

**STORAGE NAME:** h0925s1.frc.doc  
**DATE:** February 28, 2002

**HOUSE OF REPRESENTATIVES**  
**FISCAL RESPONSIBILITY COUNCIL**  
**ANALYSIS**

**BILL #:** CS/HB 925  
**RELATING TO:** Officer Malcolm Thompson Act  
**SPONSOR(S):** Fiscal Responsibility Council and Representative(s) Attkisson  
**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
  - (2) FISCAL POLICY & RESOURCES YEAS 13 NAYS 0
  - (3) FISCAL RESPONSIBILITY COUNCIL YEAS 25 NAYS 0
  - (4)
  - (5)
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**I. SUMMARY:**

Under current law, any member of the Florida Retirement System (FRS) who is totally and permanently disabled 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 a member's job, the member is entitled to in-line-of-duty disability benefits.

This bill creates the Officer Malcolm Thompson Act to expand the current definition of total and permanent disability to include Special Risk members of the FRS who are law enforcement officers, correctional officers, correctional probation officers, firefighters, emergency medical technicians, and paramedics who are catastrophically injured in-line-of-duty as a result of a felonious act of another.

This bill also amends the statutory provisions regulating local firefighters' and police officers' retirement plans to expand the definition of total and permanent disability to include local law enforcement officers, correctional officers and correctional probation officers, firefighters, emergency medical technicians, and paramedics who suffer a catastrophic injury as a result of a felonious act of another. In addition, the bill increases the threshold benefit amount from 42 percent to 80 percent of the employee's average monthly retirement benefit.

The bill also allows a sheriff to reemploy a retired member as a deputy on a contractual basis after the retired member has been retired for one calendar month. The reemployed member will not be permitted to work more than 780 hours during the first 12 months of reemployment.

The bill increases the retirement contribution rates applicable to the FRS defined benefit program by 0.02% for the Special Risk Class and 0.14% for the Special Risk Administrative Support Class. These increased contributions are intended to offset the additional costs incurred by the FRS for the benefits afforded by this bill.

The bill takes effect upon becoming a law.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Disability benefits available to FRS members**

The Florida Retirement System (FRS) provides disability benefits for its active members who are totally and permanently disabled from useful employment. All state and county employees are compulsory members of the FRS. The Division of Retirement 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.

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 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 disability benefits.

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.

Eligibility — Section 121.091(4)(a)1, F.S., provides that an FRS member is eligible for in-line-of-duty disability benefits from the first day on the job. In contrast, an FRS member must have 5 to 10 years of creditable service<sup>1</sup> before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty.

Threshold Benefit Amount — Section 121.091(4)(f), F.S., provides that the level of disability benefit to which a disabled member is minimally 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 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.

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<sup>1</sup> Section 121.091(4), F.S., provides that any member with less than 5 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 job-related. Otherwise, 5 years of creditable service is required to qualify for a non-duty disability benefit. Chapter 2000-169, L.O.F., reduced the 10 year service requirement to 8 years.

Burden of Proof.— Section 121.091(4)(c), F.S., provides that 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., spouse, and minor dependent(s) will have their entire health insurance premium paid for by the officer's employer.

### **Local pension plans for firefighters/police officers**

Chapters 175 (firefighter) and 185 (municipal police), F.S., provide funding for municipal firefighters' and police officers' retirement plans. Special fire control districts became eligible in 1993 to participate under chapter 175, F.S. The chapters provide a uniform retirement system for firefighters and police officers and set standards for the operation and funding of pension systems through a trust fund supported by a tax on insurance premiums.

Both chapters govern two types of plans: chapter plans and local law plans. To be found 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 and/or death benefits, and the benefits paid, vary widely from plan to plan, although chapter 99-1, L.O.F., imposed minimum benefits and standards for all plans operating under chapters 175 and 185, F.S. Any plan that did not meet the minimum chapter standard is required to make such improvements up to the state mandated minimum benefit level as the increase in the state premium tax revenues, over and above the amount collected for calendar year 1997, become available.

In addition to the pension plans governed by chapters 175 and 185, F.S., there are numerous other local plans that provide coverage for firefighters/police officers for disability and death. Under these plans, the standards for determining eligibility for disability retirement and/or death benefits, and the benefits paid, vary widely from plan to plan.

### **Differences in disability coverage and benefits**

Under the Florida Retirement System (FRS) and the chapter 175 and 185 plans, members are covered for disability suffered in-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 Class members and 42 percent of AFC for other members in the FRS,<sup>2</sup> and a minimum of 42 percent for the chapters 175 and 185 members.<sup>3</sup> By contrast, to qualify for nonduty-related or general disability benefits, a member must have 10 years of service, and the minimum benefit for general disability is 25 percent of AFC for both FRS members and members of Chapter 175 and 185 plans.<sup>4</sup>

### **Workers' Compensation**

Chapter 440, F.S., the Workers' Compensation Law, defines catastrophic injury, in s. 440.02(37), F.S., to mean a permanent impairment caused by:

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<sup>2</sup> s. 121.091(4)(f), F.S.

<sup>3</sup> ss. 175.191(5), and 185.18(5), F.S.

<sup>4</sup> ss. 121.091(4)(f), 175.191(5), and 185.18(5), F.S.

- a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;
- c) Severe brain or closed-head injury as evidenced by:
  - 1. Severe sensory or motor disturbances;
  - 2. Severe communication disturbances;
  - 3. Severe complex integrated disturbances of cerebral function;
  - 4. Severe episodic neurological disorders; or
  - 5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs 1.-4.
- d) Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands;
- e) Total or industrial blindness; or
- f) Any other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.

Catastrophic injury is not directly related to the determination of total and permanent disability under the FRS and the chapter 175 and 185 plans. The other local plans that provide coverage to firefighters and police officers may, or may not, already incorporate this definition of catastrophic injury in their eligibility for total and permanent in-line-of-duty disability retirement. There is no provision under the workers compensation law for a nonduty-related disability, as may be found in many retirement plans.

### **Reemployment of Retirees**

FRS retirees are permitted to be employed by private employers at anytime during retirement. However, FRS retirees generally may not be reemployed within 12 months of retirement by public employers participating in the FRS. Exceptions to this general rule include the reemployment of retired members as substitute or hourly teachers, education paraprofessionals, transportation assistants, bus drivers, or food service workers on a noncontractual basis for no more than 780 hours during the first 12 months after the member has been retired for at least 1 month. If a retiree violates these limitations, the retiree's retirement benefits will be suspend during the 12 months and benefits received must be reimbursed to the FRS.

#### **C. EFFECT OF PROPOSED CHANGES:**

See the Section-by-Section analysis, below.

#### **D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Provides for a short title, the "Officer Malcolm Thompson Act."

**Section 2:** Provides a declaration by the Legislature that the activities of firefighters, paramedics, emergency medical technicians, and police officers are vital to public safety, and that therefore, it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of these persons.

**Section 3:** Florida Retirement System (FRS) Benefits. Amends s. 121.091(4)(b), F.S., to expand the definition of total and permanent disability to include Special Risk members of the Florida Retirement System (FRS) who are officers under s. 943.10(1) [law enforcement officers], (2)[correctional officers], and (3)[correctional probation officers], F.S., and who are firefighters, emergency medical technicians, and paramedics who are injured in the line of duty as a result of a felonious act of another, if the injury is catastrophic, as defined in s. 440.02(37), F.S.

Amends s. 121.091(9)(b), F.S., to allow a sheriff to reemploy a retired member as a deputy sheriff on a contractual basis after the member has been retired for 1 month. Reemployment is limited to no more than 780 hours during the first 12 months.

**Section 4:** Firefighter Pensions Disability Retirement. Amends s. 175.191, F.S., to expand the definition of “total and permanent disability” so it includes firefighters, emergency medical technicians, and paramedics who suffer a catastrophic injury as a result of a felonious act of another. In addition, the bill also increases the threshold benefit amount for such persons from 42 percent to 80 percent of the officer’s average monthly retirement benefit.

**Section 5:** Municipal Police Pensions Disability Retirement. Amends s. 185.18, F.S., to expand the definition of “total and permanent disability” so it includes officers who suffer a catastrophic injury as a result of a felonious act of another. As done for personnel participating in a pension plan created under chapter 175, F.S., the bill increases the threshold benefit amount for such officers from 42 percent to 80 percent of the officer’s average monthly retirement benefit.

**Section 6:** Provides concurrent funding for the FRS defined benefit program to offset the additional costs associated with the new benefits afforded under this bill. Specifically, the contribution rates are increased for the Special Risk Class by 0.02% and for the Special Risk Administrative Support Class by 0.14%.

**Section 7:** Provides that the bill is effective upon becoming a law.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill increases the retirement contribution rate paid by employers participating in the Florida Retirement System. The increased contributions will generate the following amounts for deposit in the Florida Retirement System Trust Fund.

<u>FY 02-03</u>	<u>FY 03-04</u>	<u>FY 04-05</u>
\$532,000	\$559,000	\$586,000

##### 2. Expenditures:

To the extent this bill provides a liberalized definition of “total and permanent disability” for a select group of Special Risk Class members, the Florida Retirement System will experience greater costs. The appropriate level of contribution rate increases to offset these additional costs include an increase of 0.02% for the Special Risk Class and a 0.14% increase for the Special Risk Administrative Support Class. These costs are based upon a special actuarial study performed by Milliman USA, Consulting Actuaries. The Special Risk Class employer contribution rate increases and costs shown in the expenditure impact below assume that the

disability experience becomes twice the current experience for the FRS. But see "D. FISCAL COMMENTS" below.

State employers with employees in the Special Risk and Special Risk Administrative Support Classes will pay the following amounts to the FRS Trust Fund. A significant portion of these additional costs will be funded by General Revenue Fund monies.

<u>FY 02-03</u>	<u>FY 03-04</u>	<u>FY 04-05</u>
\$174,000	\$183,000	\$192,000

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not address any funding mechanism to pay for any increased costs associated with this legislation.

2. Expenditures:

**Local Plans** -- The fiscal impact on local pension plans for firefighters/police officers covered by chapters 175 and 185, F.S., is unknown and will require a study by each plan.

**Florida Retirement System** -- Local government employers with employees in the Special Risk and Special Risk Administrative Support Classes will pay the following amounts to the FRS Trust Fund. But see "D. FISCAL COMMENTS" below.

<u>FY 02-03</u>	<u>FY 03-04</u>	<u>FY 04-05</u>
\$358,000	\$376,000	\$394,000

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

*Florida Retirement System* -- The fiscal analysis of the bill assumes a liberalization of the requirements to meet the definition of "total and permanent disability" for certain Special Risk and Special Risk Administrative Support Class members -- specifically the inability to perform the duties of the special risk positions, rather than any employment. If the requirements were not liberalized, the cost of providing these benefits would be determined in future valuations of the Florida Retirement System.

*Local pension plans for firefighters/police officers* -- The cost of providing these benefits will be determined by the Division for the chapter plans and by the actuaries for the local law plans. The police officers, firefighters, paramedics, or emergency medical technicians suffering a catastrophic injury resulting from a person committing a felonious act may already qualify for total and permanent in-line-of-duty disability retirement but this group would qualify for a significantly higher minimum benefit (80% versus 42%). Resulting costs would be passed along to the local government employer sponsoring the plan. The bill does not provide any funding source but it does specify that this bill serves an important state interest to exempt it from restrictions on unfunded state mandates.

Officer Malcolm Thompson was a member of the Kissimmee Police Officers' Retirement Fund, a Chapter 185 local law plan. The cost impact for adding this benefit enhancement to their local plan was 0.1% of payroll. The annual cost for fiscal year 1998 was about \$5,002.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill requires counties and municipalities to expend funds to implement its provisions. The bill contains a legislative determination of an important state interest. The bill applies to all employers of Special Risk and Special Risk Administrative Support Class members; and thus, the bill applies to all similarly situated employers. Therefore, this bill appears to meet one or more of the exceptions to the local government mandate provisions.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The 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:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article X, Section 14 of the Florida Constitution provides:

“A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.”

This bill provides concurrent funding to offset the system costs associated with the increase in disability benefits afforded by the Florida Retirement System.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

**Legislative History**

This bill's provisions were contained in last year's CS/HB 341 (2001). It was reported favorably by the Committees on State Administration, Crime Prevention, Corrections & Safety, and Criminal Justice Appropriations, as well as the Council for Smarter Government. It died on the calendar. HB 925, as filed, contains the provisions of CS/HB 341.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the Committee on Fiscal Policy and Resources adopted one amendment. This amendment allows a sheriff to reemploy a retired member as a deputy on a contractual basis after the retired member has been retired for one calendar month. There are stipulations provided in the amendment as to how this may be accomplished.

On February 27, 2002, the Fiscal Responsibility Council adopted one amendment to the traveling amendment and adopted a council substitute for the bill. This amendment increased the retirement contribution rates for the Special Risk and Special Risk Administrative Support Classes of the defined benefit program of the Florida Retirement System. The purpose of the amendment is to fund the increased benefits afforded members of the Florida Retirement System.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

David M. Greenbaum

Staff Director:

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

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Adam Shamy

Staff Director:

Lynne Overton

AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Joe McVaney

Staff Director:

David Coburn