

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill expands the membership of the Senior Management Service Class (SMSC) by allowing certain school districts to designate a certain number of full-time nonelective positions for inclusion in the SMSC.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

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.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 164 cities and 209 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members,³ 264,000 retirees and surviving beneficiaries,⁴ and 31,000 Deferred Retirement Option Program participants.⁵ Members of the FRS belong to one of five membership classes:

1. Regular Class ⁶	588,204 members	86.46% of membership
2. Special Risk Class ⁷	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class ⁸	74 members	0.01% of membership
4. Elected Officers' Class ⁹	2,078 members	0.31% of membership
5. Senior Management Service Class ¹⁰	7,562 members	1.11% of membership ¹¹

Each class is funded separately 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, F.S.¹²

SENIOR MANAGEMENT SERVICE CLASS

The Legislature established the Senior Management Service Class (SMSC) in 1986 for certain high-level policy-making and managerial positions within the executive branch.¹³ Members of the SMSC

¹ Section 121.025, F.S.

² Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs) [hereafter referred to as FRS Annual Report].

³ *Id.* at 43.

⁴ *Id.* at 52.

⁵ *Id.* at 49.

⁶ Section 121.021(12), F.S.

⁷ Section 121.0515, F.S.

⁸ Section 121.0515(7), F.S.

⁹ Section 121.052, F.S.

¹⁰ Section 121.055, F.S.

¹¹ FRS Annual Report at 43.

¹² *See, e.g.*, s. 121.055(3)(a)1., F.S.

¹³ Section 14, Ch. 86-149, L.O.F.

have a normal retirement age of 62,¹⁴ but they earn a higher accrual rate of two percent.¹⁵ This increased benefit is funded through higher employer contribution rates: 11.96 percent of gross compensation, effective July 1, 2007, and 13.35 percent, effective July 1, 2008.¹⁶

Elected officers may elect to participate in the SMSC rather than the Elected Officers' Class.¹⁷

SENIOR MANAGEMENT SERVICE CLASS AND ITS EXPANSION

Originally, membership in the SMSC was limited to those members who held positions in the Senior Management Service of the state personnel system (in the executive branch).¹⁸ However, since the creation of the class, the Legislature has expanded eligibility to certain positions in the legislative and judicial branches, other positions in the executive branch, and positions within local government agencies.

In 1994, the Legislature expanded eligibility to additional managerial or policymaking nonelective positions in local agencies¹⁹ and the offices of state attorneys and public defenders, up to 10 full-time positions for each agency. For agencies with 100 or more regularly established positions, this expansion allowed designation of additional full-time positions, not to exceed one percent of the regularly established positions within the agency.²⁰

Members whose positions have been added to the class subsequent to the SMSC's effective date of February 1, 1987, may purchase (or their employers may purchase for them) additional retirement credit for service within the purview of the class retroactive to February 1, 1987.²¹

INCLUSION CRITERIA FOR ADDITIONAL MANAGERIAL OR POLICYMAKING POSITIONS

Section 121.055(1)(b), F.S., authorizes the designation of additional managerial or policymaking nonelective positions in local agencies for inclusion in the SMSC. The local agency employer, however, must publish a notice of intent to designate such positions for inclusion in the SMSC once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties affected. Furthermore, each position must be managerial or policymaking in nature, filled by an employee who is not subject to continuing contract, but serves at the pleasure of the local agency employer without civil service protection. The position must involve heading an organizational unit or having the responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in its areas of responsibility.²²

Section 121.055(1)(h)1., F.S., applies the same criteria to additional positions in the offices of state attorneys and public defenders.

REGIONAL CONSORTIUM SERVICE ORGANIZATIONS

Regional consortium service organizations, as described in s. 1001.451, F.S., are cooperative agreements between one or more school districts with 20,000 or fewer students each, developmental research (laboratory) schools, or the Florida School for the Deaf and the Blind. Regional consortium

¹⁴ Section 121.021(29)(c), F.S.

¹⁵ Section 121.091(1)(a)3., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁶ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2006, and 9.55 percent effective July 1, 2007, for Regular Class members).

¹⁷ Section 121.052(3)(c), F.S.

¹⁸ Section 121.055(1)(a), F.S.

¹⁹ Section 121.029(42), F.S. defines "local agency employer" as "the board of county commissioners or other legislative governing body of a county, however styled, including that of a consolidated or metropolitan governments; a clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections, provided such officer is elected or has been appointed to fill a vacancy in an elective office; a community college board of trustees or district school board; or the governing body of any city, metropolitan planning organization created pursuant to s. 339.175, F.S. or any other separate legal or administrative entity created pursuant to 339.175, F.S., or special district of the state which participates in the system for the benefit of certain of its employees."

²⁰ Section 121.055(1)(b) and (h)1., F.S.

²¹ Section 121.055(1)(j), F.S.

²² Section 121.055(1)(b)1., F.S.

service organizations meeting certain qualifications are eligible to receive incentive grants through the Department of Education. In addition, they may establish purchasing and bidding programs, including construction and construction management arrangements in lieu of individual school district bid arrangements.

PROPOSED CHANGES

This bill continues the expansion of the SMSC by allowing, but not requiring, school districts serving as the fiscal agents for regional consortium service organizations to designate up to 15 nonelective full-time positions for inclusion in the SMSC. This change essentially allows five more designated positions for these school boards compared to other local agency employers before considering additional optional designation of SMSC positions based upon total employees of the employer.

Designation of these positions in the SMSC is subject to the same inclusion criteria for additional managerial or policymaking positions for local agencies and offices of state attorneys and public defenders.

This bill would affect three regional consortium service organizations. In addition, there could be more fiscal agent school boards in the future.²³

C. SECTION DIRECTORY:

Section 1 amends s. 121.052, F.S., to make conforming changes.

Section 2 amends s. 121.055, F.S., to authorize designation of a certain number of nonelective full-time positions for certain school districts for inclusion within the Senior Management Service Class.

Section 3 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Because designation of the positions into the SMSC is voluntary, the fiscal impact of this bill will depend on the number of eligible employers who choose to designate positions into the SMSC. The cost in increased employer contribution rates to add SMSC positions within the affected school districts would be an extra 3.27 percent of pay for all affected members, based on the difference between Regular Class and SMSC retirement contribution rates in effect on July 1, 2008.

²³ Department of Management Services HB1049 (2008) Substantive Bill Analysis (Mar. 20, 2008) at 4 (on file with the Committee on State Affairs) [hereafter referred to as DMS Analysis].

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

2. Other:

Article X, s. 14 of the State 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.²⁴

For SMSC membership, employers will pay the applicable higher contribution rate for each member. This increase in the required contribution rate appears to satisfy the requirements in Article X, s. 14 of the State Constitution²⁵ to fund benefit increases to public retirement or pension systems.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

²⁴ Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of Article X, s. 14 of the State 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.

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