

STORAGE NAME: h0149s1.go

DATE: February 13, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 149

RELATING TO: The Florida Retirement System (Addition of correctional probation officers to the Special Risk Class)

SPONSOR(S): Committee on Governmental Operations & Representative Fasano

STATUTE(S) AFFECTED: ss. 121.021 & 121.0515

COMPANION BILL(S): SB 448(i)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (2) GENERAL GOVERNMENT (FISCAL)
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 149, if enacted, will add correctional probation officers to the Special Risk Class of the Florida Retirement System (FRS). Presently, Special Risk Class membership is limited to firefighters, law enforcement officers, and correctional officers.

As a result of this proposed change, eligible correctional probation officers will receive enhanced benefits. Rather than accruing retirement credit at the current rate of 1.6 percent per year, they will accrue credit at an accelerated rate of 3 percent annually. In addition, correctional probation officers will be permitted to opt for normal retirement after 25 years of special risk service, or upon reaching age 55. They must currently complete 30 years of regular service or reach age 62 before they are eligible for normal retirement.

CS/HB 149, if enacted, will affect those correctional probation officers whose primary duties involve close contact with inmates, probationers, and parolees. It will also make the supervisors of such employees eligible for the Special Risk Class. In addition, CS/HB 149 expands the Special Risk Class to include parole circuit and deputy circuit administrators. However, this bill excludes administrative support personnel from special risk membership.

Based upon the FRS contribution rates which took effect July 1, 1996, the cost for each affected employee will increase by an additional 9.67 percent of pay. This equates to \$2,418 per year for an employee who earns \$25,000 per year. According to calculations by the Division of Retirement, CS/HB 149 will add an additional cost to the Department of Corrections in excess of \$11 million annually.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The FRS is a statewide, defined benefit pension plan. It includes five membership classes: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected State and County Officer's Class, and Senior Management Service Class. Approximately 90 percent of FRS members belong to the Regular Class, while only 9 percent belong to the Special Risk Class.

Currently, correctional probation officers belong to the FRS Regular Class. As members of the Regular Class, they are subject to a normal retirement age of 62 or, alternatively, they may retire upon completion of 30 years of service. They accrue retirement credit at a rate of 1.6 percent annually. To fund these benefits, employers must contribute an amount equal to 16.77 percent of each employee's pay.

The Special Risk Class provides greater credit (3 percent) than the Regular Class (1.6 percent) for each year worked. This advantage helps offset the shorter careers served by special risk employees. The Special Risk Class also permits normal retirement after 25 years of service, or at age 55. Regular Class employees must wait an additional five to seven years before they can opt for normal retirement.

Although CS/HB 149, if enacted, will permit certain supervisory personnel to join the Special Risk Class, this provision is similar to current law which grants special risk membership to the supervisors of firefighters, correctional officers, and law enforcement officers. See s. 121.0515 (2), F.S.

In 1970, the Legislature established the Special Risk Class of the FRS. It created the Special Risk Class because it recognized that certain types of employment demand physical prowess, extraordinary agility, and mental acuity. The Legislature determined that, as a result of the normal aging process, older persons might not be able to perform strenuous duties without risk to themselves or others. It thus envisioned the Special Risk Class as a mechanism which would encourage such employees to retire early. See s. 121.0515 (1), F.S.

If the Legislature adds correctional probation officers to the Special Risk Class, its action may conflict with the intent behind the creation of the class. Admittedly, these employees frequently deal with violent inmates and parolees. They must also meet training requirements similar to those imposed on correctional officers. However, these factors are not the most determinative ones in deciding whether correctional probation officers should receive special risk status. As explained above, the Legislature created the Special Risk Class to prevent declining performance, not to compensate those who perform hazardous duties. **No evidence has been submitted to suggest that the job performance of correctional probation officers is adversely affected by age, prior to normal retirement. Also, the primary duties of correctional probation officers do not constitute "custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported," as does the duties and responsibilities of correctional officers.** See s.121.0515 (2) (c), F.S.

It should be noted that all FRS members, whether Special Risk Class or Regular Class, are entitled to the same in-line-of-duty disability and death benefits.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 149 amends s. 121.021, F.S., which provides definitions related to the FRS. Specifically, CS/HB 149 expands the definition of "special risk member" to include correctional probation officers. It also amends s. 121.0515, F.S., to provide criteria for determining when a correctional probation officer should be accorded membership in the Special Risk Class.

Correctional probation officers will receive enhanced retirement benefits as a result of the proposed changes. Consequently, the Department of Corrections will be required to make higher retirement contributions as a percentage of payroll. For each affected employee, the department will be required to pay an additional 9.67% in retirement costs. Correctional probation officers, the supervisors of such officers, and probation and parole circuit and deputy circuit administrators will receive an 88 percent improved benefit for service after January 1, 1998. This represents the difference in value of the Special Risk Class benefit over the Regular Class benefit.

Expanding the Special Risk Class to include correctional probation officers, the supervisors of such officers, and probation and parole circuit and deputy circuit administrators will open the door for Special Risk Class coverage requests from other groups who consider their positions dangerous, but who also do not comply with the current legislative intent or Special Risk Class membership criteria. Other groups that have sought Special Risk Class coverage in the past include paramedics and emergency medical technicians, health care providers in the prison setting, assistant state attorneys, certain investigators who are not law enforcement officers, and forensic unit workers.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This bill does not grant any additional authority to make rules or adjudicate disputes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

If this bill is enacted, the Division of Retirement will have a slightly increased workload, because it will be required to process the qualifications of an expanded Special Risk Class. However, the Division has reported that no additional personnel or resources will be required to administer the provisions of CS/HB 149.

- (3) any entitlement to a government service or benefit?

This bill does not reduce or eliminate an entitlement to a government service or benefit. Conversely, it increases an entitlement to enhanced retirement benefits.

- b. If an agency or program is eliminated or reduced:

Not Applicable.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not Applicable.

- (3) how is the new agency accountable to the people governed?

Not Applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

This bill does not directly increase anyone's taxes, however, it could indirectly impact a future tax increase if funds are not available through normal growth in revenues to pay for the costs of the enhanced benefits provided under this legislation. This bill requires that the Department of Corrections pay to the FRS an additional 9.67 percent of the payroll costs of each affected correctional probation officer, supervisor, and administrator to fund the enhanced benefits.

- b. Does the bill require or authorize an increase in any fees?

This bill does not require or authorize an increase in any fees.

- c. Does the bill reduce total taxes, both rates and revenues?

This bill does not reduce total taxes, either through rate reductions or reductions in total revenues.

- d. Does the bill reduce total fees, both rates and revenues?

This bill does not reduce any fees, either through a reduction in a fee or a reduction in revenue that a fee generates.

- e. Does the bill authorize any fee or tax increase by any local government?

This bill does not authorize any increase in a fee or tax by any local government.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

This bill does not reduce or eliminate an entitlement to government services or subsidy. Conversely, it increases an entitlement to enhanced retirement benefits.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

The costs of these enhancements will not be borne by the beneficiaries of these enhancements, but will come from funds appropriated by the Legislature to the Department of Corrections.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill will increase the allowable options of individuals. The correctional probation officers will be able to make a decision to take normal retirement after 25 years of special risk service, or upon reaching age 55. Currently, they must complete 30 years of regular service or reach age 62 before they are eligible for normal retirement.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

This bill does not prohibit, or create new government interference with, any presently lawful activity.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill may provide a service to families by allowing the affected correctional probation officer to take retirement five to seven years earlier with an enhanced benefit.

- (1) Who evaluates the family's needs?

The individual affected correctional probation officer.

- (2) Who makes the decisions?

The individual.

- (3) Are private alternatives permitted?

Not Applicable.

- (4) Are families required to participate in a program?

The Department of Corrections is currently a participating employer in the Florida Retirement System. Currently, correctional probation officers belong to the Regular Class of the FRS.

- (5) Are families penalized for not participating in a program?

Not Applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

- (2) service providers?

- (3) government employees/agencies?

This bill continues to vest control and administration of the Florida Retirement System with government employees and agencies subject to laws enacted by the Legislature.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 121.021(15)(b), F.S. It changes the definition of "special risk member" to include correctional probation officers.

- Section 2. Adds subsection (d) to s. 121.0515 (2), F.S. It expands the Special Risk Class to include qualified correctional probation officers. It provides guidelines for determining whether correctional probation officers are qualified to participate in the Special Risk Class. Finally, it grants special risk membership to certain supervisory personnel and to probation and parole circuit and deputy circuit administrators, and denies membership to administrative support personnel.
- Section 3. Adds a declaration of an important state interest.
- Section 4. Provides that the act will take effect January 1, 1998.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

If enacted, CS/HB 149 will affect approximately 3,627 employees of the Department of Corrections. Employer contribution rates for each affected employee will increase from 16.77 percent of that employee's salary to 26.44 percent. This represents a rate increase of approximately 58 percent for each affected employee. These **State costs**, as estimated by the Florida Division of Retirement, are reflected in the table below.

1/98-6/99 (6 months)	7/98-6/99 (Fiscal Year)	7/99-6/00 (Fiscal Year)
\$5,576,710	\$11,488,023	\$11,832,664*

*This cost estimate originated with the Department of Corrections.

The Division of Retirement will have a slightly increased workload, because it will be required to process the qualifications of an expanded Special Risk Class. However, the division has reported that no additional personnel or resources will be required to administer the provisions of CS/HB 149.

3. Long Run Effects Other Than Normal Growth:

If the Legislature enacts CS/HB 149 and includes correctional probation officers within the Special Risk Class, it may open the door to various other claims. At one time or another, prison nurses and medical personnel, forensic ward workers, police dispatchers, lifeguards, prison administrators, assistant state attorneys, certain investigators who are not law enforcement officers, emergency medical technicians,

paramedics, and fire helicopter pilots have all sought inclusion in the Special Risk Class. Thus far, these groups have all been denied membership.

4. Total Revenues and Expenditures:

See item 2 above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None. There are no local government positions that qualify for the Special Risk Class under this bill.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

This bill provides prospective Special Risk Class coverage only, effective January 1, 1998. Service between October 1, 1978 and December 31, 1997, will not count towards a special risk normal retirement date. It appears that the state Department of Corrections is the only employer with affected positions. The Department of Corrections, if this bill is enacted, will pay an additional 9.67% (as of January 1, 1998) of the salaries of its 3,627 affected employees. This is the difference between the current Regular Class retirement contribution rate of 16.77% and the Special Risk Class rate of 26.44%.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

This bill complies with the requirements of Article X, Section 14, of the Florida Constitution and Chapter 112, Part VII, Florida Statutes.

The Division of Retirement takes no position regarding this bill since there is no adverse fiscal or actuarial impact on the FRS Trust Fund.

The legitimate state purpose contained in section 3 of the bill is unnecessary and does not directly relate to the substance of the bill.

In the 1996 Session, HB 359, which incorporated the substance of current HB 149, was passed by the Committee on Governmental Operations on March 27, 1996. HB 359 died in the Committee on Appropriations on May 4, 1996.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Three technical amendments to HB 149 were adopted by the Committee on Governmental Operations on February 12, 1997. The first amendment removed the words "must be" on page 3, line 24, of the bill so that the sentence reads "...probation officer and be certified, or required to be..."

The second amendment inserted the word "provided" on page 3, line 31, after the word "responsibilities" so that the sentence reads "...have such responsibilities; **provided**, however, administrative support..."

Amendment number three, on page 4, lines 3 through 5, removed all of said lines and inserted the following language: "...legal, and personnel, **shall** not **be** included; **however**,

STORAGE NAME: h0149s1.go

DATE: February 13, 1997

PAGE 10

probation and parole circuit and deputy circuit administrators **shall participate** in the Special Risk Class.”

A motion was passed to report HB 149 as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Jimmy O. Helms

Jimmy O. Helms