise by the plan administrator, thus creating an easier standard for an injured employee to meet in order to receive the higher disability benefit, and shifting the burden of proof from the employee to the administrator.

This bill also relaxes post-retirement restrictions, which presently do not permit a disabled retiree to receive disability benefits while gainfully employed, Special Risk Class members who qualify for in-line-of-duty disability retirement. Subject to certain conditions, the disabled officer, firefighter, emergency medical technician, or paramedic may be reemployed in any position other than the one held at the time of disability, while receiving disability benefits.

This bill requires an actuarial special study.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – This bill allows affected members and their families to receive increased retirement benefits.

B. EFFECT OF PROPOSED CHANGES:

Background: General

FLORIDA RETIREMENT SYSTEM

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 164 cities and 209 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members, 264,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program participants.³ Members of the FRS belong to one of five membership classes:

1. Regular Class ⁴	588,204 members	86.46% of membership
2. Special Risk Class ⁵	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class ⁶	74 members	0.01% of membership
4. Elected Officers' Class ⁷	2,078 members	0.31% of membership
5. Senior Management Service Class ⁸	7,562 members	1.11% of membership ⁹

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.¹⁰

SPECIAL RISK CLASS

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,¹¹ might need to retire at an earlier age with less service than other

¹ Section 121.025, F.S.

² Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs).

³ Department of Management Services HB 677 (2008) Substantive Bill Analysis (Mar. 24, 2008) [hereafter referred to as DMS Analysis] at 2 (on file at the Committee on State Affairs).

⁴ Section 121.021(12), F.S.

⁵ Section 121.0515, F.S.

⁶ Section 121.0515(7), F.S.

⁷ Section 121.052, F.S.

⁸ Section 121.055, F.S.

⁹ FRS Annual Report at 43.

¹⁰ See, e.g., s. 121.055(3)(a)1., F.S.

¹¹ Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.¹² Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹³ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2007, and 22.01 percent, effective July 1, 2008.¹⁴

Special Risk Class membership includes: law enforcement officers, correctional officers, and firefighters;¹⁵ emergency medical technicians and paramedics;¹⁶ community-based correctional probation officers;¹⁷ certain employees of correctional or forensic facilities or institutions;¹⁸ youth custody officers;¹⁹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²⁰

COMPENSATION AND AVERAGE FINAL COMPENSATION

BACKGROUND

The amount of benefits a retired member receives is based on three key factors: (1) years of service, (2) accrual rate (which is three percent for members of the Special Risk Class), and (3) the member's Average Final Compensation.²¹ "Average Final Compensation" (AFC) is defined as the average of the five highest fiscal years of compensation for creditable service prior to retirement, termination, or death.²²

Relevant to the definition of AFC is the definition of "compensation," which is the monthly salary a member is paid by his or her employer for work performed arising from that employment.²³ Compensation also includes overtime payments, accumulated annual leave payments, amounts withheld for tax-sheltered annuities, deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code, and payments made in lieu of a permanent increase in the base rate of pay.²⁴ Bonuses, however, are specifically excluded from the definitions of compensation and AFC.²⁵

¹² Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

¹³ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁴ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2007, and 9.59 percent, effective July 1, 2008, for Regular Class members).

¹⁵ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁶ Ch. 99-392, L.O.F., s. 23.

¹⁷ Ch. 2000-169, L.O.F., s. 29.

¹⁸ *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietician; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DRC; pharmacist; certain senior pharmacists; dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager).

¹⁹ Ch. 2001-125, L.O.F., s. 43.

²⁰ Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification).

²¹ Section 121.091(1), F.S.

²² Section 121.021(24), F.S.

²³ Section 121.021(22), F.S.

²⁴ *Id.*

²⁵ See ss. 121.021(22)(b)2. and (24)(b)4., F.S.

EFFECT OF BILL

This bill expands the definition of “compensation” as it applies to firefighters, paramedics, and emergency medical technicians. It allows salary supplements received by a firefighter, paramedic, or emergency medical technician to be included in the definition of compensation, for retirement purposes, when said compensation is for employer-approved educational training or for other additional job-related duties and responsibilities.

This expansion of the definition for compensation may likely result in a higher AFC, which would result in a higher retirement benefit for firefighters, paramedics, and emergency medical technicians who are compensated for such training or other additional job-related duties and responsibilities. This change would set a precedent for other Special Risk Class members and membership groups in the FRS to seek more exceptions under the law for coverage of other supplemental payments not included in base pay as compensation. This benefit improvement may not be adequately prefunded by the bill’s applicable contributions alone, especially if the bonuses tend to be given late in an employees’ career.²⁶

Additionally, this bill amends the definition of “average final compensation” to provide that the AFC of a member of the Special Risk Class is calculated using the average of the highest three fiscal years’ salaries for creditable service earned by the member instead of the average of the five highest fiscal years. The same applies when calculating the AFC for in-line-of duty disability benefits for such members.

According to the Department of Management Services, this is problematic when determining the benefits of an FRS member who has “dual normal” retirement.²⁷ In 2005, the Division of Retirement was advised of the legislative intent for a bill with an identical provision filed in that year. It was advised that, regardless of the membership class at the time of retirement, the 3-year AFC should apply solely to Special Risk Class service credit, as opposed to all service credit based on Special Risk Class membership at the time of retirement, and an actuarial study was conducted accordingly. If this bill is enacted as written, however, a “dual normal” member participating in the Special Risk Class at retirement could challenge the interpretation provided for the purpose of performing the 2005 actuarial special study and could seek to have their entire benefit calculated using a 3-year AFC, regardless of the class of service.²⁸

SPECIAL RISK CLASS PAST SERVICE

BACKGROUND

Section 121.0515, F.S., sets forth the criteria and procedures for designating members of the Special Risk Class. This section also permits Special Risk Class members to purchase retirement credit in the Special Risk Class based upon specified past service:

- Past service with a city or special district, which elected to join the FRS while the member was employed at the time it began participating in the FRS; or with a participating agency to which a member’s governmental unit was transferred, merged, or consolidated.²⁹
- Past service for special risk membership as a law enforcement officer, firefighter, or correctional officer.³⁰

Special Risk Class members may upgrade retirement credit for this specified past service, up to two percent of the member’s average monthly compensation.³¹ The contributions for upgrading this

²⁶ DMS Analysis at 9.

²⁷ FRS members who have service in the Special Risk Class and service in another membership class are referred to as “dual normal” because their benefit requires two different calculations. Benefits are calculated based on the normal retirement requirement for the Special Risk Class service and the normal retirement requirement that applies to service in all other classes of membership. The results of these dual calculations are added together to determine the benefit payable.

²⁸ DMS Analysis at 9.

²⁹ Section 121.0515(5)(a), F.S.

³⁰ *Id.*

additional special risk credit may be purchased by the member or by the employer on behalf of the member, but must be equal to the difference in the contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest at a rate of 6.5 percent a year until the date of payment.³² As such, the benefit of being able to purchase this past service is offset because the full retirement benefit must be purchased even though the retirement benefit received is one percent lower (2 percent) than the normal retirement benefit for the Special Risk Class (3 percent).

EFFECT OF BILL

This bill increases from two percent to three percent the accrual rate at which certain Special Risk Class members may upgrade specified past service. This rate is the same as the normal retirement benefit for members of the Special Risk Class.

The bill also expands the qualifying past service, which may be purchased, to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider. The contributions for upgrading this additional special risk credit may be purchased by the member or by the employer on behalf of the member, but must be equal to the difference in the contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest at a rate of 6.5 percent a year until the date of payment.³³

According to the Department of Management Services, an actuarial study in 2005 determined that the cost of this enhancement could be funded by an increase in the Special Risk Class contribution rate of 0.07 percent. Since this increase is in the unfunded actuarial portion of the Special Risk Class contribution rate, this portion would be prefunded from the actuarial surplus of the FRS Pension Plan for as long as the surplus is available. When there is insufficient surplus to fund this improvement, the contribution rate would be increased.³⁴

IN-LINE-OF-DUTY DISABILITY DETERMINATION

BACKGROUND

The FRS provides disability benefits for its active members who are totally and permanently disabled from useful employment. Any member of the FRS who is totally and permanently disabled³⁵ 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, the member is entitled to in-line-of-duty disability³⁶ benefits.³⁷

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.

³¹ Section 121.0515, F.S.

³² Section 121.0515(5)(b), F.S.

³³ Section 121.0515(5)(b), F.S.

³⁴ DMS Analysis at 10-11.

³⁵ Section 121.091(4)(b), F.S., establishes that “a member shall be considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.”

³⁶ Section 121.021(13), F.S., defines “disability in line of duty” 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. Disability resulting from drug or alcohol abuse shall not be considered in the line of duty, except when the member is expected to use alcohol in the course of his or her official work in undercover law enforcement, and such use clearly results in the member's disability. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.”

³⁷ Section 121.091(4)(a)1., F.S.

Eligibility – An FRS member is eligible for in-line-of-duty disability benefits from the first day on the job.³⁸ In contrast, an FRS member must have from five to 10 years of creditable service³⁹ before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty. Effective July 1, 2001, the 10-year requirement was reduced to eight years.

Threshold Benefit Amount – The level of disability benefit to which a disabled member is entitled depends upon whether the 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 AFC as of the disability retirement date.⁴⁰ For Special Risk Class members retiring on or after July 1, 2000, the in-line-of-duty disability benefit threshold is 65 percent of the AFC as of the disability retirement date.⁴¹ If the disabling injury or illness did not occur in the line of duty, the benefit threshold is 25 percent of the AFC.⁴²

Burden of Proof – Unless a legal presumption applies, such as the one provided under s. 112.18, F.S.,⁴³ 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.⁴⁴

EFFECT OF BILL

This bill expands qualification for in-line-of-duty disability benefits to Special Risk Class members who are law enforcement officers, firefighters, correctional officers, emergency medical technicians, paramedics, and community-based correctional probation officers who, due to an illness or injury related to, but not necessarily in the line of duty or directly in the actual performance of, their employment⁴⁵ are prevented from performing useful and efficient service *in the position held*, as opposed to the current standard which requires inability to engage in *any type* of gainful employment.⁴⁶ This benefit would not be available to other members of the Special Risk Class, including youth custody officers or forensic workers.

This bill also provides that an affected employee will receive the higher in-line-of-duty benefit unless the plan administrator ("administrator") can provide "competent medical evidence to the contrary," thus shifting the burden of proof from the member to the administrator. This change would enable all such affected Special Risk Class members to qualify more easily for in-line-of-duty disability benefits based on the less restrictive definition of total and permanent disability and to maintain the disability eligibility to continue receiving those benefits due to removal of reemployment restrictions (described below). According to the Department of Management Services, these changes would increase disability retirements and associated costs that would arise from members becoming more easily eligible for in-line-of-duty disability benefits who would otherwise not be eligible under current criteria.⁴⁷

³⁸ *Id.*

³⁹ Section 121.091(4)(a)1., F.S., provides that any member with less than five 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 in the line of duty. Otherwise, five years of creditable service is required to qualify for a non-duty disability benefit.

⁴⁰ Section 121.091(4)(f)1.a., F.S.

⁴¹ Section 121.091(4)(f)1.b., F.S.

⁴² Section 121.091(4)(f)2., F.S.

⁴³ Section 112.18, F.S., provides that tuberculosis, heart disease, or hypertension that results in total or partial disability is presumed to have been accidental and suffered in the line of duty, unless the contrary is determined by competent evidence.

⁴⁴ Section 121.091(4)(c), F.S.

⁴⁵ Currently, in order to qualify for an "in-line-of-duty" disability benefit, the injury or illness must occur in the line of duty, as defined in s. 121.021(13), F.S.

⁴⁶ Section 121.091(4)(b), F.S.

⁴⁷ DMS Analysis at 11.

Because minimum threshold disability benefits are not considered taxable income,⁴⁸ an affected individual would receive a “tax-free” disability benefit of at least 65 percent of the AFC in addition to any worker’s compensation benefit or social security benefit said individual would be entitled (as well as any future salary earned while working in any position other than the one filled at the time of injury, per this bill’s easing of post-retirement reemployment restrictions). This provision, therefore, requires a favorable letter ruling from the Internal Revenue Service before implementing the provisions for disability from the job. The funding of this provision, however, would become effective July 1, 2008, regardless of the letter ruling response.

According to the enrolled actuary, liberalizing the standards for determining eligibility for in-line-of-duty disability would reduce the projected differences in relative life expectancies between disabled and non-disabled retirees. If this did happen, long-term disability costs would be even higher.⁴⁹

POST-RETIREMENT REEMPLOYMENT RESTRICTIONS

BACKGROUND

Anyone who is retired and receiving benefits from the FRS may be reemployed by any employing agency if:

1. The member did not retire under the disability retirement provisions;⁵⁰ and
2. For the first 12 months immediately after retirement, that the employer not be one that participates in a state-administered retirement plan. After 12 months from the date of retirement, a retiree may be both employed by an employing entity that participates in FRS, and receive retirement benefits.⁵¹

EFFECT OF BILL

This bill authorizes reemployment of Special Risk Class members who qualified for and elected to take an in-line-of-duty disability retirement, without limiting or restricting in any way the disability benefits payable to that person, provided that:

- Any such retired member is reemployed by any employer not participating in a state-administered retirement system in any position other than the position which the member was employed at the time of the disabling illness or injury; or
- After one calendar month of retirement, any such retired member is reemployed by any employer participating in a state-administered retirement system in any position other than a position that is included in the Special Risk Class. Any such member who is reemployed within one calendar month after retirement voids his or her application for retirement benefits, and any such member who is reemployed in a Special Risk Class position must terminate his or her disability retirement benefit effective the first day of the first month of reemployment in a Special Risk Class position.

According to the Department of Management Services, by effectively removing the reemployment limitation, disability payments would likely continue, since affected disabled retirees would be considered “recovered” only if they became reemployed in the same position they held at the time of the disabling injury, or reemployed in a Special Risk Class position. This change would create a significant financial disincentive for recovery from disability.⁵²

⁴⁸ Only the portion of the benefit that falls within the minimum benefit level, or 65 percent, is tax free; any person who receives a higher benefit based upon years of service must pay income taxes on the portion of the benefit received above and beyond the minimum benefit level.

⁴⁹ DMS Analysis at 16.

⁵⁰ Section 121.091(9), F.S.

⁵¹ *Id.* This limitation does not apply to retired firefighters and paramedics, who may be reemployed in the same capacity by an employer after 1 month from the date of retirement, but is limited to 780 hours of employment during the first year. Section 121.091(9)(b)11, F.S.

⁵² DMS Analysis at 12.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to revise definitions.

Section 2 provides employer contribution rate increases to fund benefits provided to certain Special Risk Class members.

Section 3 amends s. 121.0515, F.S., to increase the accrual rate for past service and to expand qualifying past service.

Section 4 provides contribution rate increases to fund benefits provided to certain Special Risk Class members.

Section 5 amends s. 121.091, F.S. to revise provisions relating to benefits payable for total and permanent disability for certain Special Risk Class members of the FRS who are injured in the line of duty.

Section 6 provides contribution rate increases to fund benefits provided to certain Special Risk Class members.

Section 7 requires the Division of Retirement to request a letter ruling from the Internal Revenue Service.

Section 8 provides a declaration of important state interest.

Section 9 provides an effective date of July 1, 2008, except that section 5 takes effect upon receipt of a favorable letter ruling by the Internal Revenue Service.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive increased contributions from FRS employers.

2. Expenditures:

FY 08-09: \$30,121,000
FY 09-10: \$31,326,000
FY 10-11: \$32,579,000⁵³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

FY 08-09: \$78,712,000
FY 09-10: \$81,861,000
FY 10-11: \$85,135,000⁵⁴

⁵³ Cost is based upon 2006 FRS valuation and will be revised when the new calculator for the 2007 Valuation is available based upon the funding requirements in the bill. This is for informational purposes; a new special study is required for HB 677. DMS Analysis at 14.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Management Services offered the following regarding the fiscal impact of the bill:

HB 677 provides the required funding for these provisions based upon the individual actuarial special studies that presumed these benefits were implemented separately. The consulting actuary has indicated that a new special study is required due to implementing these changes altogether.

Salary supplements as compensation – Under current law, the supplemental payments covered by this bill are not reported to the Division of Retirement, so the employer contribution portion of the cost impact cannot be directly determined from our records. Also, the language does not require employers to create new programs for these payments, only to report these payments as compensation for the FRS if they exist on or after July 1, 2008. Each impacted employer would pay an additional 20.92 percent of such payments to cover the contributions for the FRS benefit, PEORP administration fee, and the HIS based upon contribution rates for 2007-2008.

There will be a fiscal impact to the FRS resulting from additional compensation that would be allowed by this bill that is not covered under existing law. If implemented individually without the other provisions of HB 677, the fiscal impact is not anticipated to be sufficient to require a specific rate increase but these costs resulting from this change would be reflected in future valuations and experience studies of the FRS.

3-Year AFC – An actuarial special study dated April 8, 2005 was performed by Milliman Inc Consulting Actuaries, to determine the cost to the system to change the AFC calculation from a 5-year average to a 3-year average for Special Risk Class members as proposed by HB 677, but implemented without the other benefit improvements in HB 677. This special study determined the Special Risk Class contribution rate must increase by 2.36 percent, the Special Risk Administrative Support Class contribution rate must increase by 2.54 percent, the Legislative-Attorney-Cabinet subclass of the Elected Officers' Class contribution rate must increase by 0.01 percent, and the Senior Management Service Class contribution rate must increase by 0.01 percent.

Special Risk past service – An actuarial special study dated April 22, 2005 was performed by Milliman Inc. Consulting Actuaries, to determine the cost to the system to increase the accrual rate applicable to eligible past service purchased or upgraded by a Special Risk Class member from 2 percent to 3 percent as proposed by HB 677 without the other benefit improvements in this bill. This special study determined the Special Risk Class contribution rate must increase by 0.07 percent.

In-line-of-duty disability determination & Post-retirement reemployment restrictions – The liberalization of the standards for determining total and permanent disability and effective removal of post-retirement reemployment restrictions would make it easier for the specific Special Risk Class members to

⁵⁴ *Id.* at 13.

obtain and continue receiving monthly disability benefits. Once initiated, disability benefits would continue to be paid even after recovery as long as the retiree did not obtain employment in the job held when the disabling injury occurred or in a Special Risk Class position.

This benefit improvement would increase FRS in-line-of-duty disability retirements and thereby have a fiscal impact on the FRS. The bill proposes to increase the retirement contribution rate paid by employers for members of the Special Risk Class by 0.31 percent of gross payroll to fund the cost of the benefit improvement. This rate is based on Actuarial Special Study 2005-I, dated April 15, 2005, by Milliman Inc, consulting actuaries for the FRS, assuming this benefit was implemented without the other benefit improvements in HB 677.⁵⁵

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds; however, an exception applies because the bill provides that it fulfills an important state interest and the expenditure required by the bill applies to all persons similarly situated. As such, the bill appears to satisfy the requirements of Article VII, s. 18 of the Florida Constitution.

2. Other:

Article X, s. 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.⁵⁶ According to the enrolled actuary, a new special study is needed for HB 677 because the effect of implementing all of these changes in connection with each other affects the fiscal impact and was not contemplated in the single studies for these proposed benefit improvements.⁵⁷ As such, this bill does not appear to satisfy the requirements of Art. X, s. 14 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of section 5 of the bill is contingent upon a favorable letter ruling from the IRS. Because section 5 contains one of the substantive statutory changes of this bill, this may conceivably create a scenario where section 5 is rendered moot due to an unfavorable letter ruling by the IRS, thus resulting in an unnecessary higher employer contribution rate as mandated in section 6 of the bill. Amending the bill so that both sections 5 and 6 take effect upon the receipt of a favorable letter ruling from the Internal Revenue Service would appear to address this concern.

⁵⁵ *Id.* at 12-13.

⁵⁶ Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of Art. X, s. 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in part by public funds.

⁵⁷ DMS Analysis at 16.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 26, 2008, the Committee on State Affairs adopted an amendment and reported the bill favorable with amendment. The amendment changed the effective date of section 6 of the bill to upon receipt of a favorable letter ruling from the Internal Revenue Service to conform to the effective date of section 5 of the bill. This change addressed a prior drafting issue.