

# 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 748

INTRODUCER: Criminal Justice Committee and Senators Wise and Fasano

SUBJECT: FRS Special Risk Members/Department of Juvenile Justice

DATE: February 9, 2006

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

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

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## I. Summary:

The bill would expand the membership of the Florida Retirement System (FRS) Special Risk Class effective July 1, 2006, to include members who are employed by the Department of Juvenile Justice (DJJ) as a juvenile detention officer, a senior detention officer, or a direct supervisor or command officer of these employees and who meet specified criteria under the special risk membership statute. (According to the DJJ, there are approximately 1,911 of these authorized positions, of which 255 are currently vacant.) Eligible members would earn a higher accrual value for retirement service credit for their Special Risk Class service while their employers would be required to pay a higher contribution rate to fund this increased benefit under the bill.

This bill would substantially amend sections 121.021 and 121.0515, Florida Statutes.

## II. Present Situation:

### Profile of the Florida Retirement System (FRS) and the Special Risk Class<sup>1</sup>

The FRS was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, judges, and Highway Patrol officers. Today, the FRS is the fourth largest public retirement system in the United States, covering over 648,000 active employees, over 229,000 annuitants (retirees and their surviving beneficiaries), and more than 31,000 participants of the Deferred Retirement Option Program (DROP). As of June 30, 2005, state employees (including university employees) represent 21.59 percent of the FRS membership. Remaining members are employed by local agencies, including

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<sup>1</sup> Information in the "Present Situation" section of this analysis is from the Department of Management Services' analysis of the bill.

all counties (23.23 percent), district school boards (48.70 percent), and community colleges (2.81 percent), as well as cities and special districts (3.67 percent) that have opted to join the FRS.

The active membership of the FRS is divided into five membership classes: the Regular Class, the Special Risk Class, the Special Risk Administrative Support Class, the Elected Officers' Class, and the 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 of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2005, with over 68,400 active members in the Special Risk Class and 80 members in the Special Risk Administrative Support Class, special risk employees made up nearly 11 percent of the active FRS membership. There are also 2,917 retirees participating in DROP who held Special Risk Class positions and 22 retirees in DROP who held Special Risk Administrative Support Class positions. Special risk retirees in DROP comprise 9.3 percent of the total number of DROP participants.

In redefining the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care positions 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. The Legislature further found that as persons in such positions age, they might 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 a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to other members with normal retirement after 30 years of service or age 62 and vested.

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 percent of average final compensation (AFC) for each year of service, as opposed to the 1.60 percent to 1.68 percent 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 vs. age 62) or with fewer years of service (25 years vs. 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 percent minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum option 1 benefit payment.

The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2005-06 plan year under the FRS, the retirement portion of the employer contribution rate for the Special Risk Class is 17.37 percent — nearly three times the

6.67 percent retirement contribution rate for the Regular Class.<sup>2</sup> Thus when a membership group moves from the Regular Class to the Special Risk Class, the monthly employer contributions triple for affected employees.

*Membership criteria*—Under current law, FRS members must meet specified eligibility requirements to qualify for membership in the Special Risk Class. These requirements limit membership to persons who are employed as law enforcement officers, firefighters, correctional officers, correctional probation officers, emergency medical technicians or paramedics, specified forensic and health care workers, youth custody officers, and who meet the criteria set forth in applicable s. 121.0515, F.S. At the state level, specified professional health care and forensic positions in the Department of Corrections and the Department of Children and Families were included in the Special Risk Class effective January 1, 2001. To qualify for special risk membership, the members filling these state positions must spend at least 75 percent of their time performing duties involving inmate or patient contact.

#### **Article X, Section 14, of the 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 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 ch. 112, F.S.**

Article X, Section 14, of the Florida Constitution is implemented by statute under part VII of ch. 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.”

Section 121.19(10), F.S., provides that “it is the intent of the Legislature that future benefit increases enacted into law in this chapter shall be financed concurrently by increased contributions or other adequate funding, and such funding shall be based on sound actuarial data as developed by the actuary or state retirement actuary, as provided in ss. 121.021(6) and 121.192.”

#### **Local Government Mandates Provision**

Article VII, Section 18, of the Florida Constitution effectively invalidates any law that would require counties or municipalities to spend funds or limit their ability to raise revenue or receive

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<sup>2</sup> Under the FRS Investment Plan, the amount contributed to an individual member account increases from 9.25 percent to 21.33 percent when the member moves from the Regular Class to the Special Risk Class.

state tax revenue, unless certain conditions are met. First, the Legislature must have determined that the law fulfills an important state interest. The law must also meet one or more additional criteria, including that the “expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments. If it does not, the bill must pass by a 2/3 vote of the Senate and House to effectively bind cities and counties.

### III. Effect of Proposed Changes:

The bill would expand the membership of the Florida Retirement System (FRS) Special Risk Class effective July 1, 2006, to include members who are employed by the Department of Juvenile Justice (DJJ) as a juvenile detention officer, a senior detention officer, or a direct supervisor or command officer of these employees and who meet specified criteria under the special risk membership statute. (According to the DJJ, there are approximately 1,911 of these authorized positions, of which 255 are currently vacant.)

To be eligible, the member’s primary duties would include supervision and control of detainees, maintenance of safe and secure custody of detainees, and the creation of an environment of zero tolerance for escapes, abuse, or inappropriate conduct by staff with detainees; or the officer would be the direct supervisor or command officer of a member who has such duties. Administrative support personnel would be excluded from coverage under the bill.

The bill would provide that this Special Risk Class membership applies prospectively. Eligible members would earn a higher accrual value for retirement service credit for their Special Risk Class service while their employers would be required to pay a higher contribution rate to fund this increased benefit under the bill.

Finally, the bill would provide a statement that the Legislature finds that the bill fulfills an important state interest.

### IV. Constitutional Issues:

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

This legislation may be a mandate pursuant to the provisions of Article VII, section 18 of the Florida Constitution because it passes a significant cost (see **Government Sector Impact**) onto the counties. Any law requiring counties or municipalities to spend money must be approved by 2/3 vote of each house of the Legislature unless the law meets one of the constitutional exemptions or exceptions. One exception is laws that require all similarly situated persons to comply when the Legislature determines that such laws fulfill an important state interest. Although generally a law affecting the FRS meets the requirement of applying to all persons similarly situated, including local and state governments, this bill appears to apply just to state employees (juvenile detention officers). The bill does, however, provide a statement declaring it fulfills an important state interest.

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

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

According to the DMS, the bill complies with the requirements of Article X, Section 14 of the Florida Constitution and the provisions of Ch. 112, Part VII, Florida Statutes, relating to the actuarial statement of fiscal soundness.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**State:**<sup>3</sup>

As of November 21, 2005, the DJJ reported that they had a total of 1,911 authorized positions that would be impacted by SB 748<sup>4</sup>. Of these positions, 1,656 were filled with a total annual payroll of \$47,036,991.76 and 255 positions were vacant. Based upon the presumption that such positions would be filled at the minimum of pay range, the total annual salary for the vacant positions would be \$6,709,217.40. Combined total annual payroll of the vacant and filled positions would be \$53,746,209.16.

Affected members would prospectively earn a higher accrual value for retirement service credit for their Special Risk Class service and their employers would pay a higher contribution rate to fund these higher benefits. Currently, all such positions (1,911) are covered by the Regular Class and earn an accrual value of 1.60 percent to 1.68 percent of their average final compensation (AFC)<sup>5</sup> for each year of creditable service. As members of the Special Risk Class, the accrual value for each year of service would increase to 3.00 percent of AFC and the vested member would be eligible for unreduced benefits after 25 years of special risk service or at age 55, instead of being required to meet Regular Class normal retirement requirements (completing 30 years of service or attaining age 62).

Employer contributions required for Regular Class members are significantly lower than the rate required for members of the Special Risk Class. Current retirement contribution rates for the Regular class and the difference of these contribution rates in relation to the Special Risk Class contribution rate is reflected in the table below:

<sup>3</sup> Information in this section is from the Department of Management Services' analysis of the bill.

<sup>4</sup> Data based upon an email response from DJJ's personnel office on November 21, 2005.

<sup>5</sup> "Average final compensation" or "AFC" means the average of the member's highest 5 years of salary.

Year	Regular Class Contribution Rate	Special Risk Class Contribution Rate	Difference in Contribution Rates
2005/06	6.72%	17.42%	10.70%

The table below reflects the estimated annual increase in the DJJ employer contributions if SB 748 were enacted based upon the current impacted position information provided by the DJJ and the current contribution rates in effect for fiscal year 2005-06 without consideration for future payroll growth and future changes in employer contribution rates.

DJJ Positions as of 11/21/2005	Number of Positions	Annual Salary	Difference in Contribution Rates	Increase in Employer Contributions
Filled	1656	\$47,036,991.76	10.70%	\$5,032,958.12
Vacant	255	\$6,709,217.40	10.70%	\$717,886.26
<b>Total</b>	<b>1911</b>	<b>\$53,746,209.16</b>	<b>10.70%</b>	<b>\$5,750,844.38</b>

The Special Risk Class membership proposed by this bill is prospective only, so the cost of the improved benefits would be primarily funded through the higher Special Risk Class contribution rates and compounded investment returns on those contributions. Any fiscal impact resulting from changing demographics or experience of the Special Risk Class due to this change would be reflected in the contribution rates recommended by future valuations of the FRS and impact all employers with Special Risk Class members.

If SB 748 is enacted, it would result in an increase in the employer contributions due as a result of the disparity of contribution rates of Regular Class membership and that of the Special Risk Class. Based upon the impacted position information provided by the DJJ and the current contribution rates in effect for plan year 2005-06, the potential increase in employer contributions for the current plan year is reflected in the table above. Factoring in a payroll growth assumption of 4 percent per annum and using current employer contribution rates yield estimated future plan year increases as follows:

Amount and Description	Year 1 <u>FY 06/07</u>	Year 2 <u>FY 07/08</u>	Year 3 <u>FY 08/09</u>
	\$5,980,878.16 <sup>6</sup>	\$6,220,113.28 <sup>7</sup>	\$6,468,917.82 <sup>8</sup>

<sup>6</sup> This figure is derived from the impacted position information provided by DJJ as of 11/21/2005, the current fiscal year contribution rates, and a 4 percent payroll growth assumption for plan year 2006-2007.

<sup>7</sup> This figure is derived from the impacted position information provided by DJJ as of 11/21/2005, the current fiscal year contribution rates assumption for each subsequent plan year.

<sup>8</sup> This figure is derived from the impacted position information provided by DJJ as of 11/21/2005, the current fiscal year contribution rates and a 4 percent payroll growth assumption for each fiscal year 2006-2007, 2007-2008 and 2008-2009.

Although a 4 percent payroll growth assumption and current contribution rates were used in estimating these future plan year increases, actual future increases in costs to the DJJ will depend upon the actual pay raises received by these positions and future FRS employer contribution rates established by the Legislature. As the FRS Pension Plan actuarial surplus decreases, all Pension Plan employer contribution rates will increase towards their true normal cost which varies by class and ranges from 3 percent – 5 percent higher than current contribution rates.

The DJJ estimates an increase of general revenue funds for salaries and benefits for designated positions to be \$1,035,152.

***Local:***<sup>9</sup>

Approximately 82 percent of the costs associated with increasing retirement benefits for these detention officer positions will be passed on to the counties, according to the DJJ. Using DMS' figures, the DJJ estimates that counties will be required to pay into the Shared County/State Juvenile Detention Trust Fund approximately \$4,715,692 as a result of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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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>9</sup> Information in this section is from the Department of Juvenile Justice's analysis of the bill.





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

None.

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