

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill expands the Special Risk Class of the Florida Retirement System to include certain positions in forensic and correctional facilities and institutions of specified state agencies.

B. EFFECT OF PROPOSED CHANGES:

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 158 cities and 192 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: 600,000 active members, 252,000 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	583,213 members	87.73% of membership
2. Special Risk Class ⁵	72,078 members	10.84% of membership
3. Special Risk Administrative Support Class ⁶	74 members	0.01% of membership
4. Elected Officers' Class ⁷	2,195 members	0.33% of membership
5. Senior Management Service Class ⁸	7,259 members	1.09% 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

The Special Risk Class and its expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,¹¹ may need to retire at an earlier age with less service than other types of employees.¹² As such, members of the Special Risk Class can retire at age 55 or with 25 years of

¹ Section 121.025, F.S.

² FL. Dept. of Mgmt. Svcs., *Florida Division of Retirement Main Page* (visited Feb. 12, 2007) <www.frs.state.fl.us>

³ *Id.*

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 Department of Management Services HB 655 Substantive Bill Analysis at 4. (Mar. 16, 2007) (on file with the department and the Committee on State Affairs) [hereafter referred to as DMS Analysis]

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)

¹² *Id.*

creditable service.¹³ Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹⁴ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2006, and 21.96 percent, effective July 1, 2007.¹⁵

The only employees originally in the Special Risk Class were law enforcement officers, correctional officers, and firefighters.¹⁶ Starting in 1999, however, the Legislature began expanding the membership to include:

1999	Emergency medical technicians and paramedics ¹⁷
2000	Community-based correctional probation officers ¹⁸
2000	Twenty-four types of employees of correctional or forensic facilities or institutions ¹⁹
2001	Youth custody officers ²⁰
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline ²¹

Proposed Changes

This bill continues the expansion of the Special Risk Class. It adds to the Special Risk Class employees of the Department of Corrections, Department of Children and Family Services, Agency for Persons with Disabilities, and Department of Agriculture and Consumer Services, who spend at least 75 percent of their time performing duties involving contact with patients or inmates in a correctional or forensic facility or institution, in one of the following positions:

- Automotive Equipment Superintendent – SES (class code 6542);
- Certain behavioral program associates and specialists;²²
- Carpenter F/C (class code 6433);
- Certain certified radiologic technologist radiographers;²³
- Certain instructors, teachers, and teacher aides;²⁴
- Certain construction projects consultants;²⁵

¹³ 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.

¹⁴ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁵ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2006, and 9.55 percent effective July 1, 2007, for Regular Class members).

¹⁶ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁷ Ch. 99-392, L.O.F., s. 23.

¹⁸ Ch. 2000-169, L.O.F., s. 29.

¹⁹ *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).

²⁰ Ch. 2001-125, L.O.F., s. 43.

²¹ 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).

²² Class codes 5750, 5762, 5751, and 5763.

²³ Class codes 5524 and 5528.

²⁴ Class codes 4147, 9095, 4133, 1313, 1315, and 8085.

²⁵ Class codes 4691 and 4692.

- Certain medical technicians and technologists;²⁶
- Dental assistant-F/C (class code 5633);
- Certain electricians and electronic technicians;²⁷
- Certain health support aides and technicians;²⁸
- Certain human services counselors and workers;²⁹
- Inmate work crew leader (class code 6392);
- Institutional counselor F/C (class code 5932);
- Certain licensed practical nurses;³⁰
- Certain maintenance and construction superintendents, mechanics, and support technicians;³¹
- Pharmacy technician (class code 5501);
- Refrigeration mechanic-F/C (class code 6452);
- Certain rehabilitation therapists and respiratory care specialists;³²
- Social services counselor-F/C (class code 5960);
- Supervising construction project administrator (class code 4693);
- Support service aide-F/C (class code 6202);
- Certain unit treatment and rehab specialists and supervisors;³³ and
- Certain wellness education specialists.³⁴

As of March 1, 2007, the number of employees who would be affected by this bill is:³⁵

Agency	Approx. No. of affected employees	Annual salary totals for covered positions	Current Employer Contributions ³⁶	Proposed Employer Contributions ³⁷	Difference in Employer Contributions
Agriculture & Consumer Affairs	21	\$547,241.24	\$47,555.26	\$108,134.87	\$60,579.61
Children & Families	741	\$20,038,412.37	\$1,741,338.03	\$3,959,590.28	\$2,218,252.25
Corrections	1404	\$42,151,820.56	\$3,662,993.21	\$8,329,199.74	\$4,666,206.53
Persons with Disabilities	Data unknown	-	-	-	-
TOTALS	2166	\$62,737,474.17	\$5,451,886.50	\$12,396,924.89	\$6,945,038.39

Currently, such employees are members of the Regular Class. They earn retirement credit at the rate of 1.6 percent to 1.68 percent³⁸ of their average final compensation (AFC)³⁹ for each year of service.

²⁶ Class codes 5589, 5601, and 5604.

²⁷ Class codes 6445 and 7236.

²⁸ Class codes 5504 and 5519.

²⁹ Class codes 5937, 5941, 5706, 5781, 5709, and 5784.

³⁰ Class codes 5599 and 5597.

³¹ Class codes 6386, 6387, 6469, and 6377.

³² Class codes 5562, 5563, and 5582.

³³ Class codes 5776 and 5791. Includes unit treatment and rehabilitation supervisor I-F/C SES, unit treatment and rehabilitation senior supervisor I-F/C SES, and unit treatment and rehabilitation senior supervisor II-F/F SES.

³⁴ Class codes 5567 and 5568.

³⁵ DMS Analysis at 3.

³⁶ Based on the Regular Class contribution rate of 8.69 percent.

³⁷ Based on the Special Risk Class contribution rate of 19.76 percent.

³⁸ Section 121.091(1), F.S.

As members of the Special Risk Class, the value for each year of service would almost double to three percent of AFC.⁴⁰ In addition, they would be eligible for retirement after 25 years of service or at age 55.⁴¹ To fund this benefit improvement, the employers of the new special risk members would pay an additional 11.07 percent of pay (the difference between the Regular and Special Risk Class rates, for the period from July 1, 2006 through June 30, 2007)⁴² for each affected member.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to expand the definition of special risk member.

Section 2 amends s. 121.0515, F.S., to include in the Special Risk Class certain employees of a correctional or forensic facility or institution.

Section 3 provides a declaration of important state interest.

Section 4 provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact on state expenditures is as follows (these numbers do not include the Agency for Persons with Disabilities):⁴³

- Fiscal Year 2007-2008: \$7,222,840
- Fiscal Year 2008-2009: \$7,511,754
- Fiscal Year 2009-2010: \$7,812,224

The fiscal impact on the Agency for Persons with Disabilities for Fiscal Years 2007-2008 and 2008-2009 is \$1,205,427.⁴⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill applies only to specific state agencies; therefore, it does not have a fiscal impact on local government expenditures. Any fiscal impact resulting from a change in class demographics or experience, however, would be reflected in future valuations of the FRS. Special Risk Class contribution rates may be increased or decreased in the future as required to maintain compliance

³⁹ Section 121.021(24), F.S., defines “average final compensation” as the average of the five highest fiscal years of compensation for creditable service prior to retirement, termination, or death.

⁴⁰ Section 121.091(1), F.S.

⁴¹ 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.

⁴² Section 121.71(3), F.S.

⁴³ DMS Analysis at 7; Using salaries as of March 1, 2007, annualized for 2006/07, with a 4 percent increase each year thereafter, and applying the difference in the 2006/07 employer contribution rates of the Regular and Special Risk Classes – 11.07 percent.

⁴⁴ Agency for Persons with Disabilities HB 655 Substantive Bill Analysis at 3. (Mar. 1, 2007) (On file with the agency and the Committee on State Affairs) [hereafter referred to as APD Analysis]

with the State Constitution, and would be paid both by state and local government FRS employers with Special Risk Class members.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

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

This bill would add *at least* 2,166 additional positions to the Special Risk Class (the actual number is unknown at this time). Two of the affected employers indicate that an additional 300 positions might otherwise qualify under this proposed legislation. The fiscal impact to the FRS would be primarily funded through the required contributions for members of the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience would be reflected in future valuations of the FRS.⁴⁵

The Agency for Persons with Disabilities (APD) offered the following fiscal comment regarding this bill:

The Agency has approximately 400 forensic positions not currently in the special risk pool. If the bill is amended to include all forensic staff meeting the test of 75% or more direct contact time with forensic clients, it is estimated that there would be approximately \$1,205,427 recurring additional annual contribution for [the APD in] FY 2007-2008 for a full year of contributions. The fiscal impact beyond FY 2007-2008 would be the same plus any additional costs due to pay increases.⁴⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. 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.

2. Other:

Article X, Section 14, Florida Constitution

Article X, section 14 of the State 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.⁴⁷

⁴⁵ DMS Analysis at 8.

⁴⁶ APD Analysis at 3.

⁴⁷ 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 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 of 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.

For Special Risk Class membership, the employers of the new special risk members will pay an increased contribution rate of 11.07 percent of pay (the difference between the Regular Class and Special Risk Class rates)⁴⁸ for each affected member. This increase in the required contribution rate appears to satisfy the requirements in article X, section 14 of the State Constitution and part VII of ch. 112, F.S.,⁴⁹ to fund benefit increases to public retirement or pension systems.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Exclusion of Similar Positions

According to the Department of Management Services, the Department of Children and Family Services has 162.5 employees whose position titles, duties, and inmate contact level would correspond to the positions listed in this bill, but whose class codes and position titles are not listed in the bill as currently written. For example, senior physicians and mental health program analysts who otherwise meet the requirements of the bill, but whose class codes are not listed, would be excluded from special risk coverage.⁵⁰

The Department of Corrections also reports that they employ 118 "Academic Teachers" under class code 8093. The bill, however, lists "Classroom Teacher" under class code 4147 as being included in the Special Risk Class if enacted as written; thus, academic teachers would be excluded from eligibility.⁵¹

According to the Agency for Persons with Disabilities (APD), the listed classes in the bill include some, but not all, positions in APD forensic facilities. Using current data, approximately 110 staff in 25 classes would not move to the Special Risk Class. ADP states: "This means the staff would have to be add-deleted to included classes, or would not realize the benefit. It is not clear if the add-delete action would have any fiscal impact on the agency other than the short-term workload for human resources."⁵²

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

⁴⁸ Section 121.71(3), F.S.

⁴⁹ Ch. 112, part VII, F.S., 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.

⁵⁰ DMS Analysis at 3.

⁵¹ *Id.*

⁵² APD Analysis at 1.