

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 949 Communicable and Infectious Diseases

**SPONSOR(S):** Fetterhoff and Omphroy

**TIED BILLS:** **IDEN./SIM. BILLS:** HB 963, SB 1314, SB 1422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N	Villa	Smith
2) Professions & Public Health Subcommittee	14 Y, 0 N	Guzzo	McElroy
3) Appropriations Committee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

Any person employed full time by the state or a political subdivision as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who suffers a condition caused by hepatitis, meningococcal meningitis, or tuberculosis that results in total or partial disability or death is presumed to have a disability suffered in-the-line-of-duty and is therefore entitled to certain higher benefits. This presumption can be defeated by competent evidence to the contrary.

The bill adds an "infectious disease" to the list of diseases that, if suffered by an emergency rescue or public safety worker, is presumed to have been suffered in-the-line-of-duty. The bill defines "infectious disease" to mean any condition or impairment of health caused by a disease that has been declared a public health emergency by the State Health Officer.

In order to be entitled to the presumption, the bill requires the emergency rescue or public safety worker to submit a written declaration under penalty of perjury verifying that, to the best of his or her knowledge, he or she contracted the infectious disease during a public health emergency and was not exposed to any person known to have the infectious disease outside the scope of his or her employment.

The bill specifies that the vaccine or immunization that an emergency rescue or public safety worker may be required by their employer to receive in order to enjoy the presumption must be approved by the United States Food and Drug Administration.

The bill requires an emergency rescue or public safety worker to file an incident or accident report with his or her employer for each instance of known or suspected occupational exposure to an infectious disease.

The bill may have a fiscal impact on the state and local governments. See Fiscal Comments section.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Workers' Compensation Insurance

Under ch. 440, F.S., which relates to workers' compensation, an employer must pay compensation or furnish benefits if an employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.<sup>1</sup> The injury, its occupational cause, and any resulting disability must be established to a reasonable degree of medical certainty, and the accidental compensable injury must be the major contributing cause of any resulting injury.<sup>2</sup>

Compensation for permanent total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability.<sup>3</sup> In addition, an employee will generally receive an annual supplemental income benefit equal to 3 percent per year of the compensation payment, multiplied by the number of calendar years since the date of the injury, until age 62.<sup>4</sup>

Compensation for temporary total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability, but payment may not exceed 104 weeks. At the earlier of the 104th week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.<sup>5</sup>

Where the disability or death of an employee results from an "occupational disease," it will be treated as an injury by accident.<sup>6</sup> The employee or his or her survivors will be entitled to compensation. "Occupational disease" is defined to mean "only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee."<sup>7</sup>

An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only. For an injury or disease involving an occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence.<sup>8</sup>

##### 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 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.<sup>9</sup>

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<sup>1</sup> Section 440.09(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 440.15(1)(a), F.S.

<sup>4</sup> Section 440.15(1)(f), F.S.

<sup>5</sup> Section 440.15(2)(a), F.S.

<sup>6</sup> Section 440.151(1)(a), F.S.

<sup>7</sup> Section 440.151(2), F.S.

<sup>8</sup> Section 440.09(1), F.S.

<sup>9</sup> *Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year 2019-2020*, at 35. A copy of the report can be found at:

[https://www.dms.myflorida.com/workforce\\_operations/retirement/publications/annual\\_reports](https://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports).

The Florida Retirement System Act<sup>10</sup> governs the FRS, which is a multi-employer, contributory plan that provides retirement income benefits to 644,338 active members,<sup>11</sup> 432,258 annuitants, 15,512 disabled retirees, and 33,593 active participants of the Deferred Retirement Option Program.<sup>12</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. Municipalities, independent special districts, metropolitan planning districts, and public charter schools may elect to participate in the FRS. Such election is irrevocable.<sup>13</sup> The FRS also serves as the retirement plan for participating employees of the 177 cities and 149 special districts that have elected to join the system.<sup>14</sup>

Membership in the FRS is compulsory for all full-time and part-time employees working in regularly established positions for covered employers.

The FRS is managed by the Department of Management Services and the State Board of Administration.

### *Class Structure*

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

- Regular Class<sup>15</sup> has 557,754 members;
- Special Risk Class<sup>16</sup> has 76,343 members;
- Special Risk Administrative Support Class<sup>17</sup> has 108 members;
- Elected Officers' Class<sup>18</sup> has 2,153 members; and
- Senior Management Service Class<sup>19</sup> has 7,980 members.<sup>20</sup>

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

### *Plan Options*

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

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

Regardless of whether the member elects to participate in the pension plan or the investment plan, the member must contribute three percent of the member's salary.<sup>21</sup>

Certain members, as specified by law, may, in lieu of FRS participation, participate in optional retirement plans, which include the Senior Management Service Optional Annuity Program, State Community College System Optional Retirement Program, and the State University System Optional Retirement Program.

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<sup>10</sup> See ch. 121, F.S.

<sup>11</sup> As of June 30, 2020, the FRS pension plan, which is a defined benefit plan, had 479,043 members, and the investment plan, which is a defined contribution plan, had 165,295 members.

<sup>12</sup> *Annual Report*, *supra* note 1, at 160.

<sup>13</sup> See s. 121.051(2), F.S.

<sup>14</sup> *Annual Report*, *supra* note 1, at 195.

<sup>15</sup> Regular Class members are those members who do not qualify for membership in the other classes within the FRS. Section 121.021(12), F.S.

<sup>16</sup> Special Risk Class members include law enforcement officers, firefighters, correctional officers, probation officers, paramedics, and emergency medical technicians, among others. Section 121.0515, F.S.

<sup>17</sup> Special Risk Administrative Support Class members are former members of the Special Risk Class who are transferred or reassigned to an administrative support position in certain circumstances. Section 121.0515(8), F.S.

<sup>18</sup> Membership in the Elected Officers' Class is comprised of those participants who hold specified elective offices in either state or local government. Section 121.052, F.S.

<sup>19</sup> Senior Management Service Class members generally are high level executive and legal staff or as specifically provided in law. Section 121.055, F.S.

<sup>20</sup> All figures from *Annual Report*, *supra* note 3, at 161.

<sup>21</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011.

### *Special Risk Class*

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet the statutory criteria.<sup>22</sup>

When originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

are required as one of the essential functions of their positions to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.<sup>23</sup>

Compared to the Regular Class members, a person who is a member in the Special Risk Class earns a higher annual service accrual rate, may retire at an earlier age, and is eligible to receive higher disability and death benefits. As a result, the contribution rates to fund the normal cost of the special risk benefits are higher than the contribution rates to fund the normal cost of the Regular Class benefits. Similarly, the contribution rates to fund the unfunded liabilities of the Special Risk Class are higher than those contribution rates for the Regular Class.

### *Disability Retirement Benefits for Special Risk Members of the FRS*

There are two types of disability retirement available under the FRS: regular disability retirement and in-the-line-of-duty disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work.<sup>24</sup> An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.<sup>25</sup>

To be eligible for regular disability retirement under the FRS, a member must complete eight years of creditable service.<sup>26</sup> Under the FRS Pension Plan, the minimum benefit under regular disability retirement, regardless of class, is 25 percent of the employee's average final compensation.<sup>27</sup> In contrast, in-the-line-of-duty disability benefits are available to members on their first day of employment. There is no vesting period. Special Risk Class members receive a minimum in-the-line-of-duty disability benefit of 65 percent of their average final compensation.<sup>28</sup> Members in all other classes are eligible to receive a minimum in-the-line-of-duty disability benefit of 42 percent of their average final compensation.<sup>29</sup>

Under the FRS Investment Plan, the disability benefits are provided in lieu of the normal retirement benefits (the accumulations of contributions and investment earnings in the member's retirement account).<sup>30</sup> To receive the disability benefits, the member must transfer all of his or her accumulations

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<sup>22</sup> See s. 121.0515, F.S.

<sup>23</sup> Section 121.0515(1), F.S.

<sup>24</sup> Section 121.091(4), F.S.

<sup>25</sup> Florida Retirement System Employer Handbook, Disability Retirement, ch. 10, available at [https://www.rol.frs.state.fl.us/forms/EH\\_ch10.pdf](https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf).

<sup>26</sup> Sections 121.091(4)(a) and 121.591(2)(b)2., F.S.

<sup>27</sup> Section 121.091(4)(f), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 121.591(2), F.S.

to the investment plan disability account. The member will then receive a monthly benefit calculated the same as a similarly situated pension plan member.<sup>31</sup>

#### *Death Benefits for Special Risk Members of the FRS*

If a member of the FRS is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.<sup>32</sup> Under the pension plan, if the member is vested at the time of his or her death, the member's joint annuitant<sup>33</sup> is entitled to receive the optional form<sup>34</sup> of payment for the annuitant's lifetime.<sup>35</sup> If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.<sup>36</sup>

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan. Death benefits may be paid for an active member of the FRS Pension Plan who dies before retirement due to an injury or illness.<sup>37</sup> If the injury or illness arises out of and in the actual performance of duties required by a member's job, the member's surviving spouse and/or eligible dependent(s) are entitled to in-the-line-of-duty death benefits. These in-the-line-of-duty death benefits are also available to members of the investment plan if the member's beneficiary elects to transfer the accumulations in the member's investment plan account to the pension fund.<sup>38</sup>

If an FRS member who is not in the Special Risk Class dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime.<sup>39</sup> If there is no surviving spouse or the surviving spouse dies, the member's children under 18 years of age and unmarried may receive the benefits until the youngest child's 18th birthday.<sup>40</sup>

If an FRS member who is in the Special Risk Class dies in the line of duty, the member's surviving spouse and children are eligible to receive a monthly payment equal to the member's total monthly salary at the time of death.<sup>41</sup> These benefits may be extended to the 25th birthday of an unmarried child enrolled as a full time student if there is no surviving spouse or the surviving spouse dies.<sup>42</sup>

#### *Presumptions and Burdens of Proof Relating to in-the-line-of-duty Disability and Death*

An FRS member has the burden of proof when claiming in-the-line-of-duty disability or death benefits. The member must show by competent medical evidence that the death or disability occurred in-the-line-of-duty in order to receive the higher benefits. If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability

An FRS member employed as an emergency rescue or public safety worker<sup>43</sup> who suffers a condition caused by hepatitis, meningococcal meningitis, or tuberculosis that results in total or partial disability or

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<sup>31</sup> Section 121.591(2)(g), F.S.

<sup>32</sup> For purposes of disbursement of benefits, a member is considered retired as of the date of the death.

<sup>33</sup> A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.

<sup>34</sup> Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.

<sup>35</sup> Section 121.091(7)(b)1., F.S.

<sup>36</sup> Section 121.091(7)(b)2., F.S.

<sup>37</sup> Section 121.091(7), F.S.

<sup>38</sup> Section 121.591(4), F.S.

<sup>39</sup> Section 121.091(7)(d)1., F.S.

<sup>40</sup> Section 121.091(7)(d)2. and 3., F.S.

<sup>41</sup> Section 121.091(7)(i), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> "Emergency rescue or public safety worker" means any person employed full time by the state or any political subdivision of the state as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not

death is presumed to have a disability suffered in-the-line-of-duty and to be entitled to the higher benefits.<sup>44</sup> The presumption can be defeated by competent evidence to the contrary.

In order to be eligible for the presumption, the member, prior to diagnoses, must have undergone test for the disease, which fail to indicate the presence of the infection. A prior negative test is not required, however, in the case of meningococcal meningitis. In addition, the member must sign a written declaration under penalty of perjury verifying he or she has not:

- In the case of a medical condition caused by hepatitis:
  - Been exposed to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his or her employment;
  - Had a blood transfer, other than a transfusion arising out of an accident or injury happening in connection with his or her employment;
  - Engaged in unsafe sexual practices or other high-risk behavior; or
  - Used intravenous drugs not prescribed by a physician.
- In the case of meningococcal meningitis, in the last 10 days, has not been exposed outside of the scope of his or her employment to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease; and
- In the case of tuberculosis, since the member's last negative tuberculosis skin test, has not been exposed outside of the scope of his or her employment to any person known by the member to have tuberculosis.<sup>45</sup>

If medically indicated in the given circumstances pursuant to the immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service,<sup>46</sup> whenever a medically recognized vaccine or other form of immunization exists for the above mentioned communicable diseases, the emergency rescue or public safety worker may be required by his or her employer to undergo the immunization, unless the member's physician determines in writing that the immunization would pose a significant risk to the member's health.<sup>47</sup> Absent such written declaration, failure or refusal to undergo immunization disqualifies the member from the benefits of the presumption.

An emergency rescue or public safety worker is required to file an incident report with his or her employer for every known or suspected occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis. An employing agency must maintain a record of such exposures, and notify any employee that may have been exposed.<sup>48</sup>

## Effect of the Bill

The bill adds an "infectious disease" to the list of diseases that, if suffered by an emergency rescue or public safety worker, is presumed to have been suffered in-the-line-of-duty thereby entitling the worker to higher death or disability benefits, unless the contrary can be shown by competent evidence. The bill defines "infectious disease" to mean any condition or impairment of health caused by a disease that has been declared a public health emergency by the State Health Officer.<sup>49</sup>

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employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety worker" does not include any person employed by a public hospital licensed under chapter 395 or any person employed by a subsidiary thereof. Section 112.181(1)(b), F.S.

<sup>44</sup> Section 112.181(2), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> The Advisory Committee on Immunization Practices comprises medical and public health experts who develop recommendations on the use of vaccines in the civilian population of the United States. The recommendations stand as public health guidance for safe use of vaccines and related biological products. Center for Disease Control and Prevention, *Advisory Committee on Immunization Practices (ACIP)*, <https://www.cdc.gov/vaccines/acip/committee/index.html> (last visited March 17, 2021).

<sup>47</sup> Section 112.181(3), F.S.

<sup>48</sup> Section 112.181(5), F.S.

<sup>49</sup> The State Health Officer is responsible for declaring public health emergencies, issuing public health advisories, and ordering isolation or quarantines. A "public health emergency" means any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents,

In order to be entitled to the presumption, the bill requires the emergency rescue or public safety worker to submit a written declaration under penalty of perjury verifying that, to the best of his or her knowledge, he or she contracted the infectious disease during a public health emergency declared by the State Health Officer and was not exposed, outside of the scope of his or her employment, to any person known to have the infectious disease.

The bill specifies that the vaccine or immunization that an emergency rescue or public safety worker may be required by their employer to receive in order to enjoy the presumption must be approved by the United State Food and Drug Administration.

The bill requires an emergency rescue or public safety worker to file an incident or accident report with his or her employer for each instance of known or suspected occupational exposure to an infectious disease.

The bill specifies that similar to meningococcal meningitis, an emergency rescue or public safety worker is not required to undergo test, prior to diagnosis, which fail to indicate the presence of the infection in order to enjoy the presumption.

**B. SECTION DIRECTORY:**

Section 1 amends s. 112.81, F.S., to add “infectious diseases” to the list of diseases that are presumed to have been suffered in-the-line-of-duty for certain workers.

Section 2 provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

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

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

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

None.

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biological toxins, or situations involving mass casualties or natural disasters. Before declaring a public health emergency, the State Health Officer shall, to the extent possible, consult with the Governor and shall notify the Chief of Domestic Security. The declaration of a public health emergency shall continue until the State Health Officer finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and he or she terminates the declaration. However, a declaration of a public health emergency may not continue for longer than 60 days unless the Governor concurs in the renewal of the declaration. Section 381.00315(1)(c), F.S.

**D. FISCAL COMMENTS:**

The bill adds a new subset of diseases that are presumed to be suffered in-the-line-of-duty for certain workers, thereby entitling those workers to higher disability and death benefits. Accordingly, more state and local government employees may qualify for enhanced workers' compensation or retirement benefits. The fiscal impact on the state and local governments is unknown at this time.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill creates a new presumption for "infectious disease" that would be applicable to workers' compensation benefits paid to emergency rescue or public safety workers; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because all similarly situated state and local government employers of emergency rescue and public safety workers are required to provide the workers' compensation benefit. However, for this exception to apply, the bill must declare that it fulfills an important state interest.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not confer rulemaking authority nor require rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.