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 Community Affairs Committee

BILL: SB 1572

INTRODUCER: Senators Deutch and Baker

SUBJECT: Retirement

DATE: March 8, 2009 REVISED: 03/10/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	**Fav/1 amendment**
2.			GO	
3.			WPSC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	[ ]	Statement of Substantial Changes
B. AMENDMENTS........................	[ ]	Technical amendments were recommended
	[ ]	Amendments were recommended
	[x]	Significant amendments were recommended

I. Summary:

This bill authorizes certain Special Risk Class members in the Florida Retirement System (FRS) to purchase additional retirement credit for past Special Risk service at a 3-percent accrual value. The category of Special Risk Class members authorized to purchase credits for past service is expanded to include emergency medical technicians and any paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

This bill provides that when some, but not all participants, of a local or chapter firefighter or police pension plan under chapters 175 and 185, F.S., join another state retirement system as a result of a transfer, merger or consolidation of government services, or as a result of a city or special district's election to participate in another state retirement system, the chapter or local plan will continue to receive state premium tax moneys until the chapter or local plan is fully funded.

This bill substantially amends the following sections of the Florida Statutes: s. 121.0515, s. 175.041, s. 175.371, s. 185.03, and s. 185.38.

II. Present Situation:

Profile of the FRS and the Special Risk Class[1]— The 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 over 683,811 active employees, over 274,842 annuitants (retirees and their surviving beneficiaries), and more than 31,000 participants of the Deferred Retirement Option Program (DROP).

All state and county employees in regularly established positions are compulsory members of the FRS, and cities and special districts can choose to participate. As of June 30, 2008, about 175 Florida cities were covering firefighters, police, and/or general employees,[2] and 223 independent special districts had members in the FRS.[3]

The active membership of the FRS is divided into five membership classes which are separately funded based upon the costs attributable to the members of that class:

- The Regular Class which consists of 598,556 members (87.53%).
- The Special Risk Class which consists of 74,939 members (10.96%).
- The Special Risk Administrative Support Class which has 75 members (0.01%).
- The Elected Officers' Class which consists of 2,273 members (0.33%).
- The Senior Management Service Class which consists of 7,483 members (1.15%).

Special Risk Class. The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

In creating the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they might 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.

Special Risk Class membership differs from Regular Class membership in the following ways:

[1] Information in the "Present Situation" section of this bill analysis is from an analysis of the bill provided by the Department of Management Services, Division of Retirement, dated March 2, 2009.

[2] On January 1, 1996, many cities and special districts were authorized by law to "opt out" of the FRS for new employees. Many chose to do so, and since that time, some have elected to rejoin the FRS. As of June 30, 2008, among the 175 cities participating in the FRS, there are 26 cities that have chosen to withdraw from the system and do not cover new members under the FRS.

[3] This number includes 13 independent special districts closed to new FRS members since January 1996.

- A Special Risk Class member earns retirement credit at the rate of 3 percent of average final compensation (AFC) for each year of service, as opposed to the 1.60 percent to 1.68 percent credit per year of service earned by a Regular Class member.
- 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) for regular class.
- A Special Risk Class member 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.[4]

The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2008-2009 plan year, the retirement portion of the employer contribution rate for the Special Risk Class will be 19.76 percent – more than twice the 8.69 percent retirement contribution rate for the Regular Class.[5] Thus when a membership group moves from the Regular Class to the Special Risk Class, the monthly employer contributions for that group increases by over 2.25 times for affected employees.

Membership criteria. Under current law, FRS members must meet specified eligibility requirements to qualify for membership in the Special Risk Class. These requirements limit membership to persons who are employed as law enforcement officers, firefighters, correctional officers, correctional probation officers, emergency medical technicians or paramedics, specified forensic and health care workers, and youth custody officers, and who meet the criteria set forth in applicable s. 121.0515, F.S. At the state level, specified professional health care and forensic positions in the Department of Corrections and the Department of Children and Families were included in the Special Risk Class, effective January 1, 2001. To quality for special risk membership, the members filling these state positions must spend at least 75 percent of their time performing duties involving inmate or patient contact.

Past Service— Section 121.021(18), F.S., provides that "past service" means the number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which the member was in the active employ of an employer prior to his or her date of participation in the FRS. Section 121.081(1), F.S., provides the conditions which must be met for past service to be creditable, and this service must be purchased for service credit to be awarded.

Special Risk Credit for Past Service— Members of the Special Risk class of the FRS may claim past service to purchase or upgrade as special risk service valued at 2 percent of average final compensation (AFC) per year. Section 121.0515(5)(a), F.S., provides the conditions under the past service credit may be claimed. The cost to purchase past service credit earned before

[4] FRS members may choose to receive benefits from in one of four ways. Option 1 provides the greatest amount but is unaccompanied by survivor benefits.

[5] Regardless of whether the individual member elects to participate in the Defined Benefits Plan or the Defined Investment Plan, the employer pays the same contribution rate for each class or subclass of membership by blending the rates for both plans as required under the uniform contribution rate system of the FRS in part III of chapter 121. Under the Investment Plan, the amount contributed to an individual member account increased from 9 percent to 20 percent when the member moves from the Regular Class to the Special Risk Class.

January 1, 1975, is based on 8 percent of the annual salary earned for each year of the past service being claimed, with interest charged from the fiscal year the service was earned. Interest is charged at 4 percent, compounded annually, from the date past service until July 1, 1975, and 6.5 percent interest thereafter on any unpaid balance until the full amount is paid.

The cost to purchase special risk service earned on or after January 1, 1975, is calculated using the special risk contribution rate that was in effect at the time the service was earned, multiplied by the annual salary, plus interest. The cost to upgrade eligible past service to special risk service is calculated using the difference between the contributions paid on the service earned and the special risk contribution rate multiplied by the salary earned in that time period, plus interest. Past credit service may be purchased by the member or by the employer on behalf of the member.

Article X, Section 14, of the Florida Constitution— Since 1976, the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below.

> SECTION 14. State retirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members of beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of ch. 112, F.S.— Article X, Section 14, of the Florida Constitution is implemented in part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to "prohibit 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."

Part I of ch. 121, F.S.— Section 121.091(10), F.S., provides that "it is the intent of the Legislature that future benefit increases enacted into law in this chapter shall be financed concurrently by increased contributions or other adequate funding, and such funding shall be based on sound actuarial data as developed by the actuary or state retirement actuary, as provided in ss. 121.021(6) and 121.192."

Chapters 175 and 185 Plan Provisions— Sections 175.041(3) and 185.03(2), F.S., each provide that the provisions of the respective chapters do not apply to any governmental entity whose firefighters and/or police officers are eligible to participate in the FRS. Exceptions are provided for those cities and special districts that opted out of the FRS and established a chapter plan for all police officers and firefighters hired after January 1, 1996, and for a city or special district subject to a transfer, consolidation, or merger, and whose fire and law enforcement services are provided by the county in which the city or special districts are located.

Sections 175.411 and 185.60, F.S., provide that cities and special districts who opt out of a local or chapter plan but do not terminate the plan, are prohibited from receiving future insurance premium tax money used to fund the pension plans. Premium tax funds previously received must be used to fund existing benefits for vested firefighters or police officers, and the accrued benefits of such vested firefighters or police officers may not be reduced. Annual reports to the Municipal Police Officers' and Firefighters' Pension Office in the Division of Retirement at the Department of Management Services are required. Sections 175.361 and 185.37, F.S., provide requirements for distribution of plan assets when a city or a special district does terminate a chapter or local law pension plan.

Sections 175.371 and 185.38, F.S., provide that when every active firefighter or police officer in a chapter or local law pension plan elects to transfer to another state retirement system, the pension plan must be terminated and the assets must be distributed in accordance with ss. 175.361 and 185.37, F.S. If some participants elect to transfer to another state retirement system and others elect to remain in the chapter or local law plan, the chapter or local law plan will continue to receive insurance premium taxes until the plan is fully funded meaning that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis.

III. Effect of Proposed Changes:

Section 1. Amends. s. 121.0515, F.S., to:

- Increase the Special Risk accrual value at which certain employees may purchase additional retirement credit for past service from 2 percent to 3 percent of the member's average monthly compensation for the service being purchased. The service must satisfy the criteria for membership in the Special Risk Class.
- Authorizes certain emergency medical technicians or paramedics to purchase special risk class membership credit under the same terms and conditions as those provided to other public safety employee occupations.

Section 2. Amends s. 175.041(3), F.S, to conform to the revisions proposed for s. 175.371(2), F.S.

Section 3. Amends s. 175.371(2), F.S., to expand the circumstances under which a firefighter pension plan may continue to receive premium insurance taxes when some plan members have joined another state retirement system and other plan members have elected to stay in the pension plan, to include:

- When some plan participants transfer as a result of a transfer, merger, or consolidation of governmental services.
- When a municipality or a special district elects to participate in another state retirement system.

Section 4. Amends. s. 185.03, F.S., to conform to the revisions proposed for s. 185.32(2), F.S.

Section 5. Amends s. 185.32(2), F.S., to expand the circumstances under which a municipal police officer pension plan may continue to receive premium insurance taxes when some plan members have joined another state retirement system and other plan members have elected to stay in the pension plan, to include:

- When some plan participants transfer as a result of a transfer, merger, or consolidation of governmental services.
- When a municipality or a special district elects to participate in another state retirement system.

Section 6. Provides a statement of important state interest.

Section 7. Provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Although this bill does not provide the way in which the benefit improvement will be funded, the projected fiscal impacts may require cities and counties to expend revenue to fund the additional benefit. Based on a 2005 actuarial special study conducted by Milliman, Inc., the fiscal impact would be a 0.07 percent increase in the Special Risk Class contribution rate. Therefore, the bill does fall within the purview of s. 18(a), Art. VII, of the State Constitution, which provides that cities and counties are not bound by general laws requiring them to spend funds or to take an action which requires the expenditure of funds unless certain specified exemption or exceptions are met. None of the exemptions are applicable.

As for applicable specified constitutional exceptions, the bill requires similar expenditures by all similarly situated persons (i.e. counties, municipalities, and the state); therefore, the only additional requirement necessary to remove the bill from the purview of this constitutional provision is a finding by the Legislature that the bill fulfills an important state interest. (See section 6 of the bill.) Thus, the bill is exempt from the requirements of s. 18, Art. VII, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill does not meet the requirements of s. 14, Art. X of the State Constitution, because although the cost to the FRS to increase the accrual rate applicable to past Special Risk service available for purchase or upgrade is based on Actuarial Special Study 2005-L, dated April 22, 2005, and performed by Milliman Inc. Consulting Actuaries, no funding mechanism is provided.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Members of the FRS Special Risk Class who are eligible to purchase credit for past service will incur the costs of the service credit upgrade, and will receive improved retirement benefits. However, the cost does not cover the total actuarial impact of the benefit improvement.

C. Government Sector Impact:

The Division of Retirement in the Department of Management Services noted in its bill analysis that based on the 2005 actuarial study, the fiscal impact would be a 0.07 percent increase in the Special Risk Class contribution rate to fund the benefit improvement.

Fiscal Impact on Local Governments (Recurring)

FY 2009-2010	FY 2010-2011	FY 2011-2012
$2,198,000	$2,286,000	$2,377,000

Fiscal Impact on State Government (Recurring)

FY 2009-2010	FY 2010-2011	FY 2011-2012
$757,000	$788,000	$819,000

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill does not limit the periods of past service for which credit may be purchased. Under current law, special risk service earned between December 1, 1970 and September 30, 1974 is now valued at 2 percent of the member's AFC for each year of service. If the bill is not amended to limit the upgrade of past service to service earned on or after October 1, 1974, members who join the FRS due to a city or special district opting into the FRS, or members who join the FRS as a result of a merger with, consolidation with, or transfer to another unit of local government that is in the FRS, could receive a higher accrual value for Special Risk service during this time period than Special Risk Class members who were actively working at the time.

The Division of Retirement in the Department of Management Services raised the following issues relating to chapter 175/185 provisions:

- When a city or a special district opts into the FRS or merges with, transfers to, or consolidates with another local government, entry into that city or special district's pension fund is closed to new members. All new hires will enter into the FRS or another retirement plan. The city and the special district will continue to receive insurance premium taxes for the participants remaining in the closed (but not terminated) chapter or local plan until the plan is fully funded. The maintenance of the closed plan, including maintenance of existing benefits or benefit improvements or reductions are not addressed. Increased or decreased employee contributions under the bill are also not addressed. If benefit improvements were provided for members of the closed plan or a share account established for retiring members and their surviving beneficiaries, the closed plan may not be fully funded until the death of the last benefit recipient.
- Participation in the FRS for new plan members could create a disparity in benefits compared to closed plan members with regard to benefits and employee contributions.

The Division also raised issues with the following sections of chapters 175 and 185, F.S:

- The definition of "firefighter" and "police officer" in ss. 175.032(8) and 185.02(11), F.S., respectively.
- Sections 175.061 and 185.05, F.S., to provide for the ever diminishing group of active members in a closed plan.
- Sections 175.101, 175.121, and 185.08, F.S., with regard to the distribution of insurance premium taxes, and the eligibility of a closed plan to continue collecting insurance taxes for a city with which it has entered into an interlocal agreement for fire service.
- Section s175.351(1) and 185.35(1), F.S., which allow active members to choose whether to place insurance premium taxes in the existing plan or in a supplement plan for extra benefits.
- Potential conflicts with ss. 175.411 and 185.60, F.S., providing that when cities opt out of the chapter or local law pension plan, they are no longer eligible for insurance premium taxes.

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:

Barcode 750494 by Community Affairs on March 10, 2009:
This amendment removes the fiscal impact of the bill relating to funding the FRS for the upgrade in the purchase of the special risk credit for service provisions of the bill. Members or employers of members are required to contribute the amount that represents the actuarial accrued liability for the difference in accrual value during the period of service for which credit is being purchase. The cost of calculating the credit being purchased is borne by the Division of Retirement. (WITH TITLE AMENDMENT)