



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the accrual rate at which Special Risk Class members may upgrade certain past service, expands the qualifying past service. The bill also allows certain members of the Special Risk Class to upgrade specified prior academy or training 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 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 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> As such, members of the Special Risk Class can retire at age 55 or with 25 years of

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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> 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.*

creditable service.<sup>13</sup> Members of the Special Risk Class who participate in the defined benefit program also earn a higher normal retirement benefit of three percent of the member's average final compensation.<sup>14</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>15</sup>

The only employees originally in the Special Risk Class, under the current statute, were law enforcement officers, correctional officers, and firefighters.<sup>16</sup> Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics <sup>17</sup>
2000	Community-Based Correctional Probation Officers <sup>18</sup>
	Twenty-four types of employees of correctional or forensic facilities or institutions <sup>19</sup>
2001	Youth Custody Officers <sup>20</sup>
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline <sup>21</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>22</sup> In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.<sup>23</sup>

#### Upgraded Service for Law Enforcement and Correctional Officers

This bill permits Special Risk Class members, or their employers, to upgrade the following creditable service previously earned in the Regular Class to Special Risk Class service:

<sup>13</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).

<sup>14</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>15</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>16</sup> Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.

<sup>17</sup> Ch. 99-392, Laws of Fla., § 23.

<sup>18</sup> Ch. 2000-169, Laws of Fla. § 29.

<sup>19</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>20</sup> Ch. 2001-125, Laws of Fla., § 43.

<sup>21</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>22</sup> Ch. 2001-235, Laws of Fla., § 6.

<sup>23</sup> Ch. 2002-273, Laws of Fla., § 16.

Attendance at a certified training academy or other certified training facility, between July 1, 1978, and June 30, 1984, which was approved by the employer for certification as a law enforcement officer or correctional officer.

The bill allows this academy/training service to be upgraded to the same percentage of the member's average final compensation as provided for by the normal retirement benefit for Special Risk Class members.<sup>24</sup> The bill requires the contributions for upgrading this academy/training service to be equal to the difference in the contributions paid and the Special Risk Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent per year, compounded annually until the date of payment.

### Retirement Credit for Past Service

In addition to allowing certain upgraded service, this bill also expands the accrual and qualifying service for past service.

Section 121.0515, Florida Statutes, sets forth the criteria and procedures for designating members of the Special Risk Class. This section also permits special risk members to purchase retirement credit in the Special Risk Class based upon specified past service:

1. This past service was with a city or special district which is part of the Florida Retirement System where the member was employed at the time it began participating in the Florida Retirement System; or with a participating agency to which a member's governmental unit was transferred, merged, or consolidated where the member was employed at the time of the transfer, merger, or consolidation.<sup>25</sup>
2. This past service qualifies for special risk membership as a law enforcement officer, firefighter, or correctional officer.<sup>26</sup>

Special Risk Class members may upgrade the retirement credit for this specified past service, up to two percent of the member's average monthly compensation.<sup>27</sup> The contributions for upgrading this additional special risk credit may be purchased by the member or by the employer on behalf of the member, but must be equal to the difference in the contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest at a rate of 6.5 percent a year until the date of payment.<sup>28</sup> As such, the benefit of being able to purchase this past service is offset because the full retirement benefit must be purchased even though the retirement benefit received is one percent lower (2 percent) than the normal retirement benefit for the Special Risk Class (3 percent).

This bill *increases*, from two percent to three percent, the accrual rate at which Special Risk Class members may upgrade specified past service. This rate is the same as the normal retirement benefit for members of the Special Risk Class.

The bill also *expands* the qualifying past service which may be purchased to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

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<sup>24</sup> Fla. HB 671 (2006) (referencing section 121.091(1)(a)2., Florida Statutes).

<sup>25</sup> Fla. Stat. § 121.0515(5)(a) (2005).

<sup>26</sup> *Id.*

<sup>27</sup> Fla. Stat. § 121.0515 (2005).

<sup>28</sup> Fla. Stat. § 121.0515(5)(b) (2005).

C. SECTION DIRECTORY:

- Section 1: Amends section 121.0515, Florida Statutes, to increase the accrual rate for past service, to permit work for certain employers as an emergency medical technician or paramedic to qualify as past service, and to authorize the upgrade of certain prior service.
- Section 2: Requires the contribution rate for the Special Risk Class to increase by 0.07 percentage points, effective July 1, 2006.
- Section 3: Provides a statement of important state interest.
- Section 4: Sets 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 Special Risk Class contributions.

2. Expenditures:

This bill is expected to have the following fiscal impact on state government expenditures:<sup>29</sup>

Fiscal Year 2006-2007	\$ 672,000
Fiscal Year 2007-2008	\$ 699,000
Fiscal Year 2008-2009	\$ 727,000

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

Fiscal Year 2006-2007	\$ 1,746,000
Fiscal Year 2007-2008	\$ 1,816,000
Fiscal Year 2008-2009	\$ 1,888,000

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:

There are essentially two types of benefits increased by this bill: upgraded service and past service.

As it relates to the upgraded service, the Department of Management Services noted the following:

The member purchase price for the academy training service credit upgrade to be provided by the bill does not account for the entire cost of this retroactive increase in accrual values. Based

<sup>29</sup> Fla. Dep't of Mgmt. Serv., HB 671 (2006) Substantive Bill Analysis (revised Mar. 7, 2006) (on file with dep't) (Actuarial Special Study 2005-L, performed by Milliman, Inc., April 22, 2005).

<sup>30</sup> *Id.*

on a 2005 actuarial special study dated April 5, 2005, by Milliman Inc., Consulting Actuaries, *the cost was not sufficient to cause a 0.01% increase in the employer contribution rates* and the bill does not provide for the realization of \$1.742 million in surplus actuarial assets or appropriate the funds into the FRS Trust Fund needed to offset the cost of this improvement as a one-time payment. Otherwise, the cost of this improvement will be funded through future Special Risk Class rate increases. To the extent that the number of members who actually purchase this service credit upgrade varies from the assumptions of the special study, those changes will be reflected in future valuations that determine the required contribution rate for the Special Risk Class.

The fiscal note from the enrolled actuary provided by the Department of Management Services applies to both benefit increases:

The cost to be paid by the affected members or employers on behalf of their 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 would result in increased contribution rates for all employers with Special Risk Class members. The additional fiscal impact of this provision is not realized until the eligible members actually upgrade their service credit for training time and could vary depending on how the total members vary from our projection. There is an additional cost beyond the estimate if members delay purchasing their service credit until just before retirement. This bill provides for a 0.07% increase in the Special Risk Class employer contribution rate effective July 1, 2006. Since the benefit improvement could become effective prior to providing the funding for the benefit improvement, this bill does not meet the requirement for concurrent funding of benefit improvements. *The effective date of the bill should be July 1, 2006, to correspond to the funding implementation.*<sup>31</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 is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution.<sup>32</sup>

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<sup>31</sup> *Id.*

<sup>32</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.

2. Other:

Article X, Section 14

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>33</sup> According to the Department of Management Services, the benefit improvement taking effect upon becoming law without funding until July 1, 2006, violates this constitutional requirement.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Effective Date

In order to comply with the constitutional requirement to concurrently fund benefit increases when they are enacted, the sponsor may wish to change the effective date to July 1, 2006.

Other Comments: Burden of the Benefit

All employers who participate in the Florida Retirement System and who have Special Risk employees will be funding the benefit increase for qualifying past service, or any future shortfalls from these changes, even if their employees are not eligible for these benefits and even if they or their employees do not take advantage of these benefits.

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

Not applicable.

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<sup>33</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.