

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1165

Florida Retirement System

**SPONSOR(S):** Barreiro

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	_____	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Local Government Council</u>	_____	_____	_____
3) <u>Fiscal Council</u>	_____	_____	_____
4) <u>State Administration Council</u>	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

Medical examiners and certain forensic employees were added to the Special Risk Class in 2005. This bill permits these medical examiners and forensic employees to purchase additional retirement credit to upgrade their previous service in the Florida Retirement System to Special Risk Class service. The bill requires the contributions for upgrading previous service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest. The bill permits an employer to purchase upgraded credit on behalf of a member.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to have a fiscal impact on the revenues of the state or local governments. Yet, this bill does appear to have a fiscal impact on the expenditures of the state and local governments. The additional costs from this bill, as a result of the unfunded liability to the Florida Retirement System, are estimated at \$87,000 for the state and \$222,000 for local governments in Fiscal Year 2007.

*The bill appears to raise two potential constitutional issues: (1) the bill is expected to create an unfunded liability for the Florida Retirement System which may violate the provisions of section 14, Article X of the Florida Constitution; and (2) the bill does not appear to satisfy the requirements of section 18 of article VII of the Florida Constitution because the bill does not provide that it fulfills an important state interest.*

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the members of the Special Risk Class who may upgrade previous service to Special Risk Class service.

### B. EFFECT OF PROPOSED CHANGES:

#### Background on the Florida Retirement System

Chapter 121, Florida Statutes, 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.<sup>1</sup>

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.<sup>2</sup> The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.<sup>3</sup>

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.<sup>4</sup> Members of the FRS defined benefit plan belong to one of five membership classes:

Regular Class <sup>5</sup>	570,888 members	88.00%
Special Risk Class <sup>6</sup>	68,466 members	10.59%
Special Risk Administrative Support Class <sup>7</sup>	80 members	0.01%
Senior Management Service Class <sup>8</sup>	6,823 members	1.10%
Elected Officers Class <sup>9</sup>	2,122 members	0.30%

Each class is separately funded 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, Florida Statutes.<sup>10</sup>

#### Expansion of the Special Risk Class and Upgraded Service

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,<sup>11</sup> may need to retire at an earlier age with less service than other types of employees.<sup>12</sup> The only employees originally in the Special Risk Class were law enforcement

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<sup>1</sup> Fla. Stat. § 121.025 (2005).

<sup>2</sup> Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at <http://www.frs.state.fl.us/> (last visited Jan. 11, 2006).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Fla. Stat. § 121.021(12) (2005).

<sup>6</sup> Fla. Stat. § 121.0515 (2005).

<sup>7</sup> Fla. Stat. § 121.0515(7) (2005).

<sup>8</sup> Fla. Stat. § 121.055 (2005).

<sup>9</sup> Fla. Stat. § 121.052 (2005).

<sup>10</sup> See, e.g., Fla. Stat. 121.055(3)(a)1. (2005).

<sup>11</sup> Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

<sup>12</sup> *Id.*

officers, correctional officers, and firefighters.<sup>13</sup> Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics <sup>14</sup>
2000	Community-Based Correctional Probation Officers <sup>15</sup> Twenty-four types of employees of correctional or forensic facilities or institutions <sup>16</sup>
2001	Youth Custody Officers <sup>17</sup>
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline <sup>18</sup>

Another legislative trend has followed the dramatic expansion of the Special Risk Class: allowing members who have previous service in another class of the Florida Retirement System, usually the Regular Class, to purchase additional retirement credit to upgrade the previous service to Special Risk Class service. In 2001, the Legislature permitted emergency medical technicians and paramedics to purchase credit for upgraded service.<sup>19</sup> In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.<sup>20</sup>

#### Upgraded Service for Medical Examiners and Certain Forensic Employees

This bill permits medical examiners and certain forensic employees to purchase additional retirement credit to upgrade previous service in the Florida Retirement System to Special Risk Class service.<sup>21</sup> The bill requires the contributions for upgrading previous service to Special Risk Class service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest at a rate of 6.5 percent a year, compounded annually until the date of payment. The bill permits an employer to purchase upgraded credit on behalf of a member.

#### Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida 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

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<sup>13</sup> Ch. 78-308, Laws of Fla.

<sup>14</sup> Ch. 99-392, Laws of Fla., § 23.

<sup>15</sup> Ch. 2000-169, Laws of Fla. § 29.

<sup>16</sup> *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: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); 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.)

<sup>17</sup> Ch. 2001-125, Laws of Fla., § 43.

<sup>18</sup> Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (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). See also Int'l Ass'n for Identification at <http://www.theiai.org/> (last visited Mar. 27, 2006).

<sup>19</sup> Ch. 2001-235, Laws of Fla., § 6.

<sup>20</sup> Ch. 2002-273, Laws of Fla., § 16.

<sup>21</sup> Fla. HB 1165 (2006) (to the extent of the percentages of the member's average final compensation provided in section 121.091(1)(a)2, Florida Statutes).

provisions for funding the increase in benefits are made on a sound actuarial basis.<sup>22</sup> *In its current form, without an appropriation, this bill does not appear to satisfy this constitutional requirement.*

This conclusion is based on a recent actuarial study on the costs to upgrade previous service of medical examiners and qualifying forensic employees:

The projected increase in actuarial liabilities is \$26.4 million offset by the projected cost the members would pay for the eligible service under this proposal of \$22.1 million, which results in the net additional unfunded liabilities of \$4.3 million.<sup>23</sup>

The actuarial study further notes that this change will require an overall increase of 0.01 percent in the employer contribution rates for the Special Risk Class.<sup>24</sup>

The actuarial study explains that this fiscal impact is, in part, a result of differences in benefit accrual rates and contribution rates for certain periods: Benefits now accrue at a rate of 3.0 percent per year for all periods after 1974; yet, contributions between 1978 and 1992 were only funded with contribution rates of 2.0 percent to 2.8 percent.<sup>25</sup> Thus, to the extent upgraded service includes this 1978 to 1992 period, there is a shortfall between the price paid by the upgrading members and the true estimated costs to the Florida Retirement System.

#### C. SECTION DIRECTORY:

Section 1: Amends section 121.0515, Florida Statutes, to permit medical examiners and certain forensic employees to purchase upgraded service in the Special Risk Class.

Section 2: Provides that this bill takes effect upon becoming law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill *does not* appear to have a fiscal impact on state government revenues.

##### 2. Expenditures:

This bill appears to have a fiscal impact on state government expenditures. The unfunded liability to the Florida Retirement System from this bill is estimated to cost the state \$87,000 in Fiscal Year 2007.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill *does not* appear to have a fiscal impact on local government revenues.

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<sup>22</sup> Part VII of chapter 112, Florida Statutes, 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.

<sup>23</sup> Milliman, Inc., Actuarial Study, Service Upgrade for Specified Forensic Workers (Mar. 17, 2006), at p. 4.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

2. Expenditures:

This bill appears to have a fiscal impact on local government expenditures. The unfunded liability to the Florida Retirement System from this bill is estimated to cost local governments \$222,000 in Fiscal Year 2007.

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 provided the following fiscal note from the enrolled actuary regarding this bill:

The cost proposed by this bill to be paid by the affected members/employees to upgrade the service is not sufficient to pay for this kind of benefit enhancement. Any costs not covered by this pricing structure would be shifted to the system and could result in increased contribution rates for all special risk employers...HB 1165 does not provide a funding source for the additional costs of such an improvement of retirement benefits.<sup>26</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

This bill may, however, require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Although the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill does not appear to satisfy the requirements of section 18 of article VII of the Florida Constitution<sup>27</sup> because it does not provide that it fulfills an important state interest.

2. Other:

Article X, Section 14

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. This bill does not appear to provide sufficient funding for the proposed benefits increase.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

<sup>26</sup> Fla. Dep't of Mgmt. Serv., HB 1165 (2006) Substantive Bill Analysis (Mar. 20, 2006) (on file with dep't).

<sup>27</sup> Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Calculation or Funding

To address the expected unfunded liability and its potential constitutional issues, the sponsor may wish to consider changing the manner in which the upgraded credit is calculated<sup>28</sup> or providing a funding source.

Drafting Issue: Important State Interest

In order to address the constitutional requirements for bills imposing fiscal impacts on local governments, the sponsor may wish to add a provision which states that the bill fulfills an important state interest.

Drafting Issue: Limited Timeframe

Because the costs of this bill increase for both the employee and the Florida Retirement System for each year in which an employee delays purchase, the sponsor may wish to consider limiting the timeframe in which an employee may avail himself or herself of its provisions.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.

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<sup>28</sup> For example, the following language appears to mitigate most of the unfunded liability: "Contributions for upgrading such service shall be equal to the difference in the contributions paid and the Special Risk contribution rate in effect on the effective date of this bill, plus interest thereon at the rate of 6.5 percent a year, compounded annually until the date of payment."