

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 1072

INTRODUCER: Criminal Justice Committee and Senator Baker

SUBJECT: Special Risk Class Retirement Benefits

DATE: March 11, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			CA	
3.			GO	
4.			WPSC	
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:

The bill provides that “a Special Risk Class member” who is employed as a law enforcement officer, correctional officer, or community-based correctional probation officer and who is currently participating in the Deferred Retirement Option Program (DROP) for up to 60 months may participate in DROP for an additional 36 calendar months.

The bill further provides that if this Special Risk class member participates for any or all of the additional 36 calendar months in DROP, the member may not be reemployed or retained in a contractual capacity with the same employing agency following the member’s termination from that employer. This provision does not otherwise limit the retired member from being employed or contracting with any other employing agency in the Florida retirement System (FRS).

The bill further provides that if this retired member is reemployed or retained in a contractual capacity in violation of the bill’s restrictions or limitations on reemployment or retention, the member voids his or her application for retirement benefits. Any person who is reemployed or retained in contractual capacity in violation of the bill’s restrictions or limitations on reemployment or retention and any employing agency that knowingly reemploys or contracts with such person in violation of such restrictions or limitations are jointly and severally liable for

reimbursement to the FRS Trust Fund for any retirement benefits improperly paid during the reemployment or contractual period.

The bill further provides that the provisions of the bill previously described do not apply to a retired member who is employed as a part-time or auxiliary law enforcement officer or correctional probation officer on a voluntary basis and receives no more than \$1 per calendar year for services rendered directly for the employing agency, or a retired member who is elected to an office or appointed to an office by the Governor or the Governor and Cabinet.

The bill contains a statement of important state interest and has an effective date of July 1, 2009.

The bill requires a special actuarial study to determine the fiscal impact to the FRS of these proposed benefit changes.

This bill substantially amends s. 121.091, F.S.

II. Present Situation:

The Special Risk Class (SRC) of the Florida Retirement System (FRS) is one of five membership classes and consists 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.¹

In its analysis of the bill,² the Florida Division of Retirement (Division) reports that as of June 30, 2008, there were 74,224 active members in the SRC and 75 members in the Special Risk Administrative Support Class.³ SRC employees make up close to 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. The Division states:

The Legislature ... found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers. In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to other members with normal retirement after 30 years of service or age 62 and vested. The comparison of equivalent benefits was determined when 25 years at a 2% Special Risk Class accrual value resulted

¹ Section 121.0515, F.S.

² Analysis of SB 1072 by the Research and Education Section of the Florida Division of Retirement, dated March 2, 2009. All information reported in this section of the analysis is from this source, unless otherwise indicated.

³ The Division describes this class as consisting of "Special Risk Class members who were moved or reassigned to or reemployed in administrative support positions with a law enforcement, firefighting, correctional, or emergency medical care agency under the FRS. These members must maintain the certification required in his/her former position and are subject to recall into this former position. In order for membership in this class to count towards special risk normal retirement, the member must have at least 6 years of Special Risk Class service at retirement."

in 50% of the average final compensation compared to 48% of average final compensation for a Regular Class member with 30 years of service at a 1.60% per year accrual value. Special Risk Class membership differs from Regular Class membership in the following ways:

1. A Special Risk Class member earns retirement credit at the rate of 3% of average final compensation (AFC) for each year of service, as opposed to the 1.60% to 1.68% credit per year of service earned by a Regular Class member.
2. A Special Risk 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.
3. A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65% minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42% minimum option 1 benefit payment.

The minimum benefit portion of an in-line-of-duty disability retirement is not subject to federal taxation for all FRS membership classes. The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2008-09 plan year under the FRS, the retirement portion of the employer contribution rate for the Special Risk Class is 19.76% (significantly higher than the 8.69% retirement contribution rate for the Regular Class⁴). Thus when a membership group moves from the Regular Class to the Special Risk Class, the monthly employer contributions required for that group increases by over 2.25 times for these employees.

In the Department of Management Services' 2007-2008 annual report on the Florida Retirement System,⁴ the Deferred Retirement Option Program is described as follows:

The Deferred Retirement Option Program (DROP) is available under the FRS Pension Plan when the member first reaches eligibility for normal retirement. DROP allows a member to retire while continuing employment for up to 60 months. While in DROP, the member's retirement benefits accumulate in the FRS Trust Fund (increased by a cost-of-living adjustment each July) and earn monthly interest equivalent to an annual rate of 6.50 percent.

The election to participate in DROP must be made within 12 months of the member's normal retirement date, unless the member is eligible to defer the election. To participate for the maximum DROP period, the member must enter DROP upon first reaching eligibility for normal retirement, or upon reaching an eligible deferral date as described below:

- A Special Risk Class member, or a Special Risk Administrative Support Class member with six years of Special Risk Class service, who reaches his or her normal

⁴ *The Florida Retirement System, Pension Plan & Other State-Administered Systems. Annual Report* (July 1, 2007 - June 30, 2008), Division of Retirement, Department of Management Services.

retirement date based upon years of service before reaching age 52 may defer DROP entry up to age 52 and still participate for 60 months.

- A member of the Regular Class, Elected Officers' Class, or the Senior Management Service Class who reaches his or her normal retirement date before reaching age 57 may defer DROP entry until age 57 and still participate for 60 months. A member of the Special Risk Administrative Support Class who does not have six years of Special Risk Class service would be subject to these deferral requirements.
- A member of the Elected Officers' Class who reaches his or her normal retirement date during a term of office may defer the DROP election until the next succeeding term in that office and still participate for up to 60 months or until the end of that succeeding term, whichever is less.
- A member who is employed as K-12 instructional personnel as defined in s. 1012.01(2), F.S., may elect to participate in DROP at any time after reaching his or her normal retirement date and still participate for 60 months.

Upon termination, the DROP account is paid out as a lump sum payment, a rollover, or a combination partial lump sum payment and rollover, and monthly benefits are paid to the member in the amount as calculated upon entry into DROP plus cost-of-living adjustments for intervening years.

In most cases, the DROP participant must cease employment after a maximum of 60 months in DROP, must satisfy the termination requirements for retirement and must comply with applicable reemployment restrictions thereafter....⁵

This annual report also describes reemployment after retirement and restrictions that apply:

After retirement or DROP termination, retired FRS members may be employed by any private employer or any public employer not participating in the FRS without affecting his/her FRS benefits. However, restrictions apply to reemployment with an FRS employer. Any retired FRS member who is reemployed by an FRS employer during the first calendar month after retirement or DROP termination is not considered to have terminated employment and is therefore not considered to have retired. His/her active membership will be reinstated. If a member retires from an FRS employer that withdrew for new employees effective January 1, 1996, the member must terminate employment and remain unemployed for one calendar month after retirement or the end of DROP participation to meet the definition of termination and finalize his/her retirement.

Upon meeting termination requirements, FRS retirees who are reemployed by FRS employers may not receive both salary and retirement benefits for the rest of the 12-calendar month period after retirement or the end of their DROP participation, and must

⁵ *Id.* at pp 64-65 The DMS notes certain exceptions, none of which are discussed in the analysis because they do not apply to the Special Risk Class.

forfeit retirement benefits for the months employed unless working in a position for which an exception is provided.

Exceptions to the reemployment restrictions allow FRS retirees to be reemployed in specified positions during the 2nd through 12th months of retirement or following termination from DROP participation without forfeiting benefits. After being retired for one calendar month, retirees may be reemployed without further limitation in specified positions with district school boards, the Florida School for the Deaf and the Blind, developmental research schools, and participating charter schools. Retirees may also be reemployed for up to 780 hours in specified positions by a state community college or a university in the State University System, or by FRS employers as firefighters or paramedics. Finally, retired judges called to temporary duty and retirees appointed to or voted into elected office are exempt from reemployment limitations after being retired for one calendar month.⁶

III. Effect of Proposed Changes:

The bill provides that “a Special Risk Class member” who is employed as a law enforcement officer, correctional officer, or community-based correctional probation officer and who is currently participating in the Deferred Retirement Option Program (DROP) for up to 60 months may participate in DROP for an additional 36 calendar months.

The bill further provides that if this Special Risk class member participates for any or all of the additional 36 calendar months in DROP, the member may not be reemployed or retained in a contractual capacity with the same employing agency following the member’s termination from that employer. This provision does not otherwise limit the retired member from being employed or contracting with any other employing agency in the Florida retirement System (FRS).

The bill further provides that if this retired member is reemployed or retained in contractual capacity in violation of the bill’s restrictions or limitations on reemployment or retention, the member voids his or her application for retirement benefits. Any person who is reemployed or retained in a contractual capacity in violation of the bill’s restrictions or limitations on reemployment or retention and any employing agency that knowingly reemploys or contracts with such person in violation of such restrictions or limitations are jointly and severally liable for reimbursement to the FRS Trust Fund for any retirement benefits improperly paid during the reemployment or contractual period.

The bill further provides that the provisions of the bill previously described do not apply to a retired member who is employed as a part-time or auxiliary law enforcement officer or correctional probation officer on a voluntary basis and receives no more than \$1 per calendar year for services rendered directly for the employing agency, or a retired member who is elected to an office or appointed to an office by the Governor or the Governor and Cabinet.

The bill contains a statement of important state interest and has an effective date of July 1, 2009.

⁶ *Id.* at p. 66.

Other Potential Implications:

In its analysis of the original bill, the Division notes that the bill requires a special actuarial study (see “Other Constitutional Issues” section of this analysis). The committee substitute also requires a special actuarial study. The Division notes the following potential implications of the original bill, which appear to be relevant to the committee substitute:

- “This bill could encourage other employees to seek similar benefits for extended DROP participation. Similar legislation has been filed in the past for district school board administrators and certain pre-kindergarten teachers. Other employee groups such as community nursing instructors have made inquiries about this benefit to help address shortages in that field. Because of the way DROP is funded, all FRS employers would pay for any impact to the DROP contribution rate.”
- “The work in the positions eligible for Special Risk Class membership is physically demanding and often requires extraordinary agility and mental acuity that can diminish with age. Granting DROP extension to members working in the positions covered by SB 1072 for one year at a time and requiring that they pass a physical examination prior to each year of their DROP extension would be one way that the Legislature could ensure that the law conforms to the legislative intent when the Special Risk Class was redefined in 1978 to resolve funding problems with the class.”
- “The ability to extend DROP participation has been sought by other employee groups or other employers as the provisions for extended DROP participation have become applicable to others. This liberalization of the benefit has been sought to attain greater parity between employee groups or employers instead of meeting short-term needs. Over time, changes in benefits can also be motivated by desire for parity versus critical need; the liberalization of exceptions to reemployment restrictions demonstrates these changes. If extended DROP participation continues to become more broadly available, there could be increased pressure placed upon the Legislature to create a longer, initial 96-month participation period for DROP.”
- “Since DROP participants are retired and no longer have a specific class affiliation, it would be difficult for the Division to determine which DROP participants are impacted by this bill. If this bill referred to “positions otherwise covered by the Special Risk Class” it would reflect the actual structure and reporting for these positions.”
- “This bill could address some of the issues being reported in the press resulting from retirees being rehired by the same employer from which they retired after they end their DROP participation.”
- “This bill might result in limited employer access to experienced employees due to the potential fiscal impact to the employee resulting from the reemployment limitations required by SB 1072. If cases of critical employer need arise that become impeded by this provision, there could be further expansion of the reemployment exceptions in the future.”

- “If enacted, SB 1072 will only restrict reemployment of employees who end their DROP participation in one of the covered positions. Because an FRS member is considered to have retired as of their DROP begin date, SB 1072 will not restrict reemployment with the same agency from which a member terminates from one of the covered positions at the end of their DROP participation if that agency is different from the employer for which an employee was working when they began DROP. SB 1072 will not restrict the reemployment of employees who retire from one of the covered positions without participating in DROP. Also, SB 1072 will not restrict the reemployment of employees who, although employed in one of the positions covered by the bill for the majority of their DROP participation, may become employed in a position that is not covered by SB 1072 at some point during their DROP participation. If enacted, SB 1072 will place a reemployment limitation that is not applied equally to FRS-covered employees or all of the employees who retire from the same positions, only the group that chose to retire through DROP.
- “Without language specifying what employers may do to avoid liability under SB 1072, there is a possibility that agencies may find it difficult to avoid violating its provisions. For example, a member may begin DROP while employed in a position not covered by SB 1072. At some point during their DROP participation, the employee might change employment to one of the covered positions with an entirely different employer. Under SB 1072, upon their simultaneous termination from the covered position and from DROP, the employee would be prohibited from being employed, reemployed, or retained in a contractual capacity by the original employer in this scenario. The original employer in this scenario is not given a method under SB 1072 by which to avoid this circumstance.”
- “When a member’s retirement and DROP participation are voided due to a violation of FRS termination requirements, the time that they worked during DROP participation reverts to FRS creditable service. The difference between the DROP contribution rate paid during this time and the contribution rate for the membership class the employee would have been eligible for at the time must then be paid to the FRS, plus annually accruing interest, by the employer who facilitated the violation. Because there are no time limitations on the reemployment restrictions imposed by SB 1072, employers could find themselves responsible for these costs plus multiple years of accrued interest.”
- “Under SB 1072, there may be members who void their retirement multiple years after terminating from DROP. If these members’ DROP accumulation and their intervening monthly benefits are not available, they would be required to commit current and possibly future income to repay this debt to the FRS Trust Fund. These members would not be allowed to retire and begin drawing a monthly benefit until the amount owed for their voided retirement is fully paid.”⁷

In its analysis of the original bill,⁸ the Florida Department of Law Enforcement (FDLE) states:

The agency does not believe that a sworn member who has completed DROP and complies with the current reemployment requirements (off the payroll for one month,

⁷ See footnote 2.

⁸ Analysis of SB 1072, Florida Department of Law Enforcement, dated March 6, 2009.

etc.) should be excluded from reemployment within the same agency into a different non-sworn class and corresponding starting salary.

The committee substitute provides that if the Special Risk class member participates for any or all of the additional 36 calendar months in DROP, the member may not be reemployed or retained in a contractual capacity with the same employing agency following the member's termination from that employer. Therefore, it appears that FDLE's comments are also relevant to the committee substitute.

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:

The 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.⁹ 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."¹⁰

Additionally, the Florida Constitution invalidates unfunded local government mandates if the law does not meet certain constitutional tests.¹¹ 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.

In its analysis of the original bill, the Division states:

⁹ Article X, Section 14, Florida Constitution.

¹⁰ Section 112.61, F.S.

¹¹ Article VII, Section 18, Florida Constitution.

This bill requires a special actuarial study to determine the fiscal impact to the FRS of these proposed benefit changes. Under the current DROP funding methodology, the cost of DROP is spread equally as a percentage of pay across all classes instead of being funded through the membership class contribution rate. If there is a cost resulting from this proposed change, all employers would pay the additional cost instead of just employers with Special Risk Class members or employers of law enforcement, correctional officers, and correctional probation officers.¹²

The Division's comments are relevant to the committee substitute, which requires a special actuarial study.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

As indicated in the "Actuarial Statement of Fiscal Soundness," dated February 17, 2009, which was prepared by an actuary of Milliman Inc. and which is incorporated in the Division's analysis of the original bill:

The changes in SB 1072 would impact retirement trends. This bill requires an actuarial special study to determine the fiscal impact of the benefit improvement.¹³

In its analysis of the original bill, the Florida Department of Law Enforcement (FDLE) states:

The retirement contribution rates are 10.91% for DROP and 20.92% for Special Risk regular retirement participants. By extending DROP for a law enforcement officer, FDLE will incur lower costs for retirement contributions than by hiring a replacement for a member exiting DROP after completion of the normal 60-month DROP period.¹⁴

The comments of the Division and FDLE are also relevant to the committee substitute.

¹² See footnote 2.

¹³ See footnote 2.

¹⁴ See footnote 7.

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, 2009:

- Clarifies that the Special Risk members subject to the bill may not be reemployed or retained in a contractual capacity with the same employing agency following the member's termination from that employer if they participate for any or all of the additional 36 calendar months in DROP (the original bill referred to "at the conclusion" of the member's "retirement period").
- Clarifies that restrictions or limitations in the bill on the retired member's reemployment or retention with the agency from which he retired do not limit the retired member from being employed or contracting with any other agency participating in the FRS (the original bill referred to "employment or contractual opportunities for a retiree at any other employing agency").
- Provides an exception from restrictions or limitations in the bill on the retired member's reemployment or retention with the agency from which he retired: a retired member who is employed as a part-time or auxiliary correctional probation officer on a voluntary basis and receives no more than \$1 per calendar year for services rendered directly for the employing agency.

B. Amendments:

None.