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: SB 1230

INTRODUCER: Senator Crist

SUBJECT: Florida Retirement System

DATE: March 19, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Favorable**
2.			GO	
3.			JA	
4.			WPSC	
5.				
6.				

I. Summary:

SB 1230 amends s. 121.055, F.S., to add each capital collateral regional counsel office (currently there are two offices) to the list of offices that may have one Senior Management Service Class (SMSC) position if they so choose. Should the FTE in either office reach 200 in the future, there may be more than one employee designated SMSC in that office. The bill provides an effective date of July 1, 2010.

This bill substantially amends the following section of the Florida Statutes: 121.055.

II. Present Situation:

The Florida Retirement System (FRS)[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 668,416 active employees, 289,602 annuitants (retirees and their surviving beneficiaries), and 32,921 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, 2009: about 181

[1] Member counts are based on a "snapshot" of the FRS taken on June 30, 2009. These counts include members of the Teachers Retirement System, State and County Officers and Employees' Retirement System, and special retirement programs.

Florida cities[2] were covering firefighters, police, and/or general employees; and 221 independent special districts[3] had members in the FRS. District school boards represent nearly half (48.38 percent) of the FRS membership, with community colleges (2.87 percent) and universities (3.63 percent) bringing the total for educational institutions to about 55 percent of the FRS membership. State employees (excluding university employees) represent 17.35 percent of the FRS. Remaining members are employed by local agencies, including counties (23.30 percent) as well as cities and special districts (4.46 percent) that have opted to join the FRS.

The active membership of the FRS Pension Plan as of June 30, 2009, is divided into five membership classes: The Regular Class consists of 582,671 members (87.17 percent of the membership); the Special Risk Class includes 75,640 members (11.32 percent); the Special Risk Administrative Support Class has 76 members (0.01 percent); the Elected Officers' Class has 2,304 members (0.34 percent); and the Senior Management Service Class has 7,725 members (1.16 percent). Each class is separately funded based upon the costs attributable to the members of that class except for funding of the Deferred Retirement Option Program (DROP).

Senior Management Service Class (SMSC)
The SMSC was established effective February 1, 1987, in order to attract highly qualified individuals to the top policy-making managerial positions in state government. Members of the SMSC have a normal retirement age of 62, but they earn a higher accrual value than do members of the FRS Regular Class. Senior managers whose positions have been added to the class in subsequent years can purchase (or their employers can purchase for them) additional retirement credit for service within the purview of the class retroactive to February 1, 1987. With certain exceptions[4], state SMSC members can also choose to withdraw from the FRS and participate instead in the Senior Management Service Optional Annuity Program which offers immediate vesting. Local agency SMSC members, including community college presidents, city and county managers, and appointed district school superintendents, may elect to withdraw from the FRS altogether.

Positions included or authorized to be included in the SMSC
Originally, membership in the Senior Management Service Class was strictly limited to those members who held positions in the Senior Management Service of the state personnel system (executive branch employees only). However, since the creation of the class, the Legislature has added the following positions in the legislative and judicial branch and local government agencies to this retirement class:

- Effective January 1, 1990, specified local senior managers (including community college presidents, appointed school superintendents, and the county manager and city manager of each local government participating in the FRS) were added by law to the class under s. 121.055(1)(b), F.S.;

[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, 2009, among the 181 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.
[4] Assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsels are disallowed by law (s. 121.055(1)(h)3., F.S.) from participating in SMSOAP.

- Effective January 1, 1990, legislative managers (includes selected managerial staff of the Legislature, the Auditor General and his managerial staff, and the Executive Director of the Ethics Commission) were added by law to the class under s. 121.055(1)(c), F.S.;
- Effective January 1, 1991, State University System managers (positions include the Executive Service of the State University System and state university presidents) were added by law to the class under s. 121.055(1)(d), F.S.;
- Effective January 1, 1991, State Board of Administration managers (senior-level management positions with the State Board of Administration) were added by law to the class under s. 121.055(1)(e), F.S.;
- Effective January 1, 1994, specified judicial branch senior managers were added by law to the class under s. 121.055(1)(h), F.S.;
- Effective January 1, 1994, state attorneys and public defenders were granted conditional authority to designate a limited number of additional managerial positions for inclusion in the SMSC under s. 121.055(1)(h), F.S.;
- Effective January 1, 1994, each participating local agency was granted conditional authority to designate a limited number of additional managerial positions for inclusion in the SMSC[5] under s. 121.055(1)(b), F.S.;
- Effective July 1, 1996, members employed with the Department of Military Affairs in the positions of the Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Military Personnel, Director of Administration were added to the class under s. 121.055(1)(g), F.S. Effective July 1, 1996, the agency head of the Department of Military Affairs may designate additional director's positions to the SMSC not to exceed a total of 10 positions as provided under s. 121.055(1)(g), F.S.
- Effective July 1, 1999, judges of compensation claims (positions in the Department of Labor and Employment Security) were added by law to the class under s. 121.055(1)(i), F.S.;
- Effective January 1, 2001, assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsels were added to the SMSC (but were excluded from participation in SMSOAP) under s. 121.055(1)(h)2., F.S.;
- Effective January 1, 2002, assistant attorneys general became compulsory members of the SMSC under s. 121.055(1)(h)2., F.S., and
- Effective June 1, 2002, the chief deputy court administrator in each judicial circuit[6] was included in the SMSC under s. 121.055(1)(h)1., F.S.

Effective June 1, 2002, all county health department administrators and county health department directors for the Department of Health became compulsory members of the SMSC under s. 110.205(2)(j), F.S. Effective July 1, 2007, the executive directors or staff directors of a metropolitan planning organization that has opted to participate in the Florida Retirement System became compulsory members of the SMSC under s. 121.055(1)(l), F.S.

[5] Contribution rates for the Senior Management Service Class were increased by 0.47% and Regular Class rates were reduced by 0.05% to fund the shift in system costs due to the transfer of this potentially large number of positions from the Regular Class to the SMSC.
[6] This position was created for each judicial circuit in November 2001.

Constitutional Requirements
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 or 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.

Article X, Section 14, of the Florida Constitution is implemented by statute under 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."

The Department of Management Services actuary reports that the bill complies with the requirements of both Article X, Section 14 of the Constitution and ch. 112, Part VII, F.S.

III. Effect of Proposed Changes:

Senate Bill 1230 would allow the capital collateral counsel of each regional capital collateral counsel office to automatically have one SMSC position and to designate additional positions as deemed appropriate by the capital collateral counsel for inclusion in the Senior Management Service Class with the following restrictions:

(1) Each additional position added to the SMSC must be:
   (a) A non elective managerial or policy making position;
   (b) A position filled by an employee who is not subject to a continuing contract and serves at the pleasure of the employer without civil service protection; and
   (c) A position which is the head of an organizational unit or has responsibility to make or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

(2) One nonelective full-time position may be designated by the capital collateral counsel of each regional capital collateral counsel office.

(3) Additional nonelective full-time positions may be designated by the capital collateral counsel of each regional capital collateral counsel office with 200 or more regularly established positions but shall not exceed 0.5 percent of the regularly established positions.

(4) Notice of intent to designate positions for inclusion in the SMSC shall be published once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties affected as provided in chapter 50.

According to the Justice Administration Commission, there are currently two regional capital collateral counsel offices; the middle regional capital collateral counsel office and the southern regional capital collateral counsel office with 41 and 32 full-time employees (FTE) respectively. As neither regional capital collateral counsel office currently has 200 or more regularly established positions (see (3) above), each capital regional counsel would be limited to designating one nonelective full-time position until such time the number of FTE in their respective offices permits them to designate additional SMSC positions.

Positions designated to the SMSC class would earn a higher credit toward future retirement benefits than they are receiving as members of the Regular Class. Members of the SMSC earn retirement credit for their service equal to 2 percent of their average final compensation[7] per year compared to the accrual value for the Regular Class that ranges from 1.60 percent to 1.68 percent per year depending on the member's age (62-65) or total years of service (30-33) at retirement.[8] To fund the benefit improvement, the employer would pay higher retirement contributions for each designated member (the difference between the rate for the Regular Class and the rate for the SMSC). Based on rates currently in effect, retirement contribution rates for affected members would be increased by 3.27 percent.[9]

As members of the SMSC, employees in the designated positions could upgrade their prior creditable service to SMSC value within the purview of the class back to February 1, 1987, by paying the difference in Regular Class contributions paid and contributions that were in effect under the SMSC for the period being claimed, plus interest. The employer could purchase this service credit on the member's behalf.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[7] "Average Final Compensation" or AFC is the average of the 5 highest fiscal years of salary earned during covered employment. For retirement purposes, salaries are counted by fiscal year (July 1– June 30).

[8] Under the FRS, if a Regular Class member works 1, 2, or 3+ years beyond his/her normal retirement date, based on either age or service, the 1.60% value for the service is increased to 1.63%, 1.65%, or 1.68%, respectively. The higher value is applied to all years of service.

[9] For FY 2009/10 excluding the 1.11% contributions for the Retiree Health Insurance Subsidy and the 0.05% fee for administration/education under the Public Employee Optional Retirement Program, the retirement contribution rate for the Regular Class is 9.85% and the retirement contribution rate for the SMSC is 13.12%.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Currently, there are two regional capital collateral counsel offices (the middle region and southern region) and based upon the full-time employees (FTE) of each office, the regional capital collateral counsel of each office would currently be limited to designating one SMSC position until the time the FTE of an office permitted additional designations to the SMSC.

The cost in increased employer contribution rates to add SMSC positions within the capital collateral offices would be an extra 3.27 percent of pay for all affected members, based on the difference between Regular Class and SMSC retirement contribution rates in effect on July 1, 2009. The rates cannot be predicted for fiscal year 2010-2011 nor can it be known if the current salary rates will be the same as currently reported at the time of Senior Management Designation.

Salaries as *currently* reported as well as the *current* increase in the employer contribution rate were used in the following computation by the Department of Management Services actuary:

Salary	Differential between Regular Class contribution rate and Senior Management Service Class rate based on FY 2009/10 contribution rates. Rates for FY 2010/11 are unknown and therefore the actual differential in contribution rates for FY 2010/11 is unknown	Additional contributions based upon FY 2009/10 retirement contribution rates and salaries provided. It is assumed that these will be the actual salaries at the time of Senior Management designation. The actual increase in contribution resulting from senior management cannot be determined as FY 2010/11 rates are unknown.	
$82,000.57	3.27%	$2,681.42	
$67,226.00	3.27%	$2,198.29	
		$4,879.71	**Additional contributions based on FY 2009/10 rates**

Capital Collateral Regional Counsel in both the Middle and South Regions have submitted letters to committee staff expressing their intention to bear the additional cost out of their existing budgets and stating that no additional funds will be requested nor required should the bill pass.

VI. Technical Deficiencies:

It has been suggested that, for historical purposes, language in the bill on lines 30 and 31 should read:

> defender in each judicial circuit <u>and *effective July 1, 2010*, in the offices of the capital collateral regional counsel in each region</u> may be

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.)

None.

B. Amendments:

None.