

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 2246

INTRODUCER: Criminal Justice Committee and Senator Lawson

SUBJECT: FRS/DCFS/Special Risk Class

DATE: April 25, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill continues the expansion of the Special Risk Class of the Florida Retirement System by including seven types of employees of the Department of Corrections, the Agency for Persons with Disabilities, and the Department of Children and Family Services who spend at least 75 percent of their time in contact with patients or inmates in a correctional or forensic facility or institution: licensed practical nurses, senior licensed practical nurses, unit treatment and rehabilitation specialists, unit treatment and rehabilitation senior supervisors, behavioral program specialists, rehabilitation therapists, and human service workers.

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.*

This bill substantially amends sections 121.021 and 121.0515, Florida Statutes.

## II. Present Situation:

### Background on the Florida Retirement System

Chapter 121, F.S., 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 ch. 121, F.S.<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 member's average final compensation.<sup>13</sup> These increased benefits

<sup>1</sup> s. 121.025, F.S. (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> s. 121.021(12), F.S. (2005).

<sup>6</sup> s. 121.0515, F.S. (2005).

<sup>7</sup> s. 121.0515(7), F.S. (2005).

<sup>8</sup> s. 121.055, F.S. (2005).

<sup>9</sup> s. 121.052, F.S. (2005).

<sup>10</sup> *See, e.g.,* s. 121.055(3)(a)1., F.S. (2005).

<sup>11</sup> *Id.*

<sup>12</sup> s. 121.021(29), F.S. (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).

<sup>13</sup> s. 121.091(1)(a)2.h., F.S. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).

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 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

<sup>14</sup> s. 121.71(3), F.S., (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 s. 121.0515, F.S.

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

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

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

<sup>19</sup> Ch. 2005-167, Laws of Fla. s. 1; codified as s. 121.0515(2)(h), F.S. (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).

Retirement Option Program participants. Currently, the Special Risk Class makes up nearly 11% of the active FRS membership.<sup>20</sup>

### III. Effect of Proposed Changes:

#### Continued Expansion of the Special Risk Class

This bill continues the expansion of the Special Risk Class by adding employees of the Department of Corrections, the Agency for Persons with Disabilities, and the Department of Children and Family Services when employed in one of the following seven types of positions performing specified duties and responsibilities and when those duties require the employee to spend at least 75 percent of his or her time in contact with patients or inmates in a correctional or forensic facility: licensed practical nurses,<sup>21</sup> senior licensed practical nurses,<sup>22</sup> unit treatment and rehabilitation specialists,<sup>23</sup> unit treatment and rehabilitation senior supervisors,<sup>24</sup> behavioral program specialists,<sup>25</sup> rehabilitation therapists,<sup>26</sup> and human service workers.<sup>27</sup>

<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"].

<sup>21</sup> The primary duties and responsibilities must include administering medication during scheduled times, and as otherwise directed; and providing routine practical nursing care, including assistance with resident personal hygiene, feeding, vital signs, first aid, dressing changes, irrigations, and enemas.

<sup>22</sup> The primary duties and responsibilities must include participating in the screening, evaluation, and care of patients or inmates under the supervision of a physician or registered nurse; providing treatments and administering medication pursuant to physician's orders; performing specific nursing tasks including, but not limited to, venipuncture and vital signs; providing appropriate nursing intervention in emergency situations; documenting completely and accurately the care provided to a patient in his or her patient record; maintaining records and logs and assisting with data entry within the scope of nursing-related information; and participating in the monitoring, requisition, and documentation of the use of medications, medical supplies, and equipment.

<sup>23</sup> The primary duties and responsibilities must include providing direct patient care to mental health residents by participation in therapy sessions, activity programs, personal hygiene, and individualized treatment; maintaining a secure and therapeutic environment, monitoring residents' progress, and implementing specialized treatments as directed by the treatment team; supervising residents in recreational or cultural activities; coordinating clinic visits for residents and assisting nurses when necessary; and writing and reading daily notes on residents' behavior, reviewing daily program notes, shift reports, and logs; and keeping current on all changes in the residents' records.

<sup>24</sup> The primary duties and responsibilities must include (1) directly supervising all unit treatment and rehabilitative specialists at a treatment building or in multiple buildings; reviewing progress notes and assigning and coordinating unit treatment and rehabilitative specialist activities; handling all emergency situations on shift; and participating in or conducting therapy sessions; or (2) directly supervising other unit treatment and rehabilitative senior supervisors or behavioral program specialists; coordinating activities for consistency from shift to shift; preparing or implementing work schedules for assigned buildings to ensure minimum coverage; approving leave and schedule changes; disseminating information, policies, and communications to treatment staff; serving as liaison between counselors and treatment staff; and supervising and evaluating volunteers and interns.

<sup>25</sup> The primary duties and responsibilities must include maintaining a safe, secure, and therapeutic environment by implementing specialized behavior control techniques; working closely with other staff to reduce seclusion hours; directly supervising all unit treatment and rehabilitative specialists; and writing required performance appraisals and other feedback on supervised staff in a timely manner.

<sup>26</sup> The primary duties and responsibilities must include supervising and coordinating resident work programs to include such duties as vocational evaluation and counseling of residents for placement in classroom or job site training; monitoring residents in their attainment of occupational skills by means of on-the-job training and classroom instruction; and directly supervising resident groundskeepers.

<sup>27</sup> The primary duties and responsibilities must include (1) maintaining the resident building to meet the sanitation, safety, and infection control standards; serving meals; conducting room checks and face counts; and escorting residents to medical and other appointments as assigned; or (2) assisting residents with their daily living activities; admitting residents into the unit; assisting with discharges; completing resident assessments and other forms as needed; and assisting with therapeutic activities as assigned.

### **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>28</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>29</sup>

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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.

##### **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.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

<sup>28</sup> Part VII of ch. 112, F.S., 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>29</sup> DMS Analysis at p. 8.

**C. Government Sector Impact:**

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

This bill is expected to have the following fiscal impact on state government expenditures:<sup>30</sup>

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

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>31</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Drafting Issue: Legislative Findings and Important State Interest Declaration**

HB1223 and SB 2246 both contained a third section which set forth legislative findings and a declaration of an important state purpose. This section was inadvertently removed from both drafts of the CS/HB 1223 and the CS/SB 2246. According to the House Governmental Operations Committee it is not essential that this language be reinstated because there is no impact on local governments. However, the language could be returned if the sponsor so desires.

**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

<sup>30</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>31</sup> *Id.* at p. 9.

Class.<sup>32</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>33</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.
- 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.<sup>34</sup>

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>32</sup> s. 121.0515(1), F.S. (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>33</sup> *Id.*

<sup>34</sup> The substance of this analysis was drawn from the House of Representatives Staff Analysis for CS/HB 1223.





## **VIII. Summary of Amendments:**

None.

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