

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill could cause local governments to increase local taxes in order to cover the retirement benefit proposed by this bill.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to more than 630,000 active and 226,000 retired members and beneficiaries of its more than 800 government employers.¹ The active membership of 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. Each class is separately funded based upon the costs attributable to the members of that class.

Special Risk Class

The Special Risk Class was created to recognize that persons employed in certain categories of law enforcement and firefighting must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. As persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their coworkers. In response, the Legislature established the Special Risk Class to permit such employees to retire at an earlier age and with less service without suffering economic deprivation.²

Special Risk Class membership differs from Regular Class membership in the following ways:

- A Special Risk Class member earns retirement credit at the rate of 3% of average final compensation for each year of service, as opposed to the 1.60% to 1.68% credit per year of service earned by a Regular Class member.
- A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 versus age 62) or with fewer years of service (25 years versus 30 years) than a Regular Class member.
- A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65% minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42% minimum option 1 benefit payment.³

Special Risk Class benefit improvements are funded by higher employer contributions.

Effect of Bill

The intent of the Special Risk Class is to provide an early retirement program for positions in corrections, law enforcement, and firefighting that may be more difficult to perform with advancing age, principally through the physical demands of the positions. The bill expands the membership of the

¹ Department of Management Services 2005 Substantive Bill Analysis, HB 215, January 27, 2005, at 4.

² Section 121.0515(1), F.S.

³ Department of Management Services 2005 Substantive Bill Analysis, HB 215, January 27, 2005, at 5.

Special Risk Class to include positions that may primarily be sedentary in nature,⁴ which is contradictory to the purpose of the Special Risk Class.

The bill expands the membership of the FRS Special Risk Class, beginning October 1, 2005, to include members employed by a law enforcement agency or medical examiner's office in a forensic discipline recognized by the International Association for Identification (association).⁵ The member must also qualify for membership in the association. In addition, the member's primary duties must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or the member must be the:

- Direct supervisor;
- Quality management supervisor; or
- Command officer.

The membership expansion does not apply to administrative support personnel.

Membership in the Special Risk Class is based upon specific positions. The requirement of being employed in a forensic discipline is not clear and is not defined in chapter 121, F.S. According to the Department of Management Services, the department would be required to define by rule the specific positions that would be impacted.⁶ Furthermore, if the association expands the list of forensic disciplines then the membership in the Special Risk Class could expand and the FRS could incur higher retirement costs that will be charged to the entire class.

The bill does not define "law enforcement agency" nor is it defined in chapter 121, F.S., thus requiring the department to define the term by rule in order to implement the provision.⁷

Finally, the bill provides a declaration of important state interest.

C. SECTION DIRECTORY:

Section 1 amends s. 121.0515, F.S., to expand the membership of the Special Risk Class.

Section 2 provides a declaration of important state interest.

Section 3 provides an October 1, 2005, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

Unknown. Effective October 1, 2005, FRS employers would pay an increased retirement contribution rate for their FRS employees who are affected by the bill. Division of Retirement records maintained for members of the FRS Regular Class do not include job descriptions, position

⁴ Sedentary positions might include laboratory technicians, polygraph operators, and document, fingerprint and weapons experts.

⁵ Forensic disciplines currently recognized by the association are bloodstain pattern identification, crime scene investigation, firearms/tool mark examination, footwear and tire track examination, forensic art, forensic laboratory analysis, forensic photography and electronic digital imaging, innovative and general techniques, latent print/fingerprint identification, polygraph, questioned documents, voice identification/acoustic analysis, forensic odontology, and ten print fingerprint. <http://www.theiai.org/membership>.

⁶ Department of Management Services 2005 Substantive Bill Analysis, HB 215, January 27, 2005, at 2.

⁷ *Id.*

titles, or duties. Therefore, it is not possible for the division to identify how many members would be affected by the class change, or to determine the resulting overall cost to state employers.⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

Unknown. Effective October 1, 2005, FRS employers would pay an increased retirement contribution rate for their FRS employees who are affected by the bill. Division of Retirement records maintained for members of the FRS Regular Class do not include job descriptions, position titles, or duties. Therefore, it is not possible for the division to identify how many members would be affected by the class change, or to determine the resulting overall cost to local government employers.⁹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The fiscal impact on the FRS Trust Fund could be minimal since Special Risk Class membership is only provided on a prospective basis. However, agency employers of the affected employees would be required to pay the Special Risk Class contribution rate instead of the Regular Class rate. The bill would add an unknown number of additional positions to the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience due to the provisions of this bill would be reflected in rates recommended by future actuarial studies of the FRS.¹⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires counties and municipalities to expend funds to implement its provisions. It is, however, exempt from the mandates restriction because it contains a statement of important state interest.

2. Other:

The bill appears to comply with the constitutional requirements.

Article X, s. 14, Florida Constitution

Since 1976, the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by

⁸ The association estimates that, as of March 2004, the bill would impact 850 FRS members. The Florida Department of Law Enforcement estimated that 409 persons within its agency would be impacted by the bill. Department of Management Services 2005 Substantive Bill Analysis, HB 215, January 27, 2005, at 2 and 6.

⁹ *Id.*

¹⁰ *Id.* at 7.

public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of chapter 112, F.S.

Article X, s. 14 of the Florida Constitution is implemented by statute under part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to "prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The terms "forensic discipline" and "law enforcement agency" are not defined in the bill, nor are they defined in chapter 120, F.S. According to the Department of Management Services, the bill does not provide enough of a basis to ensure the rules needed to implement the provisions would meet the legislative intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.