

**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 Governmental Operations Committee

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**BILL:** CS/CS/SB 706

**INTRODUCER:** Governmental Operations Committee, Criminal Justice Committee and Senator Baker and others

**SUBJECT:** Special Risk Class Retirement Benefits

**DATE:** April 17, 2008                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Krol</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

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.

Extended DROP participation requires prior approval by the employer.

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 will expand DROP extension provisions to include current and prospective special risk class DROP participants who are employed as law enforcement officers with a rank or equivalent rank of captain or below. Those DROP participants who pass the same physical examination required for new officers and provide 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 is capable of performing the essential duties of an officer will be eligible to extend their DROP participation to a maximum of 96 months. The one exception to this provision is that a member may be retained by the employing agency in the capacity of part-time or auxiliary law enforcement officer if serving on a voluntary basis and receiving no more than \$1 per calendar year in remuneration.

This bill continues employer authorization for affected SRC members to be able to qualify for the DROP extension period.

After participating SRC members finish in the extended 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 liable for reimbursement to the FRS Trust Fund for any retirement benefits improperly incurred to the member during their time of employment. The prohibition does not apply to retired members who are elected to office or appointed to office by the Governor.

For purposes of qualifying for the DROP extension a member's rank at the time of entry shall be used as the eligibility factor.

### **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:

Art. X, s. 14, 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>

On March 27, 2008, the Department of Management Services (DMS) released an actuarial impact statement originally prepared on January 30, 2008, by its external plan actuary on the fiscal impact of CS/SB 706. 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 features of 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;
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;
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.

On April 11, 2008, the DMS released a supplemental statement clarifying its earlier analysis and providing additional calculations on the methods used in reaching its conclusions. That statement illustrated a significant decline in Special Risk Class salaries and benefits at the age of 55 and beyond, that is, the age and date at which normal retirement inclusive of the five years' DROP eligibility under current law, occurs. The agency reaffirmed its prior findings and conclusions that the bill would result in the alteration of existing compensation patterns which, in turn would affect the funding of DROP benefits for this membership group.

The April analysis also restated a criticism that its actuary had previously provided about the Legislature's funding method for DROP benefits. Current law uses a single average rate of 9.80 percent for all membership classes. The actuary has repeatedly recommended 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: first, it would

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<sup>3</sup> This constitutional requirement is implemented in s. 112.61, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," which 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.

allocate the costs to each membership class based upon its experience; second, 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, third, it would align DROP funding recognition with recommended standards of the Governmental Accounting Standards Board. OPPAGA has also annually criticized the funding method as it fails to accurately apportion the costs based upon experience.

On the basis of the above analyses, the DMS concludes that the bill violates s. X of Art. X, State Constitution and Part VII of ch. 112, F.S. While amendment of the bill may mitigate some of the fiscal impact associated with its provisions, it will not alter the final result: a special actuarial study must be requested and received prior to its enactment. The department concludes its analysis with the following statement:

The last matter for this bill is that a special study has not been requested.<sup>4</sup> If desired, this request should come from a substantive committee chair to the Division of Retirement. We would request a time and cost study from the actuary before seeking final approval from that committee chair. To perform the study we would need information that we currently do not have.<sup>5</sup>

On April 15, 2008, the Division of Retirement provided an analysis of FRS retirees who were reemployed within twelve months of their retirement and termination of employment. Reemployed retirees entitled to a second career benefit totaled 808 in FY 2005-06; 1,208 in FY 2006-07; and 872 in FY 2007-08 for all FRS employers.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

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. On February 20, 2008, that department communicated the following:

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<sup>4</sup> The accepted custom for such studies is that the request originates from anyone of four parties: the respective chairs of the appropriations committees or the designated governmental operations or state administration standing committees of the Senate and House of Representatives. No letter request for a special study has ever been denied.

<sup>5</sup> Department of Management Services, "Review of SB 706 with Proposed Amendment," April 11, 2008.

. . .(A)gencies will have a waiting line for staff seeking demotions from managerial staff such as Majors, Colonels, Classification Supervisors and maybe even a Warden or Circuit Administrator. The extra 36 months or 38 percent increase in their account . . . will certainly build a nice nest egg. For most agencies almost anyone can pass the physical exam so that's not an obstacle . . . . The fact that it is less expensive for the state to pay for DROP than Special Risk Retirement will give this bill a boost but the management problems are a potential problem especially if managers get heavy handed in handing out discipline to make room for someone to extend their DROP.

Also, 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.

The Department of Management Services reports that this bill may set a precedent for other SRC members and other FRS classes to seek additional exceptions to provide for extended DROP participation.<sup>6</sup> It will require an actuarial special study to determine the fiscal impact of the benefit improvement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>6</sup> Section 121.091(13)(b)1., F.S., provides that instructional personnel employed by the Florida School for the Deaf and the Blind who receive permission from the Board of Trustees of the Florida School for the Deaf and the Blind, and instructional personnel in grades K-12 who receive permission from the district school superintendent may participate in an extended DROP for up to 96 calendar months.

**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 Governmental Operations on April 17, 2008:**

- Reinstates provision of current law that the DROP extension requires prior approval of the employer.
- Uses the member's rank at entry into DROP as the point of eligibility.
- Permits reemployment with the former employer at the conclusion of DROP only for law enforcement and only on a volunteer basis.

**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.