

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL 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: The Professional Staff of the Health Policy Committee

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BILL: SB 2092

INTRODUCER: Senator Hill

SUBJECT: Florida Retirement System

DATE: April 12, 2008

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HP	<b>Favorable</b>
2.			CA	
3.			GO	
4.			GA	
5.				
6.				

**I. Summary:**

The bill redefines the term “special risk member” for purposes of the Florida Retirement System to include any member who is employed by a public acute care hospital that serves as a trauma center and that provides treatment to members of the public who have deadly or crippling infectious diseases, members of the public who are accused of or convicted of serious violent crimes, members of the public who have been subjected to hazardous materials or biological or chemical agents as a result of terrorism or industrial accidents, or members of the public who have diseases the treatment of which requires intervention with extremely toxic substances.

The bill amends the criteria for special risk membership to include certain members employed by acute care hospitals as defined in the revised definition. The bill also provides a legislative finding that a member who meets this definition is serving an important state interest and should be a member of the special risk class of the Florida Retirement System.

This bill amends ss. 121.021 and 121.0515, F.S., and creates an undesignated section of law.

**II. Present Situation:**

**Florida Retirement System**

The Florida Retirement System (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 680,302 active employees, 264,763 annuitants (retirees and their surviving beneficiaries), and 31,562 participants of the Deferred Retirement

Option Program (DROP). All state and county employees are compulsory members of the FRS, and as of June 30, 2007, about 164 Florida cities were covering firefighters, police, and/or general employees under the FRS. On that date, there were also 209 independent special districts with members in the FRS. As of June 30, 2007, district school boards represented nearly half (48.86 percent) of the FRS membership, with community colleges (2.78 percent) and universities (3.5 percent) bringing the total for educational institutions to about 55 percent of the FRS membership. State employees (excluding university employees) represent 17.28 percent of the FRS. Remaining members are employed by local agencies, including counties (23.61 percent) as well as cities and special districts (3.96 percent) that have opted to join the FRS.

Chapter 121, F.S., the Florida Retirement System Act, establishes requirements for eligibility in the FRS. The FRS includes five membership classes: the Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected State Officers' Class, and Senior Management Service Class.

Section 121.0515(2), F.S., establishes criteria for membership in the Special Risk Class, which is open to law enforcement officers; firefighters; correctional officers; emergency medical technicians and paramedics; community-based correctional probation officers.

Other persons may qualify if they spend at least 75 percent of their time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution, including: dietitians, public health nutrition consultants, psychological specialists, psychologists, senior psychologists, regional mental health consultants, psychological services directors, pharmacists, senior pharmacists, dentists, senior dentists, registered nurses, senior registered nurses, registered nurse specialists, clinical associates, advanced registered nurse practitioners, advanced registered nurse practitioner specialists, registered nurse supervisors, senior registered nurse supervisors, registered nursing consultants, quality management program supervisors, executive nursing directors, speech and hearing therapists, and pharmacy managers; youth custody officers; and members of a law enforcement agency or medical examiner's office in a forensic discipline. These members are included within special risk class because they:

. . . perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other positions and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom. Therefore, as a means of recognizing the peculiar and special problems of this class of employees, it is the intent and purpose of the Legislature to establish a class of retirement membership that awards more retirement credit per year of service than that awarded to other employees; however,

nothing contained herein shall require ineligibility for special risk membership upon reaching age 55.<sup>1</sup>

Accordingly, Special Risk Class members have been given greater career benefits than Regular Class members. A member of the Special Risk Class:

- Earns retirement credit at the rate of 3 percent of average final compensation (AFC) for each year of service, as opposed to the 1.6 percent to 1.68 percent credit per year of service earned by a Regular 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; and
- 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.

As of June 30, 2007, with 74,224 active members in the Special Risk Class and 74 members in the Special Risk Administrative Support Class, special risk employees made up 11 percent of the active FRS membership.

### **Hospitals and Trauma Centers**

Hospital employees are generally members of the Regular Class under the current law. These employees may routinely treat individuals who have deadly infectious diseases, who are accused or convicted of violent crimes, who have been exposed to biological/chemical agents or hazardous materials, or whose treatment involves toxic substances. Their job duties require these activities and they work in a much more controlled environment than those experienced by emergency medical technicians or paramedics. There are specific protocols to follow to minimize the risk of exposure to contagion or toxic substances. If additional staff or assistance is required, these resources may be found within the hospital.

Trauma centers are regulated under part III, ch. 395, F.S. "Trauma center" is defined to mean a hospital that has been verified by the Department of Health (DOH) to be in substantial compliance with the requirements in s. 395.4025, F.S., and has been approved by the DOH to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center.

According to the DOH, there are currently 21 designated trauma centers in Florida. Only two of these trauma centers, Jackson Memorial Hospital and the North Broward Hospital District, have employees who are participating in the FRS. Although these hospitals withdrew from the FRS for new employees effective January 1, 1996, all employees who elected to retain FRS membership instead of switching to the new pension plan offered by the hospitals would be eligible for the Special Risk Class benefit specified in the bill. According to the Division of Retirement, as of June 30, 2007, there were 3,225 eligible employees who have chosen to retain FRS membership.

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<sup>1</sup> See section 121.0515(1), F.S.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 121.021, F.S., relating to definitions in ch. 121, F.S., to provide that, effective July 1, 2008, “special risk member” includes any member who is employed by a public acute care hospital that serves as a trauma center and that provides treatment to members of the public who have deadly or crippling infectious diseases, members of the public who are accused of or convicted of serious violent crimes, members of the public who have been subjected to hazardous materials or biological or chemical agents as a result of terrorism or industrial accidents, or members of the public who have diseases the treatment of which requires intervention with extremely toxic substances.

**Section 2.** Amends s. 121.0515, F.S., relating to criteria for membership in the special risk class, to include members who are employed by a public acute care hospital that serves as a trauma center and that provides treatment to members of the public who have deadly or crippling infectious diseases, members of the public who are accused of or convicted of serious violent crimes, members of the public who have been subjected to hazardous materials or biological or chemical agents as a result of terrorism or industrial accidents, or members of the public who have diseases the treatment of which requires intervention with extremely toxic substances.

**Section 3.** Creates an undesignated section of law, to provide a statement of important state interest in compliance with section 18, Article VII of the State Constitution.

**Section 4.** Provides an effective date of July 1, 2008.

### IV. Constitutional Issues:

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

Article VII, section 18 of the State Constitution enumerates circumstances in which a county or municipality may refuse to spend funds or take action requiring the expenditure of funds unless the Legislature has determined an important state interest. The bill would require certain counties to fund the additional benefits for FRS members who are employees of public acute care hospitals that serve as trauma centers. The bill does not define trauma centers. According to the staff of the Division of Retirement of the Department of Management Services (DMS), the bill expands special risk class membership to a broader, less well-defined group of employees. The bill does not specify any particular group of employees at the named institutions that are intended to be covered; therefore, all employees of these agencies are included, whether or not the employee is actually exposed, or likely to be exposed in one of the conditions listed in the bill.

The fiscal impact of this requirement has been estimated on two known public acute care hospitals with trauma centers, but the requirements of the bill may require a more extensive actuarial analysis if it is interpreted to include a broader class of FRS members. However, if the bill requires local governments to spend in the aggregate of \$1.8 million then pursuant to Article VII, Section 18 of the Florida Constitution, the Legislature must

formally determine that the bill fulfills an important state interest and the bill must pass by a two-thirds vote of the membership of each house of the Legislature.

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

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Some employees of certain public acute care hospitals with trauma centers may benefit to the extent that they accrue additional benefits as members of the Special Risk Class.

**C. Government Sector Impact:**

The two hospitals affected by the changes proposed by SB 2092, Jackson Memorial Hospital and the North Broward Hospital District, would pay an additional percentage of salary based upon the difference between the Regular Class and Special Risk Class employer contribution rates effective July 1, 2008, for 3,225 members with an annualized payroll of \$236,078,345. Although the employer contribution rates effective July 1, 2008, are yet to be determined, based on FY 2007-08 employer contribution rates of 8.69 percent for the Regular Class and 19.76 percent for the Special Risk Class, the additional percentage of salary paid by the employer would be 11.07 percent. The future salary costs are increased by 4 percent based upon current payroll and contribution rates to provide these estimated costs. The actual additional costs will be determined by the difference between future rates for the Regular Class and the Special Risk Class and actual salaries.

According to the Division of Retirement, it is estimated the affected local governments may incur the following expenditures:

<b>Year 1 FY 08/09</b>	<b>Year 2 FY 09/10</b>	<b>Year 3 FY 10/11</b>
\$27,179,228	\$28,266,397	\$29,397,053

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to the DMS, Senate Bill 2092 does not provide any certification or employment-related requirements for FRS-covered employees of these public acute care hospitals with trauma centers. This means that any FRS-covered employee of these hospitals who is not participating in the DROP, a reemployed retiree, or a member of the State and County Officers and Employees' Retirement System or the Teachers' Retirement System will become a member of the Special Risk Class. Nurses and other employees performing direct patient care will have the same class of membership as the administrative and support personnel, technicians who do not interact with patients, and housekeeping staff. To be consistent with other employee groups added to the Special Risk Class, this bill should be amended to add only those positions that are responsible for direct patient care and exposure to the hazards referred to in this bill.

Also, SB 2092 could cause disparate retirement benefits between the hospital staff at public acute care hospitals versus the acute care hospitals that are also certified as trauma centers. According to the Agency for Health Care Administration, there are 284 licensed hospitals in Florida and 237 of these have licensed acute care beds. Additionally, the DOH indicates that there are currently 21 trauma centers in Florida. This bill requires that the public acute care hospitals with trauma centers must provide treatment to individuals with deadly or crippling infectious diseases, patients accused of or convicted of serious violent crimes, patients exposed to hazardous materials or biological/chemical agents, or patients whose disease treatment involves extremely toxic substances. These treatment requirements are consistent with the care required of any acute care hospital making it possible for hospital staff treating the same type of patients, either for total care or for stabilization before transport to a trauma center, to receive substantially different retirement benefits. This disparity could lead to hospital employees not covered by the Special Risk Class to seek these improved benefits through the courts or future legislation.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.