

STORAGE NAME: h0097

DATE: January 11, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
ANALYSIS**

BILL #: HB 97

RELATING TO: Keith Ward Act/FRS

SPONSOR(S): Representative Crady and Representative Kilmer

COMPANION BILL(S):

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

- (1) CORRECTIONS
- (2) GOVERNMENT OPERATIONS
- (3) GENERAL APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Presently, Special Risk Class membership is limited to firefighters, law enforcement officers and correctional officers. HB 97 will create the Keith Ward Act, which will add correctional probation officers, the supervisors of such officers, and probation and parole circuit and deputy circuit administrators to the Special Risk Class of the Florida Retirement System (FRS), effective January 1, 2000.

The fiscal impact of this bill is estimated by the Department of Corrections for FY 1999-2000 to be \$10,916,911.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Retirement System (FRS) is a statewide, defined benefit pension plan covering the employees of state, county, municipal and special district units of government. The FRS has five classes of membership: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected State and County Officer's Class, and Senior Management Service Class.

According to the Department of Corrections, there are currently 3,565 correctional probation officers. These staff currently belong to the Regular Class. Members of the Regular Class are subject to a normal retirement age of 62 or upon completion of 30 years of service. Regular Class members accrue retirement credit at a rate of 1.6 to 1.68% of the average final compensation for each year of service. To fund these benefits, employers must contribute an amount equal to 15.51% of each employee's pay (effective July 1, 1998).

Current law provides specific eligibility requirements for membership in the Special Risk Class. Membership is restricted by statute and is currently composed of law enforcement personnel, firefighters and correctional officer personnel that have sworn responsibilities in the apprehension, detention, detection and surveillance of criminal law violators. The class also includes supervisors of such employees. See §121.0515, F.S.

Members of the Special Risk Class achieve normal retirement at the age of 55 or after 25 years of service. Special Risk Class members also accrue retirement credits at the higher rate of 3% of average final compensation for each year of service. These advantages are intended to help offset the shorter careers served by special risk employees. To fund Special Risk Class retirement benefits, employers must contribute 24.38% of each employee's pay (effective July 1, 1998).

In establishing the Special Risk Class, the Legislature recognized that an essential function of some positions is the performance of physically demanding work, or work that requires extraordinary agility and mental acuity. In these positions, the normal aging process may leave employees unable to continue their duties without risking the health and safety of the public, their coworkers, or themselves. The Legislature thus envisioned the Special Risk Class as a mechanism which would allow employees at such a "special risk" of burn out to retire early without financial penalties. See §121.0515(1)F.S.

Prior to October 1, 1978, correctional probation officers were included in the Special Risk Class. However, this group of employees was removed, effective October 1, 1978, because they failed to meet the revised certification requirements in §943.1395, F.S., and their primary duties did 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.

According to the Department of Corrections, there were 13 batteries upon correctional probation officers in FY 1997-98. In addition, there are about 200 verbal threats made against correctional probation officers each year. According to the department, correctional probation officers often are confronted with dangerous situations while

performing their assigned duty providing supervision of offenders in the community. Correctional probation officers assist law enforcement officers when arresting offenders in the probation office or in the community. In addition, correctional probation officers use their own personal vehicle to perform their field supervision responsibilities. Vehicular accidents do occur and vandalism to their vehicles is not uncommon.

On March 10, 1998, the Florida Police Benevolent Association filed a lawsuit against Florida's Department of Management Services' Division of Retirement related to correctional probation officers not covered under the Special Risk Class status. The suit argues that since correctional probation officers are required to be certified and receive training to perform duties similar to those duties required by law enforcement officers, they ought to be under Special Risk Class status. This suit is currently pending.

In its 1998 Annual Report, the Florida Corrections Commission discusses this issue in detail. The commission recommends that correctional probation officers assigned to major institutions be reclassified as "correctional classification officers" and that only these staff become eligible for Special Risk Class status, not all correctional probation officers. The commission based its recommendation on the rationale that granting all correctional probation officers Special Risk Class status may create an expectation that other professional staff working in institutions who provide inmate supervision and counseling, such as medical staff, psychologist, and teachers, who currently are not, but should be under the Special Risk Class status.

The Special Risk Class criteria currently addresses only the need of a group of employees to retire earlier than other employees due to the adverse effects of aging upon their ability to perform their job duties. The criteria do not address a desire to reward employees with hazardous jobs. The Legislature created the Special Risk Class to prevent declining performance, not to compensate those who perform hazardous duties. 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:

The bill will amend §121.021, which provides definitions for the Florida Retirement System Act. Specifically, the bill will expand the definition of "special risk member" to include correctional probation officers, the supervisors of such officers, and probation and parole circuit and deputy circuit administrators, effective January 1, 2000.

The bill will also amend §121.0515, F.S., which designates the criteria for membership in the Special Risk Class, to provide criteria for determining when a correctional probation officer should be afforded membership. The bill will include correctional probation officers that:

1. Are certified in compliance with § 943.1395, and
2. Have primary duties which include supervised custody, surveillance, control, investigation, and counseling of assigned inmates, probationers, parolees, or community controllees within institutions or the community, or,
3. Supervise a member or members who have such responsibilities.

Although the bill exempts administrative support personnel, probation and parole circuit and deputy circuit administrators are included in the Special Risk membership.

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?

Although the bill may slightly increase the workload of the Division of Retirement because it will be required to process the qualifications of an expanded Special Risk Class, the Division has reported that no additional personnel or resources will be required to administer the bill.

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

The bill will increase the group of people who are entitled to enhanced retirement benefits.

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

(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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

Correctional probation officers will not bear the cost of the enhanced retirement system. The expanded system will be supported by 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?

The bill will allow correctional probation officers and their supervisors to retire early without economic penalty.

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

N/A

5. Family Empowerment:

a. If the bill purports 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?

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill will amend §121.021, F. S. and § 121.0515, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates a short title, the “Keith Ward Act.”

Section 2. Amends §121.021(15)(b) to include correctional probation officers in the membership of the Special Risk Class of the Florida Retirement System.

Section 3. Amends §121.0515(2) to include criteria for correctional probation officers to be included as Special Risk Members. Requires that such officers to be certified, or be required to be certified, in compliance with §943.1395, F.S., and have primary duties and responsibilities including supervised custody, surveillance, control, investigation, and counseling of assigned inmates, probationers, parolees, or community controllees within institutions or the community, of by the supervisor of such an officer. Providing that such criteria include probation and parole circuit and deputy circuit administrators, but exclude administrative support personnel.

Section 4. States that the Legislature has determined that the provisions of this act fulfill an important state interest.

Section 5. Provides an effective date of January 1 of the year following enactment.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

\$ 10, 916,911 in FY 99-00

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See "Recurring Effects".

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:

The \$10,916,911 cost in FY 1999-2000 to the Department of Corrections is based on the difference in employer contributions between regular class (15.51%) and special risk class (24.38%). Therefore, the cost to the Department of Corrections would be an additional 8.87% of the salaries of the 3,565 affected employees.

The Division of Retirement has stated there will be no fiscal impact upon the Florida Retirement System Trust Fund.

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

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A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does 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 does not reduce the revenue raising authority of local governments.

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

This bill does not reduce the percentage of state shared tax with local governments.

V. **COMMENTS:**

This bill provides only prospective Special Risk Class coverage effective January 1, 2000. Service between October 1, 1978 and December 31, 1998, will not count towards a special risk normal retirement date.

Granting correctional probation officers Special Risk Class membership may create an expectation of such membership for other professionals working within institutions who provide inmate supervision and counseling but who are not currently eligible, such as classroom instructors or psychologists. It may also 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.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

None.

VII. **SIGNATURES:**

COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

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