

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 901 Florida Retirement System  
**SPONSOR(S):** Sobel and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1396

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

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### SUMMARY ANALYSIS

This bill continues the expansion of the Special Risk Class of the Florida Retirement System by including certain ocean water rescue lifeguards.

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

This bill does not appear to impact state or local government revenues. The bill, however, requires the public employers of these ocean water rescue lifeguards to pay an additional contribution rate of 10.70 percent of the employees' salaries. Although the estimated cost is unknown, the increase in the required contribution rate *appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.*

The bill does not provide that it fulfills an important state interest and *does not appear to satisfy the constitutional requirements for local government mandates.*

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include certain ocean water rescue lifeguards.

### 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 creditable service.<sup>13</sup> Members of the Special Risk Class also earn a higher normal retirement benefit 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.*

<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).

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>

This bill continues the growth of the Special Risk Class by expanding the definition and criteria for the Special Risk Class: any person who works full time as an ocean water rescue lifeguard and who works directly under the supervision of a fire rescue department, is supervised by a medical director, and is certified as an emergency medical technician or paramedic.

#### Ocean Water Rescue Lifeguards

The number of ocean water rescue lifeguards employed by participating employers of the Florida Retirement System is unknown. Several counties contacted by the Division of Retirement within the Department of Management Services did not respond, were otherwise included in the Special Risk Class, or were not impacted by this bill. Other data suggests there could be as many as 220 regular class ocean water rescue lifeguards.<sup>22</sup>

#### 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

<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> Chart of Agency Lifeguards - Special Risk and Regular Class, provided by the Communications Workers of Am., Council of Fla. (Feb. 2006).

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>23</sup> Because employers will pay an additional 10.70 percent of salary for these ocean water rescue lifeguards, the bill appears to satisfy this constitutional requirement.

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."

Section 2: Amends subsection (2) of section 121.0515, Florida Statutes, to include ocean water rescue lifeguards in the criteria for the Special Risk Class.

Section 3: Provides an effective date of October 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 any ocean water rescue lifeguards employed by public employers participating in the Florida Retirement System.

2. Expenditures:

This bill may have a fiscal impact on state government expenditures if there are any "ocean water rescue lifeguards" employed by state government or if the continued expansion of the Special Risk Class ultimately requires increased contribution rates for all state employers with Special Risk Class members.

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 will have a fiscal impact on local government expenditures for any "ocean water rescue lifeguards" employed by local governments or if the continued expansion of the Special Risk Class ultimately requires increased contribution rates for all state employers with Special Risk Class members.

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:

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<sup>23</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.

HB 901 would add an unknown number of additional positions to the Special Risk Class. The fiscal impact is primarily funded through the required employer contributions for members of the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience would be reflected in the employer contribution rates recommended by future valuations of the FRS.<sup>24</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 provide that it fulfills an important state interest. *As such, it does not appear to satisfy the requirements of section 18 of article VII of the Florida Constitution.*<sup>25</sup>

##### 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 concurs that the bill complies with this constitutional requirement.<sup>26</sup>

#### B. RULE-MAKING AUTHORITY:

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

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

###### Drafting Issue: Important State Interest

To satisfy the requirements of section 18 of article VII of the Florida Constitution, the sponsor may wish to add a declaration of important state interest to the bill.

###### Drafting Issue: Reference Primary Job Duties

The sponsor may wish to describe the primary job duties for ocean water lifeguards as is the case with other criteria for the Special Risk Class.<sup>27</sup>

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<sup>24</sup> Fla. Dep't of Mgmt. Serv., HB 901 (2006) Substantive Bill Analysis (Feb. 22, 2006) (on file with dep't) [hereinafter DMS Analysis] at p. 7.

<sup>25</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.

<sup>26</sup> DMS Analysis at p. 6.

### Drafting Issue: Full-Time Requirement

The Department of Management Services notes that part-time employees can be members of the Florida Retirement System, but are excluded from this bill.<sup>28</sup> Generally, designation as part of the Special Risk Class is not based on whether the work is full or part-time, but the nature of the work and the percent of time that the particular position is required to perform the work which constitutes a special risk.<sup>29</sup> The sponsor may wish to consider revising these provisions.

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

Not applicable.

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<sup>27</sup> See, e.g., Fla. Stat. § 121.0515(2)(a) (2005) ("In addition, the member's duties and responsibilities must include the pursuit, apprehension, and arrest of law violators or suspected law violators.").

<sup>28</sup> DMS Analysis at p. 2.

<sup>29</sup> *Id.*