

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: SB 2072

INTRODUCER: Senator Oelrich

SUBJECT: State Retirement System

DATE: March 26, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Pre-meeting
2.			GO	
3.			GA	
4.				
5.				
6.				

I. Summary:

This bill creates a new class in the Florida Retirement System (FRS) to be known as the “Qualifying Injured Special Risk Class,” and provides for eligibility requirements and membership benefits.

This bill creates s. 121.0517, Florida Statutes.

II. Present Situation:

Florida Retirement System (FRS)¹

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 664,819 active employees, 252,060 annuitants, and 31,688 participants of the Deferred Retirement Option Program (DROP).

All state and county employees are compulsory members of the FRS, and as of June 30, 2006, about 158 Florida cities were covering firefighters, police, and or general employees under the FRS. On that date, there were also 192 independent special districts with members in the FRS. As of June 30, 2006, state employees (including university employees) represent 22 percent of the FRS membership. Remaining members are employed by local agencies, including all

¹ Information relating to the profile of the FRS, membership, and pension plan classifications provided by the Division of Retirement in the Department of Management Services. (See the department’s Substantive Bill Analysis for SB 130, prepared January 25, 2007.)

counties, district school boards, and community colleges, as well as cities and special districts that have opted to join the FRS.

The active membership of the FRS is divided into five membership classes: the Regular Class consists of 583,213 members (87.3 percent of membership); the Special Risk Class includes 72,078 members (10.84 percent); the Special Risk Administrative Support Class has 74 members (0.01 percent), the Elected Officers Class has 2,195 members (0.33 percent), and the Senior Management Service Class has 7,259 members (1.09 percent). 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, 2006, with over 72,000 active members in the Special Risk Class and 74 members in the Special Risk Administrative Support Class, special risk employees made up nearly 11 percent of the active FRS membership.

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 few years of service (25 years vs. 30 years) for regular class.
- 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.²

The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2006-2007 plan year under the FRS, the retirement portion of the employer contribution rate for the Special Risk Class is 19.76 percent – more than twice the 8.69 percent retirement contribution rate for the Regular Class. Thus when a membership group moves from the Regular Class to the Special Risk Class, the monthly employer contributions more than double for affected employees.

Special Risk Administrative Support Class. -A special risk class member who is moved or reassigned to, or subsequently employed in, a non-special risk law enforcement, firefighting, correctional or emergency medical care administrative support position within the same agency or within any other similar agency under the FRS becomes a member of the Special Risk Administrative Support Class and earns credit at the same rate as a regular class member. However, service in the special risk administrative support class does apply towards satisfaction of the special risk class normal retirement date.

² FRS members may choose to receive benefits from the Pension Plan in one of four ways. Option 1 provides the greatest amount, but is unaccompanied by survivor benefits.

Worker's Compensation

A member of the FRS who is eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during employment will, upon return to active employment with a covered employer for 1 calendar month, receive full retirement credit for the period prior to such return to employment. The employer of record at the time of the workers' compensation injury or illness is required to make all retirement contributions based on the compensation paid to the member immediately prior the date of receipt of workers' compensation payments.

Article X, Section 14, of the Florida Constitution

Since 1976, the Florida Constitution has required that benefit improvements under public pensions 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 of 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."

Part I of ch. 121, F.S.

Section 121.091(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."

III. Effect of Proposed Changes:

Section 1 creates s. 121.0517, F.S., to

- Provide the Legislature's recognition that persons employed in law enforcement, firefighting, and criminal detention are required to perform work that is unusually dangerous and physically demanding or arduous, or that requires extraordinary agility, and that these persons may suffer a disability in the line of duty.

- Establish a class of retirement membership to award retirement benefits at the special risk membership rate for public servants who sustain a qualifying injury.
- Establish that the purpose of the “Qualifying Injured Special Risk Membership” class is to rectify situations in which a special risk member is not receiving disability retirement benefits, and will suffer severe economic deprivation due to a loss of future benefit accruals due to reclassification as a non-special risk member.
- Establish eligibility requirements for participation in the “Qualified Injury Special Risk Class” as follows:
 - The FRS member must have already qualified for and been an active participant of the Special Risk Class at the time of the qualifying injury.
 - The FRS member must not be receiving disability retirement benefits under FRS disability retirement provisions.
 - Two licensed physicians, one of whom must be a primary treating physician, certify the existence of the physical injury and medical condition that is a qualifying injury.
 - The employee must have reached maximum medical improvement after October 1, 2007.
- Establish the following criteria for “Qualifying Injured Special Risk” membership:
 - Physical injuries and medical conditions for which certification is required:
 - Physical loss or loss of use of one or more arms, legs, hands, or feet and the use permanent and total with respect to at least one hand or one foot, or permanent with at least 75 percent loss of motor function with respect to one arm or one leg.
 - The physical loss is total or permanent, except in the event of physical injury to the brain.
 - The physical loss, or the loss of use of limbs, does not prohibit the member from performing the essential job functions of a new position.
 - The use of artificial limbs is not possible or does not change the member’s ability to perform the essential job functions of a new position.
 - That the physical loss, or the loss of use of limbs, is a direct result of a physical injury and not of any mental, psychological, or emotional injury.
- Define a “qualifying injury” as an injury in the line of duty to a special risk member, as certified by the member’s employing agency, which does not result in total and permanent disability.
- Provide that notwithstanding other provisions of the act, a qualifying injury will not be treated as a qualifying injury or shall cease conforming to the definition of a qualifying injury if and when the member ceases employment with the employer for whom the member was working as a special risk class member on the date of the injury.
- Specify that no additional employment rights are granted or created for any individual to continue employment, to be hired, or to be rehired, which are not already provided for by state or federal law.

Section 2 provides that the act shall take effect July 1, 2007.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does require the expenditure of funds by a county or municipality, although the level of expenditure is indeterminate at this time. Also, the bill does not contain a declaration of important state interest.

Therefore, this bill may violate the provisions of s. 18(a), Art. VII, State Constitution, which provides, in part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest”, and unless certain other conditions are met.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill may violate the provisions of s. 14, Art. X, State Constitution, because it provides an increase in the benefits to the members or beneficiaries of the FRS without making or providing for the funding of the increase on a sound actuarial basis.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Retirement in the Department of Management Services, noted the following:

- An actuarial special study is required to determine the fiscal impact of this bill and to establish the employer contribution rate required to continue to provide a 3 percent accrual value for each year of creditable service for a former Special Risk Class member who is employed in a non-Special Risk Class covered position due to recovery from an in-the-line-of-duty injury that prevents the

member from returning to employment in the previously held Special Risk Class position.

- The bill does not provide a contribution rate to fund the benefits of the new class, and does not provide benefit computation formulas or retirement ages.
- The division expects a large amount of administrative costs for a small number of people that will qualify for the new class of membership.

VI. Technical Deficiencies:

The effective date of the bill is July 1, 2007, yet qualifying criteria specifies that a member must reach maximum medical improvement after October 1, 2007. Anyone who would otherwise qualify, but reaches maximum medical improvement prior to October 1, 2007, will not qualify for participation in the new class.

VII. Related Issues:

The Division of Retirement in the Department of Management Services noted the following:

- Employers with employees who qualify for the new class created in the bill can establish a separate retirement program within their agency to cover any economic loss suffered by the qualifying employees, thereby meeting the intent of the bill to limit membership in the new class to members who continue to be employed by the employing agency at the time of injury. The additional benefits will be provided by the member's employer rather than all agencies with Special Risk Class members.
- The bill provides that members are ineligible for membership in the new class upon attaining a normal retirement date which could raise age or disability discrimination issues if a member is forced into a different class because of age or service limits.
- The bill requires a 75 percent loss of motor function as criteria for eligibility, which means that a person with a 50 percent loss of motor function, who can't perform the duties of a Special Risk position, is ineligible for membership in the new class.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
