

**STORAGE NAME:** h0389a.ft

**DATE:** April 11, 1997

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
FINANCE AND TAXATION  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 389

**RELATING TO:** The Florida Retirement System (Addition of assistant state attorneys to the Special Risk Class)

**SPONSOR(S):** Representatives Martinez and Villalobos

**STATUTE(S) AFFECTED:** s.121.021

**COMPANION BILL(S):** SB 802 (s)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 3 NAYS 2
- (2) CRIME AND PUNISHMENT YEAS 8 NAYS 0
- (3) FINANCE AND TAXATION YEAS 7 NAYS 4
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

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**I. SUMMARY:**

If enacted, HB 389 will expand the Special Risk Class of the Florida Retirement System (FRS) to include assistant state attorneys. Presently, Special Risk Class membership is limited to firefighters, law enforcement officers, and correctional officers. An assistant state attorney would not qualify as a law enforcement officer within the meaning of the statute which provides for the accrual of retirement credit. Section 212.0515, F.S. See Amendment Section.

As a result of this proposed expansion, assistant state attorneys 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, assistant state attorneys will be permitted to opt for 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.

Overall, HB 389 will increase state expenditures. Based upon the FRS contribution rates which took effect July 1, 1996, the cost for each affected employee will equate to an additional 9.67 percent of pay. This will total an additional \$4,481 per year for an employee earning \$46,336 annually -- the 1996 average salary for assistant state attorneys. Because the affected FRS members are all state employees, HB 389 will cost the State of Florida an estimated \$7 million annually. See Amendment Section.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The FRS is a statewide, defined benefit pension plan. It includes five membership classes: The 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.

Current law has specific requirements for membership in the Special Risk Class. A special risk member is defined as any officer or employee employed as a law enforcement officer, firefighter, or correctional officer who complies with the criteria in s. 121.0515 (2), F.S., and is approved by the Division of Retirement.

Presently, assistant state attorneys belong to the FRS Regular Class. As members of the Regular Class, they are subject to a normal retirement age of 62, although they may also opt for normal retirement upon completion of 30 years of service. Regular Class members 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 contribution rate as of July 1996 is 26.44 percent.

Section 121.0511, F.S. provides that the intent of the Florida Legislature in establishing the Special Risk Class is to protect the retirement benefits of employees in these positions by providing an earlier retirement age and higher value for each year of service. The reasoning was that this work requires extraordinary agility and mental acuity, and persons in these positions, due to diminishing physical or mental capabilities, may find they are unable to continue performing their duties to normal retirement without risk to the health and safety of themselves and the public. Accordingly, these members are allowed to retire with full benefits at age 55 and are given a higher value per year, currently 3 percent, to provide benefits equal to or greater than those a Regular Class member would earn during a longer, 30-year career.

B. EFFECT OF PROPOSED CHANGES:

HB 389 amends s. 121.021, F.S., which provides definitions related to the FRS. Specifically, HB 389 expands the definition of "special risk member" to include assistant state attorneys. It will grant special risk membership to all assistant state attorneys.

Assistant state attorneys will receive enhanced benefits as a result of the proposed changes. At the same time, the Justice Administrative Commission, which administers the payroll for assistant state attorneys, will incur greater costs.

For each of the 1,640.50 affected positions, the Justice Administrative Commission will be required to contribute an amount equal to 26.44 percent of their salary. This represents a 9.67 percent increase over Regular Class contributions of 16.77 percent. As the fiscal analysis section will show, state expenditures will increase by an estimated \$7 million for the first year, with further increases thereafter. See Amendment Section.

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?

No.

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

The Division of Retirement will be burdened with a slightly increased workload because it will have to examine the qualifications of members of an expanded Special Risk Class.

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

Assistant state attorneys will be entitled to a significantly increased retirement benefit (3 percent per year rather than 1.6 percent). See Amendment Section.

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

This bill does not reduce or eliminate an agency or program.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No, however, employer retirement contributions will be increased by 9.67 percent for affected employees. This could indirectly help necessitate a need for increased taxes.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No, conversely, assistant state attorneys will receive a significantly increased retirement benefit (3 percent per year rather than 1.6 percent).

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

No.

4. Individual Freedom:

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

No.

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

No.

5. Family Empowerment:

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

This bill does not purport to provide services to families or children.

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

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 121.021 (15) (b), F.S. It expands the definition of "special risk member" to include assistant state attorneys.

Section 2. Provides that the act will take effect October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

FY 1997-98 (9 months) \$5,585,119

FY 1998-99 \$7,555,529

FY 1999-00 \$7,785,285

\*(Note: These figures are based on information provided by the Justice Administrative Commission to the Division of Retirement). See Amendment Section.

3. Long Run Effects Other Than Normal Growth:

None.

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.

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:**

If enacted, HB 389 will increase employer contribution rates for each affected employee from 16.77 percent to 26.44 percent. This represents an increase of approximately 58 percent in the state's retirement contributions for each affected employee. There are reportedly 1,640.50 affected positions as of January 1997. It is estimated that increased costs to the state will total in excess of \$7 million annually. See Amendment Section.

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:

If the Legislature includes assistant state attorneys within the FRS Special Risk Class, other similarly situated groups may seek membership or renew their efforts to gain membership. Public defenders, for example, fulfill parallel roles in the state's criminal justice system. It will be difficult to articulate a rationale for including assistant state attorneys while excluding public defenders. An amendment traveling with the bill adds public defenders to the bill.

At one time or another, prison nurses and medical personnel, forensic ward workers, prison administrators, police dispatchers, lifeguards, fire helicopter pilots, emergency medical technicians, paramedics (HB 123 extends the Special Risk Class to emergency medical technicians and paramedics), and correctional probation officers have all sought inclusion in the Special Risk Class. Some of these groups seem to have at least an equal claim to membership as do assistant state attorneys. Yet, in the past, the Legislature has denied membership to these groups.

The Division of Retirement has taken no position on this bill since it has no adverse fiscal impact on the FRS Trust Fund. The Justice Administrative Commission will be required by law (s. 121.071, F.S.) to increase the rate of contributions for all affected assistant state attorneys by an additional 9.67 percent, the difference between the Regular Class and Special Risk Class contribution rates.

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

**Legislative History:** In the 1996 Session, HB 839, which would have included assistant state attorneys in the Special Risk Class of the FRS, was voted unfavorable by a vote of 5 yeas and 5 nays. The vote by which the bill failed was reconsidered and left pending and HB 839 died in the Committee on Governmental Operations on May 4, 1996.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted by the Committee on Finance and Taxation and is traveling with the bill. The amendment expands the special risk class of the Florida Retirement System to include assistant public defenders. There are approximately 1,100 assistant public defender positions in the state. The amendment increases the fiscal impact to the state by (\$5.2) million.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Jimmy O. Helms

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AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

J. Willis Renuart

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AS FURTHER REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

Sharon A. Zahner

Keith G. Baker, Ph.D.