

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 593 Disability Retirement Benefits

SPONSOR(S): Williamson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 936

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 593 passed the House on March 10, 2020, as SB 936.

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits for employees of state and county government agencies, district school boards, state colleges, and universities; it also serves as the retirement plan for participating employees of the cities and special districts that have elected to join the system. Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan.

The FRS provides disability retirement benefits for members that are totally and permanently disabled. In order to qualify for disability retirement benefits, a member must provide certification of the member's total and permanent disability from two Florida licensed physicians, or if the member is required to work full time outside this state, then the member can provide certification from two licensed physicians of that state.

The bill allows an FRS member who is receiving care at a federal Veterans' Health Administration facility (VA facility) to provide certification by two licensed physicians employed by the VA facility as proof of total and permanent disability, regardless of the state where the physicians are licensed.

The bill has no fiscal impact to the state or local governments.

The bill was approved by the Governor on June 9, 2020, ch. 2020-19, L.O.F., and will become effective July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Trust Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated into the FRS as a closed group.¹

The FRS is a multi-employer, contributory plan governed by the Florida Retirement System Act.² As of June 30, 2019, the FRS had 647,942 active members,³ 424,895 annuitants, 15,783 disabled retirees, and 32,670 active participants of the Deferred Retirement Option Program.⁴ As of June 30, 2019, the FRS consisted of 976 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 176 cities and 136 special districts that have elected to join the system.⁵

The membership of the FRS is divided into five membership classes:

- Regular Class⁶ has 562,260 members;
- Special Risk Class⁷ has 75,386 members;
- Special Risk Administrative Support Class⁸ has 101 members;
- Elected Officers' Class⁹ has 2,200 members; and
- Senior Management Service Class¹⁰ has 7,981 members.¹¹

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The pension plan, which is a defined benefit plan; and

¹ *Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019*, at 35. A copy of the report can be found at https://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports [hereinafter *Annual Report*].

² See Chapter 121, F.S.

³ As of June 30, 2018, the pension plan, which is a defined benefit plan, had 502,146 members, and the investment plan, which is a defined contribution plan, had 145,796 members. *Annual Report, supra* note 1, at 158.

⁴ *Annual Report, supra* note 1, at 158.

⁵ *Annual Report, supra* note 1, at 193.

⁶ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁷ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics, and emergency technicians, among others. Section 121.0515, F.S.

⁸ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the FRS. Section 121.0515(8), F.S.

⁹ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

¹⁰ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹¹ All figures from *Annual Report, supra* note 1, at 161.

- The investment plan, which is a defined contribution plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the pension plan. The earliest that any member could participate in the investment plan was July 1, 2002.

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹² The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹³

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹⁴ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁵ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁶

The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁷ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁸

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement.¹⁹ Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.²⁰ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²¹ A member vests immediately in all employee contributions paid to the pension plan. Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²²

¹² Section 121.4501(8), F.S.

¹³ Art. IV, s. 4(e), FLA. CONST.

¹⁴ Section 121.4501(6)(a), F.S.

¹⁵ If a member terminated employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.

¹⁶ Section 121.591, F.S.

¹⁷ See s. 121.4501(16), F.S.

¹⁸ FRS, *Disability*, https://myfrs.com/FRSPro_ComparePlan_Disability.htm (last visited December 10, 2019).

¹⁹ Section 121.025, F.S.

²⁰ Section 121.021(45)(a), F.S.

²¹ Section 121.021(45)(b), F.S.

²² Section 121.091, F.S.

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²³ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²⁴ Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.²⁵

Disability Retirement Benefit

There are two types of disability retirement benefits available under the FRS: in-line-of-duty and regular disability. In-line-of-duty disability benefits are available to members from their first date of employment.²⁶ The minimum in-line-of-duty disability benefit is 42 percent of the member's average monthly compensation for all members except those in the Special Risk Class, who may not receive less than 65 percent of their average monthly compensation.²⁷ To qualify for regular disability retirement, members must complete eight years of credible service.²⁸ The minimum benefit under regular disability is 25 percent of the member's average monthly compensation.²⁹ If a disabled member's service benefit would be higher than the minimum disability benefit, the member can elect to receive the higher benefit.

A member cannot receive any disability retirement benefit if the disability is a result of any of the following:

- Injury or disease sustained by the member while willfully participating in a riot, civil insurrection, or other act of violence or while committing a felony;
- Injury or disease sustained by the member after his or her employment has terminated; or
- Intentional, self-inflicted injury.³⁰

To qualify for either type of disability retirement benefit, members must be totally and permanently disabled to the extent that they are unable to work.³¹ DMS must require proof that the FRS member is totally and permanently disabled before approving any disability retirement payment. The proof must include the certification of the member's total and permanent disability by two licensed physicians in this state. If a member's position with an employer requires the member to work full time outside of this state in the United States, then the member may include certification by two licensed physicians of the state where the member works.³² Regardless, it must be documented that the:

- Member's medical condition occurred or became symptomatic during the time the member was employed.
- Member was totally and permanently disabled at the time he or she terminated covered employment.
- Member has not been employed after such termination.

In addition, for in-line-of-duty benefits, it must be documented that the disability was caused by a job-related illness or accident that occurred while the member was an FRS employee.³³

Federal Veterans' Health Administration Facility

The Veterans' Health Administration (VA) is the largest healthcare network in the United States serving over 9 million enrolled veterans, and is made up of 1,255 health care facilities, including 170 medical

²³ Section 121.021(29)(a)1., F.S.

²⁴ Section 121.021(9)(b)1., F.S.

²⁵ Section 121.021(9)(a)2. and (b)2., F.S.

²⁶ Section 121.091(4)(a)1.b., F.S.

²⁷ Section 121.091(4)(f), F.S.

²⁸ Section 121.091(4)(a)1.b., F.S.

²⁹ Section 121.091(4)(f), F.S.

³⁰ Section 121.091(4)(i), F.S.

³¹ Section 121.091(4), F.S.

³² Section 121.091(4)(c), F.S.

³³ *Id.*

centers and 1,074 outpatient sites of varying complexity.³⁴ The mission of the VA is to honor America's veterans by providing exceptional health care that improves their health and well-being.³⁵ Each VA facility provides traditional hospital-based services, and most offer specialty care services such as speech pathology, dermatology, dental, geriatrics, neurology, oncology, podiatry, prosthetics, urology, and vision care.³⁶

Many VA physicians and staff rotate throughout the country and are not necessarily Florida-licensed physicians.³⁷ However, each VA physician must possess at least one full, active, current, and unrestricted license that authorizes the licensee to practice in the state of licensure.³⁸ A physician who has had his or her license revoked for professional misconduct, professional incompetence, or substandard care is not eligible to work as a VA physician unless his or her license is restored to a full and unrestricted status.³⁹ Additionally, the VA consults with the National Practitioner Data Bank, which provides a background check for each new hire.⁴⁰ Physician applicants must also provide the VA with employment history, pre-employment references, and details of past involvement with malpractice allegations.⁴¹

Effect of the Bill

For proof of total and permanent disability, the bill allows an FRS member who is receiving care at a federal VA facility to provide certification by two licensed physicians employed by the facility; regardless of the state the physicians are licensed. This change will allow FRS members receiving care from such a facility to more timely and conveniently prove total and permanent disability as the FRS member would no longer have to go outside his or her current medical care provider to obtain certification of disability.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³⁴ U.S. Department of Veterans Affairs, <https://www.va.gov/health/aboutvha.asp> (last visited January 10, 2020).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Department of Management Services, Agency Analysis of 2020 House Bill 593, p. 2 (December 23, 2019).

³⁸ U.S. Department of Veterans Affairs, Veterans Health Administration Handbook 1100.19, available at: <https://www.va.gov/vhapublications/publications.cfm?pub=2> (last visited January 14, 2020).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would allow FRS members who receive care at VA facilities to receive proof of total and permanent disability certification from two physicians licensed by the facility, rather than two Florida licensed physicians. This will have a positive fiscal impact to those patients due to the saved time and expense of not having to go outside his or her current medical care provider to obtain the certification of disability.

D. FISCAL COMMENTS:

None.