

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 501 Special Risk Class Retirement Benefits
SPONSOR(S): Government Efficiency & Accountability Council, Robaina and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Government Efficiency & Accountability Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Camara/Dykes</u>	<u>Cooper</u>
2) <u>Policy & Budget Council</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
3) <u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4) <u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5) <u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

SUMMARY ANALYSIS

The Deferred Retirement Option Program (DROP) allows a member of the Florida Retirement System (FRS), who has reached normal retirement date, to defer the receipt of retirement benefits while continuing employment with an FRS-participating employer. The deferred monthly benefits accrue on behalf of the member, plus interest compounded monthly, for the period of his or her DROP participation. After completing DROP and terminating employment, the member not only receives the total of his or her DROP benefits, but also the previously determined normal retirement benefits. Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months, with certain exceptions.

This bill expands the timeframe for DROP participation for certain Special Risk Class members. The bill increases from 60 months to 96 months the period of time that certain law enforcement officers, correctional officers, and community-based correctional probation officers may participate in DROP. In order to participate in the extended DROP period, officers must obtain authorization from their employing agencies and meet certain physical requirements.

The bill also prohibits such officers from being reemployed by the same agency from which they retired, with certain exceptions.

The bill makes editorial changes and consolidates provisions relating to DROP.

The bill makes legislative findings and declares an important state interest.

This bill requires an actuarial special study to determine its fiscal impact. An actuarial study has not been performed nor has it been requested. As such, this bill appears to raise constitutional concerns.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases from 60 to 96 months the period of time that certain law enforcement officers, correctional officers, and community-based correctional probation officers may participate in the Deferred Retirement Option Program.

Safeguard individual liberty – This bill creates reemployment limitations and prohibitions that affect certain law enforcement officers, correctional officers, and community-based correctional probation officers.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

FLORIDA RETIREMENT SYSTEM

Chapter 121, F.S., governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement (Division).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

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.

SPECIAL RISK CLASS

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,¹³ might need to retire at an earlier age with less service than other types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.¹⁴ Members of the Special Risk Class also earn a higher normal retirement benefit of 3.0 percent of the member's average final compensation.¹⁵ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2007, and 22.01 percent, effective July 1, 2008.¹⁶

Special Risk Class membership includes law enforcement officers, correctional officers, and firefighters;¹⁷ emergency medical technicians and paramedics;¹⁸ community-based correctional probation officers;¹⁹ certain employees of correctional or forensic facilities or institutions;²⁰ youth custody officers;²¹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²²

DEFERRED RETIREMENT OPTION PROGRAM

In 1997, the Florida Legislature created the Deferred Retirement Option Program (DROP) for members of the FRS.²³ The program allows a member of the FRS, who has reached normal retirement date, to defer the receipt of retirement benefits while continuing employment with an FRS-participating employer.²⁴ The deferred monthly benefits accrue on behalf of the member, plus interest compounded monthly, for the period of his or her DROP participation. After completing DROP and terminating employment, the member not only receives the total of his or her DROP benefits, but also the previously determined normal retirement benefits.²⁵

DROP TIMEFRAMES

Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months. Certain educational personnel, however, may elect to participate in DROP for up to 96 months, 36 more than the 60 months normally allowed, if authorization by the district superintendent

¹³ Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

¹⁴ Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

¹⁵ Section 121.091(1)(a)2.h., 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, 2007, and 9.59 percent effective July 1, 2008, for Regular Class members).

¹⁷ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁸ Ch. 99-392, L.O.F., s. 23.

¹⁹ Ch. 2000-169, L.O.F., s. 29.

²⁰ *Id.* (The following employees must spend at least 75 percent of their time performing duties that involve contact with patients or inmates to qualify for the Special Risk Class: dietician, public health nutrition consultant, psychological specialist, psychologist, senior psychologist, regional mental health consultant, psychological services director-DRC, pharmacist, certain senior pharmacists, 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).

²¹ Ch. 2001-125, L.O.F., s. 43.

²² Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (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).

²³ Ch. 97-180, L.O.F., s. 8.

²⁴ Section 121.091(13), F.S. (For most members of the FRS, the election to participate in DROP must be made within 12 months immediately following the date on which the member first reaches normal retirement date).

²⁵ *Id.*

is given to the member.²⁶ Extended DROP participation was introduced initially as part of the short-term solution for district school boards to alleviate the shortage of instructional personnel in areas of critical need.²⁷

PROPOSED CHANGES

This bill expands DROP timeframes for the benefit of Special Risk Class members who are employed as law enforcement officers, correctional officers, and community-based correctional probation officers, as described in s. 121.0515(2), F.S., having a rank or equivalent rank of captain or below at the start of DROP participation. It allows them to participate in DROP beyond 60 months, up to the 96-month maximum participation period. In order to qualify for this extension, members must:

- Receive authorization from their employer to participate in the extended DROP period;
- Pass the same physical examination required for new officers under s. 943.13(6), F.S.;²⁸ and
- Provide an accompanying statement from the officer's examining physician, physician's assistant, or certified advanced registered nurse practitioner that the officer is capable of performing the essential functions of his or her duties as a law enforcement officer, correctional officer, or community-based correctional probation officer.

Upon completion of DROP, the bill prohibits such officers from being reemployed by the same agency from which they retired, except for retired officers who are:

- Retained by the employing agency as a part-time or auxiliary law enforcement officer serving on a voluntary basis and earning no more than \$1 per year; or
- Elected or appointed by the Governor to an office in the employing agency.

The bill provides that any retired member or employing agency in violation of the reemployment limitation is jointly and severally liable for reimbursement to the FRS Trust Fund of any retirement benefits improperly paid.

The bill also makes editorial changes and consolidates provisions relating to DROP.

C. SECTION DIRECTORY:

Section 1 amends s. 121.091, F.S., to prohibit reemployment of certain members of the Special Risk Class by the same employing agency from which they retired, and to increase the period of time in which certain Special Risk Class members may participate in DROP.

Section 2 provides a declaration of important state interest.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²⁶ *Id.*

²⁷ Department of Management Services HB 501 (2008) Substantive Bill Analysis (Feb. 6, 2008) at 5 (on file with the Government Efficiency & Accountability Council) [hereafter referred to as DMS Analysis].

²⁸ Section 943.13(6), F.S., requires any person serving as a law enforcement officer, correctional officer, or correctional probation officer to “[h]ave passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission. In order to be eligible for the presumption set forth in s. 112.18 while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required by this subsection upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.”

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The changes proposed by this bill would appear to affect retirement trends. According to DMS, the bill requires an actuarial special study to determine the fiscal impact of the benefit improvement.²⁹

This bill likely may carry an additional cost impact due to salary differentials, as new hires may be paid a different salary than existing employees occupying the same position during extended DROP participation.

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.

The mandates provision appears to apply because this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds; however, an exception applies because the bill provides that it fulfills an important state interest and the expenditure required by the bill applies to all persons similarly situated. As such, the bill appears to satisfy the requirements of Article VII, s. 18 of the Florida Constitution.

2. Other:

Article X, s. 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 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.³⁰

²⁹ DMS Analysis at 7.

³⁰ Part VII of Ch. 112, F.S., 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 that is funded in whole or in part by public funds.

The changes proposed by this bill appear to affect retirement trends, which creates a need for an actuarial special study in order to determine the fiscal impact of the benefit improvement. To date, a study has not been performed nor has it been requested. As such, this bill appears to raise constitutional concerns.

On March 27, 2008, DMS released an actuarial impact statement originally prepared on January 30, 2008, by its external plan actuary on the fiscal impact of the Senate companion to HB 501. The actuary with the firm Milliman Inc., concluded that the bill violated constitutional and statutory provisions on the recognition of the proper funding of increased pension benefits. That conclusion was reached after consideration of eight specific provisions in the bill:

1. The transfer of the fiscal impact of the extra three years to all participating FRS employers;
2. Making the extension an entitlement of the employee rather than a privilege of the employer, as is current law;³¹
3. The blanket extension for three years, rather than one year at a time when considerations of the physically demanding nature of job duties is weighed;
4. The potential expansion to other employee groups;
5. A technical reference to the specific population to be affected;
6. The appearance of impropriety that occurs when former retirees are reemployed after thirty days;³²
7. The operation of this benefit increase to all interested parties rather than just to those determined by the employer to fill a critical need; and,
8. Embedded restrictions on reemployment not now a part of Florida retirement statutes.³³

On April 11, 2008, DMS released a supplemental statement³⁴ clarifying its earlier analysis and providing additional calculations on the methods used in reaching its conclusions. The agency reaffirmed its prior findings and conclusions that the bill would result in the alteration of existing compensation patterns that in turn would affect the funding of DROP benefits for this membership group.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

OTHER COMMENTS: Policy Change

The Legislature created the Special Risk Class of the FRS in order to:

[R]ecognize that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care positions are required as one of the essential functions of their positions to 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

³¹ The changes incorporated by the strike-all amendment adopted by the Government Efficiency & Accountability Council on April 22, 2008 appear to address this concern.

³² *Id.*

³³ See The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 706, prepared by the Governmental Operations Committee, April 17, 2008, at 4 and 5.

³⁴ On file with the Government Efficiency & Accountability Council.

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 . . .³⁵

Authorizing participation in DROP for 60 months and extending that participation to 96 months raises a question as to whether the stated intent for including in the Special Risk Class law enforcement officers, correctional officers, and community-based correctional probation officers is undermined. The intent of the Special Risk Class is to authorize early retirement for those members who, because of the work required by their job, are unable to perform that job for more than 25 years or pass the age of 55.

If this bill were to pass, it would appear to authorize such officers to perform their duties and responsibilities for 33 years, 8 years longer than the 25 years required for early retirement in the Special Risk Class and three years longer than that required for retirement from the Regular Class.

OTHER COMMENTS: Physical exam

In order for a law enforcement officer, correctional officer, or community-based correctional probation officer to qualify for DROP extension, the officer must pass the same physical examination required for new officers. In addition, the officer must provide an accompanying statement from the examining physician, physician assistant, or certified advanced nurse practitioner that the officer is capable of performing the essential functions of his or her duties.

The Department of Management Services suggests that because the work performed by such officers is physically demanding and often requires extraordinary agility and mental acuity that can diminish with age “that if this extension is granted for these members they should be granted DROP extension for one year at a time and be required to pass a physical examination prior to each year of their DROP extension.”³⁶

OTHER COMMENTS: DMS analysis of DROP funding

On April 11, 2008, DMS released a supplemental statement that restated a criticism that its actuary had previously provided regarding the Legislature's funding method for DROP benefits.³⁷ Current law uses a single average rate of 9.80 percent for all membership classes. The actuary has recommended repeatedly that the DROP rate be reduced to zero and its recognition be reflected in the normal cost rates for all of the separate classes. This would accomplish three objectives:

- It would allocate the costs to each membership class based upon its experience;
- It would eliminate the significant subsidy enjoyed by the Special Risk and Elected State Officers' Classes since their normal costs rate is double the current DROP rate; and,
- It would align DROP funding recognition with recommended standards of the Governmental Accounting Standards Board.

OTHER COMMENTS: Department of Corrections

Because this bill allows only officers who have the rank equivalent of captain or below to participate in the DROP extension, the Department of Corrections reported concerns that officers may not want to be promoted to higher ranks or may seek demotions in order to be eligible for the extension.³⁸

D. STATEMENT OF THE SPONSOR

No statement submitted.

³⁵ Section 121.0515(1), F.S.

³⁶ DMS Analysis at 8.

³⁷ OPPAGA also has criticized annually the funding method as it fails to apportion accurately the costs based upon experience.

³⁸ The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 706, prepared by the Governmental Operations Committee, April 17, 2008, at 6.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 22, 2008, the Government Efficiency & Accountability Council adopted a strike-all amendment and reported the bill favorably as a Council Substitute.

This bill expanded the timeframe for DROP participation for certain Special Risk Class members without requiring employer authorization. The amendment requires law enforcement officers, correctional officers, and community-based correctional probation officers to obtain authorization from their employer prior to extending their DROP participation from 60 to 96 months. It also clarifies that a member's rank at the time he or she enters DROP is used for determining eligibility for the extended DROP participation.

The amendment creates reemployment limitations and prohibitions. Upon completion of DROP, the amendment prohibits such officers from being reemployed by the same agency from which they retired. However, such retired officers may be retained by the employing agency as a part-time or auxiliary law enforcement officer if serving on a voluntary basis and earning no more than \$1 per year. Any retired member or employing agency in violation of the reemployment limitation is jointly and severally liable for reimbursement for any retirement benefits improperly paid. A retiree who is elected or appointed by the Governor to an office in the employing agency is exempt from this prohibition.