

**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.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 706

INTRODUCER: Criminal Justice Committee and Senator Baker and others

SUBJECT: Special Risk Class Retirement Benefits

DATE: March 11, 2008      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Krol    | Cannon         | CJ        | Fav/CS |
| 2. |         |                | CA        |        |
| 3. |         |                | GO        |        |
| 4. |         |                | GA        |        |
| 5. |         |                |           |        |
| 6. |         |                |           |        |

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill proposes to extend the maximum Deferred Retirement Option Program (DROP) participation period for Special Risk Class (SRC) members who are employed as law enforcement officers, correctional officers, or community-based correctional probation officers, having the rank or equivalent rank of captain or below, from a maximum of 60 months to a maximum of 96 months.

The bill also provides that after electing to extend DROP participation, but before beginning the additional 36 months, the officer must pass the same physical examination required for new officers and provide an accompanying statement from the officer's examining physician, physician's assistant, or certified advanced 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.

The bill also amends the DROP extension process for positions currently eligible for extended participation from one that requires approval by the employer to an employee elective requirement.

The bill prohibits officers, rank of captain or below, from being employed, reemployed, or retained in a contractual capacity by the same employing agency from which the member retired at the conclusion of their participation in DROP. Any person or employing agency that violates this is subject to reimbursement to the FRS Trust Fund for any retirement benefits paid during the employment or contract period. This does not apply to any retiree who is elected to office or appointed to an office by the Governor.

This bill substantially amends section 121.091 of the Florida Statutes.

## II. Present Situation:

The SRC of the Florida Retirement System (FRS) is one of five membership classes which consist of state and local government employees who meet the criteria for special risk membership. SRC covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership.<sup>1</sup> The Department of Management Services reports that as of June 30, 2007, there are 74,224 active members in the SRC and 74 members in the Special Risk Administrative Support Class. SRC employees make up 11 percent of the active FRS membership. Because the nature of the SRC work is physically demanding or arduous, or requires extraordinary agility and mental acuity, the Legislature has established increased benefits to SRC members to retire at an earlier age than Regular Class members.

1. SRC members earn retirement credit at the rate of 3 percent of average final compensation (AFC) for each year of service, as opposed to the 1.60 to 1.68 percent credit per year of service earned by a Regular Class member.
2. SRC members qualify for normal retirement at an earlier age (age 55 versus age 62) or with fewer years of service (25 years versus 30 years) than a Regular member.
3. SRC members who reach 25 years of service before age 52 may start DROP participation immediately or defer participation up to the age of 52 and still participate for up to 60 months.

An eligible employee may elect to participate in DROP by deferring receipt of retirement benefits while continuing employment with an FRS employer.<sup>2</sup> The benefit of DROP is that deferred monthly benefits accrue in the System Trust Fund, in addition to compounded interest, for the full period of DROP participation. An employee applies for DROP by signing a Notice of Election to Participate in DROP (DP-ELE) which serves as a resignation document based on their chosen DROP termination date. Upon termination of employment, the participant receives the total DROP amount from the System Trust Fund, and also begins to receive original normal retirement benefits.

SRC members who met or exceeded the eligibility requirement as of July 1, 1998, were able to participate in the DROP program for 36 months. SRC members who met the requirement as of August 1, 1998, were eligible for the full 60 month DROP period. When FRS members reach normal retirement based upon years of service instead of age (prior to 55 for SRC members),

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<sup>1</sup> Section 121.0515, F.S.

<sup>2</sup> Section 121.091(13), F.S.

they are allowed to defer DROP participation. Initially SRC members were allowed to defer DROP participation only up to 5 years prior to normal retirement age (age 50 for SRC members). In 1999 SRC members were allowed to defer DROP participation to age 52. The initial DROP participation period allows a SRC member to work at least 5 years beyond their normal retirement date and longer if deferring DROP participation until age 52.

### **III. Effect of Proposed Changes:**

This bill would liberalize DROP extension provisions to include current and prospective DROP participants who are “members of the Special Risk Class” and are employed as law enforcement officers, having a rank or equivalent rank of captain or below. These DROP participants who have passed the same physical examination required for new officers and provided an accompanying statement from the officer’s examining physician assistant, or certified advanced nurse practitioner that the officer, correctional officer, or community-based correctional probation officer would be eligible to extend their DROP participation from a maximum of 60 months to a maximum of 96 months. All other SRC members would not be eligible for DROP extension.

This bill does not require any employer authorization for affected SRC members to be able to qualify for the DROP extension period. SRC members would be able to change their resignation date without getting approval from their individual employers.

Because this bill allows only officers who have the rank of or equivalent to 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.

The Department of Management Services reported that this bill may set a precedent for other SRC members and other FRS classes to seek more exceptions under the law to provide for extended DROP participation up to 96 months.

After members of SRC, rank captain and below, end their participation in DROP, they are prohibited from continuing employment with the agency from which they retired. Members who are employed, reemployed or retained in a contractual capacity by their former employing agency will void their application for retirement benefits. Employers who knowingly hire a retired former employee will be held for reimbursement to the FRS Trust Fund for any retirement benefits improperly incurred to the member during their time of employment. This does not apply to retired members who are elected to office or appointed to office by the Governor.

### **IV. Constitutional Issues:**

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.<sup>3</sup> The “Florida Protection of Public Employee Retirement Benefits Act” prohibits “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.”<sup>4</sup>

Also, the Florida Constitution invalidates unfunded local government mandates if the law does not meet certain constitutional tests.<sup>5</sup> The Legislature must find that the law fulfills an important state interest and one or more additional criteria:

- Appropriate sufficient funds to pay the entire cost of the benefit;
- Authorize a new funding source to generate funds sufficient for counties to pay the cost of the benefits;
- Pass the bill in response to a federal requirement to obtain entitlement; or
- Pass the bill by a two-thirds vote.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Older and more experienced officers may benefit from the ability to potentially extend DROP up to an additional 36 months. As officers participating in the DROP extension continue to work years after their retirement date, there may be a diminished opportunity for other younger officers to advance within the field.

<sup>3</sup> Florida Constitution Article X, Section 14.

<sup>4</sup> s. 112.61, F.S.

<sup>5</sup> Florida Constitution Article VII, Section 18.

The Department of Management Services reports that this bill may impact retirement trends. It would require an actuarial special study to determine the fiscal impact of the benefit improvement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 11, 2008:**

- Prohibits SRC members from becoming employed with the agency with which they retired.
- Agencies that knowingly hire former retirees will have to make reimbursement to the FRS Trust Fund for retirement benefits accrued by the retiree during their time of reemployment.
- This does not apply to retirees who are elected to or appointed to an office by the Governor.

**B. Amendments:**

None.