

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include certain pilots and aerial applicators who fly aircraft that apply pesticides to control mosquitoes or other arthropods.

B. EFFECT OF PROPOSED CHANGES:

Mosquito Control in Florida

Chapter 388, Florida Statutes, provides for the creation and operation of mosquito control districts. Cities, towns, counties, or any portion thereof are authorized to create special taxing districts for the control of arthropods,¹ to include mosquitoes.² The authority provided in section 125.01, Florida Statutes, which sets forth the statutory powers of counties, is the preferred method for creating these mosquito control districts; yet, districts which were established under the former petition process may continue to operate.³ Some mosquito control districts have been established by special act of the Legislature.⁴

According to the Bureau of Entomology and Pest Control within the Department of Agriculture and Consumer Services and the Department of Management Services, there are currently 57 mosquito control districts:

- 35 districts are operated by boards of county commissioners;
- 7 districts are operated by dependent districts of the county; and
- 15 districts are independent special districts.⁵

All of the employees of the mosquito control districts which are operated by the county or under the county participate in the Florida Retirement System. Thirteen of the independent special districts participate in the Florida Retirement System.⁶

Twenty-one of these mosquito control districts utilize aircraft for mosquito control – although four of these counties contract for these pilot services.⁷ The Department of Management Services estimates there are 35 pilots employed in full-time positions by the various mosquito control districts.⁸

Background on the Florida Retirement System

Chapter 121, Florida Statutes, 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.⁹

¹ Fla. Stat. § 388.011 (2005) (defining “arthropod” as those insects of public health or nuisance importance, including all mosquitoes, midges, sand flies, dog flies, yellow flies, and house flies).

² Fla. Stat. § 388.021(1) (2005).

³ Fla. Stat. § 388.021(2) (2005).

⁴ See, e.g., ch. 99-449, Laws of Fla. (Anastasia Mosquito Control District; St. Johns Co.).

⁵ Fla. Dep’t of Agric. and Consumer Serv., Div. of Agric. Env’t Serv., Bureau of Entomology and Pest Control, *Mosquito Control Directory*, available at <http://www.flaes.org/aes-ent/mosquito/mosqcontroldirectory.html> (last visited Mar. 29, 2006); Dep’t of Mgmt. Serv., HB 897 (2006) Substantive Bill Analysis (Mar. 14, 2006) (on file with dep’t) at p. 7) [hereinafter “DMS Analysis”].

⁶ DMS Analysis at p. 7.

⁷ *Id.*

⁸ *Id.* at p. 8.

⁹ Fla. Stat. § 121.025 (2005).

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.¹⁰ The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.¹¹

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.¹² Members of the FRS belong to one of five membership classes:

Regular Class ¹³	570,888 members	88.00%
Special Risk Class ¹⁴	68,466 members	10.59%
Special Risk Administrative Support Class ¹⁵	80 members	0.01%
Senior Management Service Class ¹⁶	6,823 members	1.10%
Elected Officers Class ¹⁷	2,122 members	0.30%

Each class is separately funded 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, Florida Statutes.¹⁸

The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because they perform work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees.¹⁹ As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.²⁰ Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.²¹ These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.²²

The only employees originally in the Special Risk Class under the current statute were law enforcement officers, correctional officers, and firefighters.²³ Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics ²⁴
2000	Community-Based Correctional Probation Officers ²⁵
2000	Twenty-four types of employees of correctional or forensic facilities or institutions ²⁶

¹⁰ Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/>>.

¹¹ *Id.*

¹² *Id.*

¹³ Fla. Stat. § 121.021(12) (2005).

¹⁴ Fla. Stat. § 121.0515 (2005).

¹⁵ Fla. Stat. § 121.0515(7) (2005).

¹⁶ Fla. Stat. § 121.055 (2005).

¹⁷ Fla. Stat. § 121.052 (2005).

¹⁸ *See, e.g.*, Fla. Stat. 121.055(3)(a)1. (2005).

¹⁹ *Id.*

²⁰ Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

²¹ Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).

²² Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).

²³ Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.

²⁴ Ch. 99-392, Laws of Fla., § 23.

²⁵ Ch. 2000-169, Laws of Fla. § 29.

²⁶ *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: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior

2001	Youth Custody Officers ²⁷
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline ²⁸

This bill continues the expansion of the Special Risk Class by including in the definition of "special risk member" and the criteria for special risk membership any person who is employed as a pilot or aerial applicator by an authorized state agency or municipality, county, or special district,²⁹ and who has the following qualifications:

- Licensed as a pilot by the Federal Aviation Administration;
- Licensed or certified as an arthropod control applicator as required by the Department of Agriculture and Consumer Services; and
- Has as his or her primary duties and responsibilities, piloting or co-piloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

Constitutional Requirements for Retirement or Pension System Increases

Article X, section 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.³⁰ Because employers will pay an additional 10.70 percent of salary for these mosquito control pilots, the bill appears to satisfy this constitutional requirement.³¹

C. SECTION DIRECTORY:

- Section 1: Creates paragraph (f) within subsection (15) of section 121.021, Florida Statutes, to expand the definition of special risk member to include mosquito control pilots.
- Section 2: Amends subsection (2) of section 121.0515, to include mosquito control pilots.
- Section 3: Declares a statement of important state interest.
- Section 4: Provides an effective date of October 1, 2006.

psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); 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.)

²⁷ Ch. 2001-125, Laws of Fla., § 43.

²⁸ Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (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). See *also* Int'l Ass'n for Identification at <http://www.theiai.org/> (last visited Mar. 27, 2006).

²⁹ Fla. HB 897 CS (2005) (authorized under chapter 388, Florida Statutes, or by special act).

³⁰ Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 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 which is funded in whole or in part by public funds.

³¹ DMS Analysis at pp. 9-10.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive increased contributions for any pilots flying aircraft for mosquito control treatment who are employed by public employers participating in the Florida Retirement System.

2. Expenditures:

This bill may have a fiscal impact on state government revenues if there are any pilots flying aircraft for mosquito control treatment employed by state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill will have a fiscal impact on local government revenues as these employers will be required to pay the Special Risk Class contribution rate for the affected employees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There does not appear to be a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services noted the following fiscal impact for the bill:

Based on current salary information available for mosquito control pilots who are members of the Florida Retirement System, it appears that the annual salary for such pilots ranges from about \$36,900 to around \$85,000 (averaging about \$60,300). While the actual cost to Florida public employers is unknown, if in fact there were just 35 such pilots working fulltime who earn an average annual salary of \$60,300, the statewide cost to affected employers in increased retirement contributions for FY 2005/06 would be \$225,823.³²

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

For Special Risk membership, the employers of the new special risk members will pay an additional 10.70% of pay (the difference between the Regular and Special Risk Class rates, for the period from July 1, 2005 – June 30, 2006) for each affected member, and the bill therefore complies with the requirements of article X, section 14 of the Florida Constitution and of chapter 112, part VII, Florida Statutes. Any changes to the demographics and actuarial experience of the Special Risk Class resulting from this bill that result in additional fiscal impact will be reflected in future valuations and experience studies of the Florida Retirement System.³³

³² *Id.* at p. 8.

³³ *Id.* at pp. 9-10.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

This bill is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution.³⁴

2. Other:

Article X, Section 14

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. The Department of Management Services concludes that the bill complies with this constitutional requirement.³⁵

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Continued Expansion of Special Risk

This bill proposes an additional expansion of the Special Risk Class. The Legislature must ultimately determine whether these pilots or aerial applicators perform work that is consistent with the intent of the Special Risk Class.³⁶ The Legislature must also be aware, as noted by the Department of Management Services, that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.³⁷

- *Encouraging Other Groups.* Other pilots, for example, may seek to become part of the Special Risk Class “based solely on their jobs as aviators, rather than on their performing work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, such that after age 55 (or 25 years of service) the member may no longer be able to perform the required work without risking the health and safety of the member, the public, or the member’s co-workers.”³⁸

³⁴ Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

³⁵ DMS Analysis at pp. 9-10.

³⁶ Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees).

³⁷ *Id.*

³⁸ *Id.*

- *Creating inequities.* Consider similarly situated employees who are not eligible for the Special Risk Class while the pilots are part of the Special Risk Class: a person who mixes and dispenses the pesticides while flying with the pilot, or drivers and pesticide applicators who dispense pesticides from ground transport vehicles.³⁹

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with a committee substitute. The amendment provided further definition and criteria for the mosquito control pilots who are included in the Special Risk Class.

³⁹ *Id.*