

**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 Appropriations Subcommittee on General Government

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BILL: PCS/SB 1758 (303670)

INTRODUCER: Appropriations Subcommittee on General Government and Senator Montford

SUBJECT: Special Risk Class

DATE: February 23, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Davis/Sneed</u>	<u>Betta</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1758 revises criteria for membership in the Special Risk Class of the Florida Retirement System to include specified employees of the Florida State Hospital, located in Chattahoochee, Florida. The bill provides a legislative determination that the act fulfills an important state interest.

The Department of Children and Families will incur higher retirement contributions to fund these enhanced benefits for employees moving from the Regular Class to the Special Risk Class of the Florida Retirement System as specified in the bill. The bill may affect approximately 1,000 positions. The costs of these enhanced benefits are estimated to be \$1,939,172 (\$1.3 million from the General Revenue Fund and \$676,054 from agency trust funds) for Fiscal Year 2018-2019 and \$3,878,344 (\$2.5 million from the General Revenue Fund and \$1.3 million from agency trust funds) annually thereafter. The bill appropriates the recurring sums of \$1,263,118 from the General Revenue Fund, \$605,606 from the Federal Grants Trust Fund, and \$70,448 from the Operations and Maintenance Trust Fund to the Department of Children and Families to implement the provisions in the bill.

The bill takes effect on January 1, 2019.

## II. Present Situation:

### The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.<sup>1</sup> The FRS is a contributory system, with most members contributing three percent of their salaries.<sup>2</sup>

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S. As of June 30, 2017, the FRS had 637,643 active members, 406,374 annuitants, 16,150 disabled retirees, and 32,233 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> As of June 30, 2017, the FRS consisted of 995 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and includes the 173 cities and 260 special districts that have elected to join the system.<sup>4</sup>

The membership of the FRS is divided into five membership classes:

- The Regular Class<sup>5</sup> consists of 552,600 active members, plus 3,116 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 71,612 active members;
- The Special Risk Administrative Support Class<sup>7</sup> has 93 active members;
- The Elected Officers' Class<sup>8</sup> has 2,082 active members, plus 85 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,912 members, plus 116 in renewed membership.<sup>10</sup>

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<sup>1</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 33. Available online at: [https://www.rol.frs.state.fl.us/forms/2016-17\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2016-17_CAFR.pdf). (Last visited January 3, 2018.)

<sup>2</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

<sup>3</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 144.

<sup>4</sup> *Id.*, at 180.

<sup>5</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>6</sup> The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

<sup>7</sup> The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

<sup>8</sup> The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

<sup>9</sup> The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

<sup>10</sup> All figures from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 147.

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

### ***The Special Risk Class of the FRS***

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 originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

are required to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.<sup>11</sup>

A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members.

### ***Investment Plan***

In 2000, the Legislature created the Public Employee Optional Retirement Program (Investment Plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the Investment Plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the Investment Plan.<sup>12</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>13</sup> Vested benefits are payable upon termination or death as a

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<sup>11</sup> Section 121.0515(1), F.S.

<sup>12</sup> Section 121.4501(6)(a), F.S.

<sup>13</sup> If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.

lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>14</sup> The Investment Plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>15</sup> An FRS member who qualifies for disability while enrolled in the Investment Plan must apply for benefits as if the employee were a member of the Pension Plan. If approved for retirement disability benefits, the member is transferred to the Pension Plan.<sup>16</sup>

The State Board of Administration (SBA) is primarily responsible for administering the Investment Plan.<sup>17</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>18</sup>

### ***Pension Plan***

The Pension Plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>19</sup> The SBA handles investment management.

Any member initially enrolled in the Pension Plan before July 1, 2011, vests in the Pension Plan after completing six years of service with an FRS employer.<sup>20</sup> For members enrolled on or after July 1, 2011, the member vests in the Pension Plan after eight years of creditable service.<sup>21</sup> Benefits payable under the Pension Plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.<sup>22</sup> For most members of the Pension Plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.<sup>23</sup> For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.<sup>24</sup> Members initially enrolled in the Pension Plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.<sup>25</sup>

### ***Contribution Rates***

FRS employers are responsible for contributing a specified percentage of the member's monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute,

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<sup>14</sup> Section 121.591, F.S.

<sup>15</sup> See s. 121.4501(16), F.S.

<sup>16</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date.

Section 121.091(4)(f), F.S.

<sup>17</sup> Section 121.4501(8), F.S.

<sup>18</sup> FLA CONST. art. IV, s. 4.

<sup>19</sup> Section 121.025, F.S.

<sup>20</sup> Section 121.021(45)(a), F.S.

<sup>21</sup> Section 121.021(45)(b), F.S.

<sup>22</sup> Section 121.091, F.S.

<sup>23</sup> Section 121.021(29)(a)1., F.S.

<sup>24</sup> Section 121.021(29)(b)1., F.S.

<sup>25</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

which is the same percentage regardless of whether the member participates in the Pension Plan or the Investment Plan.<sup>26</sup> The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2017, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS Pension Plan.<sup>27</sup>

	<b>Valuation Results (in \$ billions)</b>			
	<b>July 1, 2014</b>	<b>July 1, 2015</b>	<b>July 1, 2016</b>	<b>July 1, 2017</b>
Actuarial Liability	\$160.1	\$165.5	\$170.4	\$178.6
Actuarial Value of Assets	\$138.6	\$143.2	\$145.5	\$150.6
Unfunded Actuarial Liability	\$21.5	\$22.3	\$24.9	\$28.0
Funded Percentage (Actuarial Value of Assets/Actuarial Liability)	86.6%	86.5%	85.4%	84.3%

The state actuary determines a rate associated with the normal cost of the Pension Plan (funding the prospective benefits) and a rate necessary to amortize the unfunded actuarial liabilities (UAL) over a 30-year period. The following are the current employer contribution rates<sup>28</sup> for each class and the blended rates recommended by the state actuary beginning in July 2018:<sup>29</sup>

<sup>26</sup> Section 121.70(1), F.S.

<sup>27</sup> Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at 125.

<sup>28</sup> Section 121.71(4) and (5), F.S.

<sup>29</sup> Letter to Ms. Elizabeth Stevens, *Re: Blended Proposed Statutory Rates for the 2018-2019 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 6, 2017 (on file with the Senate Committee on Governmental Accountability and Oversight).

Membership Class	Current Rates Effective July 1, 2017		Recommended Rates to be effective July 1, 2018	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	2.90%	3.03%	3.04%	3.500%
Special Risk Class	11.86%	9.69%	12.18%	10.60%
Special Risk Administrative Support Class	3.83%	29.80%	3.64%	29.62%
Elected Officer’s Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.45%	42.69%	6.65%	48.38%
• Justices and Judges	11.67%	26.25%	12.00%	27.05%
• County Officers	8.54%	35.24%	8.50%	38.48%
Senior Management Service Class	4.29%	16.70%	4.45%	17.89%
Deferred Retirement Option Program	4.17%	7.96%	4.41%	7.96%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.<sup>30</sup>

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the Investment Plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas contributions under the Pension Plan are transferred into the FRS Trust Fund.<sup>31</sup>

**Section 14, Article X of the State Constitution**

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

Article X, section 14 of the Florida Constitution provides:

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.

<sup>30</sup> Section 121.71(3), F.S.

<sup>31</sup> See ss. 121.4503 and 121.72(1), F.S.

## Florida State Hospital

The Florida State Hospital (hospital) located in Chattahoochee, Florida, is a state psychiatric hospital operated by the Department of Children and Families that provides civil and forensic services.<sup>32</sup> Forensic services for persons who are charged with a felony and have been found to be incompetent to proceed with their trial due to mental illness, or who have been acquitted of a felony by reason of insanity are governed by ss. 916.111-916.185, F.S.

The hospital's civil services are comprised of the following three units:

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.

The hospital's forensic services evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.

### III. Effect of Proposed Changes:

**Section 1** amends s. 121.0515, F.S., to add specified Florida State Hospital employees to the Special Risk Class of the Florida Retirement System (FRS).

These employees must be a member of the FRS, spend at least 65 percent of his or her time performing duties that involve contact with patients or inmates at the Florida State Hospital, and be employed in the following job classes:

- Abuse registry counselor (class code 5961).
- Barber/beautician (class codes 6201, 6205, and 6206).
- Behavioral program associate (class codes 5750 and 5762).
- Behavioral program specialist (class codes 5751 and 5763).
- Certified radiologic technologist (class codes 5523, 5524, 5527, and 5528).
- Chaplain (class codes 5819 and 5820).
- Child protective investigator (class code 8371).
- Child protective field support consultant (class code 8374).
- Children, youth, and families counselor (class code 5954).
- Classroom teacher (class codes 4144 and 4147).

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<sup>32</sup> See <http://www.myflfamilies.com/service-programs/mental-health/fsh/services-programs> (last visited on Jan. 19, 2018).

- Custodial trainer (class code 6530).
- Custodial worker (class codes 6511 and 6526).
- Dental assistant (class codes 5632 and 5633).
- Dental hygienist (class code 5641).
- Dental technician (class code 5644).
- Dietetic technician (class code 5594).
- Direct services aide (class code 5702).
- Education and training specialist (class code 1328).
- Food control specialist (class code 6217).
- Food support worker (class code 6213).
- Groundskeeper (class code 6394).
- Health support aide (class codes 5504 and 5505).
- Human services counselor (class codes 5934, 5936, 5937, 5940, and 5941).
- Human services program analyst (class code 5871).
- Human services program consultant (class codes 5918, 5919, and 5920).
- Human services program records analyst (class code 5864).
- Human services program specialist (class code 5877).
- Human services worker (class codes 5706, 5709, 5781, and 5784).
- Librarian (class code 4315).
- Librarian specialist (class codes 4318 and 4319).
- Medical laboratory technician (class codes 5047 and 5048).
- Pharmacy technician (class codes 5500 and 5501).
- Rehabilitation therapist (class codes 5562 and 5563).
- Residential unit specialist (class code 5736).
- Senior chaplain (class code 5823).
- Social services counselor (class codes 5953 and 5960).
- Storekeeper (class codes 0918, 0921, and 0922).
- Teacher aide (class codes 4133 and 4142).
- Therapy aide (class codes 5556 and 5557).
- Training specialist (class codes 1322 and 1324).
- Unit treatment and rehab specialist (class codes 5776 and 5791).
- Vocational instructor (class codes 1309, 1310, 1311, 1312, 1313, and 1315).
- Volunteer services center specialist (class code 6000).
- Volunteer services specialist (class code 5997).

**Section 2** provides a legislative determination that the bill fulfills an important state interest.

**Section 3** appropriates the recurring sums of \$1,263,118 from the General Revenue Fund, \$605,606 from the Federal Grants Trust Fund, and \$70,448 from the Operations and Maintenance Trust Fund to the Department of Children and Families to implement the provisions in the act.

**Section 4** provides the bill takes effect January 1, 2019.



**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill extends Special Risk Class retirement benefits to certain employed members of specified job classes who perform duties involving contact with patients or inmates at the Florida State Hospital. The Department of Children and Families (DCF) will incur higher retirement contributions to fund these new benefits for employees in the Special Risk Class specified in the bill. There are approximately 1,000 positions affected by the bill. The costs of these new benefits are estimated to be \$1,939,172 (\$1.3 million from the General Revenue Fund and \$676,054 from agency trust funds for Fiscal Year 2018-2019 and \$3,878,344 (\$2.5 million from the General Revenue Fund and \$1.3 million from agency trust funds) annually thereafter. Recurring funds are appropriated from the General Revenue Fund, the Federal Grants Trust Fund, and the Operations and Maintenance Trust Fund to the DCF to implement the retirement benefit enhancement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Florida State Hospital (FSH) is one of three DCF mental health treatment facilities, which also include the Northeast Florida State Hospital (NEFSH) and the North Florida Evaluation and

Treatment Center (NFETC). As stated above, the FSH provides civil and forensic services, the NEFSH provides only civil services, and the NFETC only provides forensic services.<sup>33</sup>

According to the Department of Management Services, “legal challenges could be filed if the bill becomes law and there are the same positions, duties, and required percentage of inmate contact for members employed by a forensic facility with the Department of Children and Families who are not covered for Special Risk Class participation by this bill. Legal challenges could also be filed for employees in the same position and class code with the same duties and percentage of inmate contact as those covered by this bill who work for agencies other than the Department of Children and Families.”<sup>34</sup>

In addition, according to the DCF, several job classes specified in the bill are not used at the FSH.<sup>35</sup>

### VIII. Statutes Affected:

This bill substantially amends section 121.0515 of the Florida Statutes.

### IX. Additional Information:

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

**Recommended CS by Appropriations Subcommittee on General Government on February 21, 2018:**

The committee substitute provides an appropriation to the Department of Children and Families to implement the bill.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>33</sup> Department of Children and Families, *Analysis of HB 493* (received February 2, 2018) (on file with the Senate Subcommittee on General Government).

<sup>34</sup> Department of Management Services, *Analysis of SB 1758* (February 12, 2018) (on file with the Senate Subcommittee on General Government).

<sup>35</sup> Department of Children and Families, *Analysis of HB 493* (received February 2, 2018) (on file with the Senate Subcommittee on General Government). Abuse registry counselor (class code 5961), Child protective investigator (class code 8371) and Child protective field support consultant (class code 8374) are job classes not currently utilized at the FSH.