

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1223 Florida Retirement System
SPONSOR(S): Machek and others
TIED BILLS: IDEN./SIM. BILLS: SB 2246

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Governmental Operations Committee, Mitchell, Williamson. Row 2: 2) Local Government Council. Row 3: 3) Fiscal Council. Row 4: 4) State Administration Council. Row 5: 5)

SUMMARY ANALYSIS

This bill continues the expansion of the Special Risk Class of the Florida Retirement System by including nine additional classes of employees of correctional and forensic facilities or institutions: unit treatment and rehabilitation specialists; unit treatment and rehabilitation senior supervisors; licensed practical nurses; behavioral program associates; behavioral program specialists; human service workers; and rehabilitation therapists.

The bill makes legislative findings and declares an important state interest.

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

This bill does not appear to impact local government revenues or expenditures. The bill, however, requires the state, as the public employer of these employees, to pay an additional contribution rate of 10.70 percent of employees' salaries at an estimated statewide cost of \$2,068,546 in Fiscal Year 2006-2007. This increase in the required contribution rate appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include additional classes of employees of correctional and forensic facilities or institutions.

### 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 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>

#### The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because they perform work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees.<sup>11</sup> As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.<sup>12</sup> Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the

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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. Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/>>.

<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> *Id.*

<sup>12</sup> Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

member's average final compensation.<sup>13</sup> These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.<sup>14</sup>

The only employees originally in the Special Risk Class under the current statute were law enforcement officers, correctional officers, and firefighters.<sup>15</sup> Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics <sup>16</sup>
2000	Community-Based Correctional Probation Officers <sup>17</sup>
2000	The following 24 types of employees of correctional or forensic facilities or institutions who spend at least 75 percent of their time performing duties which involve contact with patients or inmates: dietitians; public health nutrition consultants; psychological specialists; psychologists; senior psychologists; regional mental health consultants; psychological services directors-DCF; pharmacists; senior pharmacists; dentists; senior dentists; registered nurses; senior registered nurses; registered nurse specialists; clinical associates; advanced registered nurse practitioners; advanced registered nurse practitioner specialists; registered nurse supervisors; senior registered nurse supervisors; registered nursing consultants; quality management program supervisors; executive nursing directors; speech and hearing therapists; and pharmacy managers.
2001	Youth Custody Officers <sup>18</sup>
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline <sup>19</sup>

These additions to the Special Risk Class have caused it to grow by more than 25 percent in the last six years:

There were 54,683 active Special Risk Class members as of June 30, 1999, and 2,355 Deferred Retirement Option Program participants; as of June 30, 2005, there were 71,383 members filling Special Risk Class positions, 68,466 active members and 2,917 Deferred Retirement Option Program participants. Currently, the Special Risk Class makes up nearly 11% of the active FRS membership.<sup>20</sup>

### Continued Expansion of the Special Risk Class

This bill continues the expansion of the Special Risk Class by adding seven classes of employees of

<sup>13</sup> Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).

<sup>14</sup> Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).

<sup>15</sup> Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.

<sup>16</sup> Ch. 99-392, Laws of Fla., § 23.

<sup>17</sup> Ch. 2000-169, Laws of Fla. § 29.

<sup>18</sup> Ch. 2001-125, Laws of Fla., § 43.

<sup>19</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>20</sup> Dep't of Mgmt. Serv., HB 1223 (2006) Substantive Bill Analysis (Mar. 24, 2006) (on file with dep't) at pp. 3-4) [hereinafter "DMS Analysis"].

correctional or forensic facilities or institutions who spend at least 75 percent of their time performing duties which involve contact with patients or inmates:

- Unit treatment and rehabilitation specialist-F/C (class code 5791);
- Licensed practical nurse F/C (class code 5599);
- Behavioral program associate F/C (class code 5762);
- Behavioral program specialist F/C (class code 5763);
- Human service worker I-F/C (class code 5781);
- Human service worker II-F/C (class code 5784); and
- Rehabilitation therapist F/C (class code 5563).

The bill also expands the Special Risk class by adding two classes of employees of correctional or forensic facilities or institutions who work for the Department of Children and Family Services and spend at least 75 percent of their time performing duties which involve contact with patients or inmates:

- Unit treatment and rehabilitation senior supervisor I-F/C (class code 5793); and
- Unit treatment and rehabilitation senior supervisor II-F/C (class code 5796).

### 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 provisions for funding the increase in benefits are made on a sound actuarial basis.<sup>21</sup> Because employers will pay an additional 10.70 percent of salary for these additional classes of employees of correctional and forensic facilities or institutions, the bill appears to satisfy this constitutional requirement.<sup>22</sup>

#### C. SECTION DIRECTORY:

- Section 1: Creates paragraph (f) within subsection (15) of section 121.021, Florida Statutes, to expand the definition of special risk member to include two types of Department of Children and Family Services employees.
- Section 2: Amends subsection (2)(f) and creates subsection (2)(i) of section 121.0515, Florida Statutes, to include additional types of employees of correctional and forensic facilities or institutions.
- Section 3: Declares a statement of important state interest.
- Section 4: Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The Florida Retirement System will receive increased contributions for the additional types of employees of correctional and forensic facilities or institutions.

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<sup>21</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>22</sup> DMS Analysis at p. 8.

2. Expenditures:

This bill is expected to have the following fiscal impact on state government expenditures.<sup>23</sup>

Fiscal Year 2006-2007	\$2,068,546
Fiscal Year 2007-2008	\$2,151,287
Fiscal Year 2008-2009	\$2,237,339

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

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 total cost of \$2,068,546.14 that was calculated for the 2006-07 fiscal year was based upon the current contribution rates for 2005-06 and a 4% payroll growth assumption. The fiscal impact of providing Special Risk Class coverage on a prospective basis for these positions will be funded through the payment of higher required contributions and investment returns on those contributions. 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 valuations and experience studies of the FRS and impact all employers with Special Risk Class members.<sup>24</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. 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 counties or municipalities have to raise revenue.

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. The Department of Management Services concludes that the bill complies with this constitutional requirement.

<sup>23</sup> *Id.* at p. 8 (these expenditures are based on a payroll growth assumption of 4 percent per annum and use current employer contribution rates).

<sup>24</sup> *Id.* at p. 9.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Classes of Employees

The sponsor may wish to consider adding these employees to the Special Risk Class based on their job duties and responsibilities rather than by class code. The Department of Management Services accurately reflects the problems with using class codes:

- Historically when positions have been added to the Special Risk Class, the positions have been added by title with certification requirements and giving the primary job duties and responsibilities that comprise more than 50% of the employees' required duties in the official position description at the time of being added to the class. This method of adding positions makes it clear what duties are required of the positions being added to the Special Risk Class.
- In the case of State positions, it would also allow Human Resource Management within the Department of Management Services to identify the affected positions and class codes that are covered by the Special Risk Class, thereby maintaining flexibility within the state personnel system as needed without having positions inadvertently covered by the Special Risk Class because the statute specifies the class code. The evaluation would be determined by the identified primary job duties and not only by broadband class codes and position titles. Another draw back to using this type of position listing is that the Department of Corrections has indicated that they only utilize 2 of the positions being added to the Special Risk Class and this bill includes the position of behavior program associate that is not utilized by the Department of Children and Families. Meanwhile, there are more than 500 senior licensed practical nurses at the Department of Corrections that would not be covered by this bill because their position title and class code are not specifically included.<sup>25</sup>

Drafting Issue: Location of Additions

This bill expands the Special Risk Class by amending an existing paragraph and creating a new paragraph. Changes to the Special Risk Class, however, are generally made as separate additions so it is clear when specific positions were added.<sup>26</sup>

Other Comments: Continued Expansion of Special Risk

This bill proposes an additional expansion of the Special Risk Class. The Legislature must ultimately determine whether these additional types of employees of correctional and forensic facilities or institutions perform work that is consistent with the intent of the Special Risk Class.<sup>27</sup> The Legislature also must be cognizant, as noted by the Department of Management Services, that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.<sup>28</sup>

- Specifically, further expansion of Special Risk Class health care positions only at state correctional and forensic facilities will lead to greater disparity of treatment for similarly situated employees within the Florida Retirement System and lead to even more pressure for similar positions at non-state detention facilities to become included in this class of membership.

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<sup>25</sup> *Id.* at p. 4.

<sup>26</sup> *Id.* at p. 3.

<sup>27</sup> Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees).

<sup>28</sup> *Id.*

- In general, expansion of the membership of the Special Risk Class encourages other employee groups to seek the higher benefits provided to the Special Risk Class compared to the Regular Class. Such requests are generally based in seeking equity for similar positions not included, member perceptions of working in risky positions, or their proximity to working with other employees covered by the Special Risk Class membership instead of meeting the legislative intent for this membership class.

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

Not applicable.