

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 821 Retirement
SPONSOR(S): Precourt
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Government Efficiency & Accountability Council		Cámara	Cooper
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is the primary retirement plan for most state and local public employees, offering a benefit plan that provides retirement, disability and death benefits to its beneficiaries. The FRS is divided into five membership classes: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected Officers' Class, and Senior Management Service Class.

This bill creates a new class in the FRS called the Qualifying Injured Special Class for certain Special Risk Class members who suffer a "qualifying injury" in the line of duty that does not render them "totally and permanently disabled," but who due to such injury, can no longer be employed in the Special Risk Class position held at the time of the injury.

The bill provides a definition for "qualifying injury," and would allow affected members to continue accruing credit toward retirement at the Special Risk Class value while remaining employed, in a different position, with the same employer at the time of the injury.

This bill requires an actuarial special study to determine its fiscal impact.

The bill creates an increase in expenditures by those local governments who have employees affected by the bill and who are compulsory members of the FRS; therefore, the bill appears to meet the criteria for a mandate under the provisions of section 18(a), article VII of the State Constitution. The bill applies to state and local governments and therefore appears to apply to all persons similarly situated; however, the bill does not contain the required statement regarding its fulfilling an important state interest. As such, *the bill would require a two-thirds vote for passage*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill creates the Qualifying Injured Special Class of the Florida Retirement System.

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

Special Risk Class

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. 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 FL Dept. of Mgmt Svc, HB 81 (2007) Substantive Bill Analysis (on file with dept. and the Committee on State Affairs) at 3. [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).

creditable service.¹² Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹³ 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, 2007.¹⁴

Special Risk Class membership includes: law enforcement officers, correctional officers, and firefighters;¹⁵ emergency medical technicians and paramedics;¹⁶ community-based correctional probation officers;¹⁷ certain employees of correctional or forensic facilities or institutions;¹⁸ youth custody officers;¹⁹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²⁰

Disability benefits available to FRS members

The FRS provides disability benefits for its active members who are totally and permanently disabled from useful employment. Any member of the FRS who is totally and permanently disabled²¹ 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 disability²² benefits.²³ For Special Risk Class members, the in-line-of-duty disability benefit threshold is 65 percent of the average final compensation²⁴ (AFC) as of the disability retirement date.²⁵ FRS members who are injured in the line of duty, but whose injuries do not render them "totally and permanently disabled" from "useful and efficient service" are not entitled to disability benefits under the FRS.

¹² 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.

¹³ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁴ 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).

¹⁵ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁶ Ch. 99-392, L.O.F., s. 23.

¹⁷ Ch. 2000-169, L.O.F., s. 29.

¹⁸ *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).

¹⁹ Ch. 2001-125, L.O.F., s. 43.

²⁰ 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).

²¹ Section 121.091(4)(b), F.S., defines "total and permanent disability": A member shall be considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.

²² Section 121.021(13), F.S., defines "disability in line of duty": An injury or illness arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440, F.S., may also be used.

²³ Section 121.091(4)(a)1., F.S.

²⁴ 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. For in-line-of-duty disability benefits, if less than 5 years of creditable service have been completed, the term "average final compensation" means the average annual compensation of the total number of years of creditable service.

²⁵ Section 121.091(4)(f)1.b., F.S.

Proposed Changes

This bill creates the Qualifying Injured Special Risk Class. Membership in this new class is available to Special Risk Class members employed in the categories of law enforcement, firefighting, and criminal detention positions who suffer a disability in the line of duty due to a qualifying injury. The injury must render them unable to perform the duties of their former Special Risk Class position, but allow them to work in a new position, for the same employer, after recovery.

The bill provides that the purpose of this new class is to address situations in which a special risk member does not qualify for disability retirement benefits but, due to a qualifying injury, will suffer economic deprivation due to the loss of future benefit accruals at the special risk membership rate. The new class established by this bill would allow affected members to continue accruing credit toward retirement at the Special Risk Class value while remaining employed in a different position with the same employer at the time of the injury.

This bill defines the term “qualifying injury” to mean an injury suffered in the line of duty, as certified by the member’s employing agency, to a Special Risk Class member whose injury does not result in “total and permanent disability” as defined in s. 121.091(4)(b), F.S. An injury is not a qualifying injury:

- Unless the injury is a physical injury to the member’s physical body resulting in a loss, or loss of use, of one or both arms, legs, hands, or feet; or
- If the member is no longer employed by the same employer as when he or she was injured.

Upon ceasing employment with the employer for whom he or she was providing special risk services on the date the injury occurred, the member’s injury is no longer considered a “qualifying injury,” thus terminating membership in this new class as of that date.

Eligibility requirements for membership in the Qualifying Injured Special Risk Class are as follows:

- The member must be an active participant in the Special Risk Class at the time of the qualifying injury and must not be receiving disability retirement benefits.
- Two licensed medical physicians, one of whom is a primary treating physician of the member, must certify the existence of the physical injury and medical condition that constitute a qualifying injury and that the member has reached Maximum Medical Improvement (MMI) after July 1, 2007. The certifications from the licensed medical physicians must include six criteria:
 - The injury to the special risk member has resulted in a physical loss or loss of use of one or both arms, legs, hands, or feet.
 - The physical loss or loss of use is total and permanent, except in the event of a physical injury to the member’s brain, in which event the loss of use is: permanent and total with respect to at least one hand or foot; or permanent with at least 75-percent loss of motor function with respect to at least one arm or leg.
 - The physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.
 - Notwithstanding the physical loss or loss of use, the individual is able to perform the essential job functions required by the member’s new position.
 - Use of artificial limbs is either not possible or does not alter the member’s ability to perform the essential job functions of the member’s position.
 - The physical loss or loss of use of one or both arms, legs, hands, or feet is a direct result of a physical injury and not of any mental, psychological, or emotional injury.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to revise definitions.

Sections 2 and 3 make conforming changes.

Section 4 creates s. 121.0517, F.S., to create the Qualifying Injured Special Risk Class within the FRS.

Section 5 amends s. 121.052, F.S., to allow sheriffs upon assuming office to have a period of 6 months to elect to remain in the Qualifying Injured Special Risk Class or elect membership in the Elected Officers' Class.

Section 6 amends s. 121.055, F.S., to authorize a person appointed to a position in the Senior Management Service Class who is a member of the Qualifying Injured Special Risk Class to remain in the latter class.

Sections 7 and 8 make conforming changes.

Section 9 amends s. 121.4501, F.S., to provide the benefit commencement age for members of the Qualifying Injured Special Risk Class.

Section 10 amends s. 121.71, F.S., to provide for employer retirement contribution rates for the Qualifying Injured Special Risk Class.

Section 11 amends s. 121.72, F.S., to provide gross compensation percentages for the Qualifying Injured Special Risk Class for allocations from the FRS Contributions Clearing Trust Fund for optional retirement program participant accounts.

Section 12 amends s. 121.73, F.S., to provide gross compensation percentages for the Qualifying Injured Special Risk Class for allocations from the FRS Contributions Clearing Trust Fund for optional retirement program participant disability coverage.

Section 13 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

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:

The provisions of HB 821 require an actuarial special study to determine the fiscal impact of this change and to establish the required contribution rate to fund these benefits in an actuarially sound manner as required under Article X, Section 14 of the Florida Constitution and Part VII, chapter 112, F.S. The bill presumes that providing the Special Risk Class contribution rate will actuarially fund for future benefit accruals because the FRS employer would still be required to pay the Special Risk Class contribution rate for any employee whose membership changed from the Special Risk Class to the Qualifying Injured Special Risk Class due to the enactment of this proposed bill.

This bill includes no express intent that its provisions be retroactively applied and does not address the unfunded liability that would accrue if the previous service of members that could have been placed in the Qualifying Injured Special Risk Class prior to the July 1, 2007 effective date of this bill were covered. As long as the bill is applied prospectively only, the prospective funding for benefits accrued in this class on or after the effective date will be properly funded when the rate established by an actuarial special study is enacted with the creation of this class. Any changes to the demographics and actuarial experience of the Special Risk Class, the Qualifying Injured Special Risk Class, or other membership classes resulting from this bill would be reflected in future actuarial valuations and experience studies of the FRS.²⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is expected to result in an increase in expenditures by those local governments who have employees affected by the bill and who are compulsory members of the Florida Retirement System, therefore the bill appears to meet the criteria for a mandate under the provisions of section 18(a), article VII of the State Constitution. The bill applies to state and local governments and therefore appears to apply to all persons similarly situated, complying with one of the conditions of section 18(a), article VII of the State Constitution; *however, the bill does not contain the required statement regarding its fulfilling an important state interest. As such the bill will require a two-thirds vote for passage.*

2. Other:

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.²⁷ The provisions of this bill require an actuarial special study to establish the required contribution rate to fund these benefits in an actuarially sound manner. *Therefore, this bill does not appear to satisfy the requirements of article X, section 14 of the State Constitution.*

B. RULE-MAKING AUTHORITY:

None.

²⁶ DMS Analysis at 8-9.

²⁷ 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 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Management Services:

- This bill is scheduled to take effect July 1, 2007. It would not be possible to make necessary changes to the system database, update publications, and develop the enrollment/reporting requirements for employers to properly implement this major plan change without reasonable lead time. Also, there would be a large amount of administrative costs for a very small number of people that would qualify for this new class of membership.
- Employers who have employees that would qualify for this new class could establish a separate retirement program for their employees for the same service within their own agency to cover any economic loss suffered by their employees who would qualify for benefits under this bill. This would parallel the intent of the bill since membership in the Qualifying Injured Special Risk Class would be limited to continued employment with the same employer at the time of injury. The employer would be providing the additional benefits only if their own employees were affected, rather than amending the FRS to make it a requirement for all agencies with Special Risk Class members described in this bill.
- This bill does not address the issue of whether a person can become a member of the Qualifying Injured Special Risk Class, terminate employment, then be rehired later by the same employer and be reenrolled in the Qualifying Injured Special Risk Class.
- This bill is specific that if a member sustains a qualifying injury with one employer and goes to work for another employer they would not be eligible for enrollment in the Qualifying Injured Special Risk Class. Once the member lost eligibility to hold a position in the Special Risk Class, regardless of cause, the retirement benefit being earned reflects the benefit of the class of membership for the employee's new position. Being compensated for loss of future earnings or benefits from a work related injury is generally handled through workers compensation and not through the retirement system.
- This bill adds a new disability standard and provision for the Florida Retirement System. This will create additional workload for the Division of Retirement staff.
- The retirement contribution cost for each employer using this provision will be greater than the rate would be if the position was filled by another employee who is assigned to the Regular Class.²⁸

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

²⁸ DMS Analysis at 2-3.