

**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 Committee on Governmental Oversight and Accountability

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BILL: CS/SB 1146

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Special Risk Class of the Florida Retirement System

DATE: January 31, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1146 amends s. 121.0515, F.S., to revise criteria for membership in the Special Risk Class of the Florida Retirement System (FRS) to include juvenile justice detention officers I and II and juvenile justice detention supervisors with the Department of Juvenile Justice (DJJ).

Juvenile justice detention officers I and II (JDO) serve as a front-line direct care staff who supervise and manage all youth assigned to a juvenile detention center. JDOs are tasked with ensuring the safety and security of all youth in custody, and that youth are provided their constitutional rights regarding access to legal, medical, and mental health issues.

This bill provides a legislative declaration that the bill fulfills an important state interest.

The DJJ will incur roughly \$6.2 million annually in additional retirement contributions to fund these enhanced benefits for detention officers and supervisors shifting from the Regular Class to the Special Risk Class of the Florida Retirement System. The costs incurred by DJJ will be partially offset by increased cost-sharing payments allocated to counties for detention costs paid pursuant to s. 985.6865, F.S. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

## II. Present Situation:

### The Florida Retirement System (FRS)

#### *General Background*

The FRS was established in 1970.<sup>1</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, 2019, the FRS had 647,942 active members, 424,895 annuitants, 15,783 disabled retirees, and 32,670 active participants of the Deferred Retirement Option Program (DROP).<sup>2</sup> As of June 30, 2019, the FRS consisted of 976 participating employers enrolling new members and 44 participating employers closed to new FRS membership with grandfathered FRS members.<sup>3</sup>

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

- The Regular Class<sup>4</sup> consists of 554,631 active members and 7,629 in renewed membership;<sup>5</sup>
- The Special Risk Class<sup>6</sup> includes 74,274 active members and 1,112 in renewed membership;
- The Special Risk Administrative Support Class<sup>7</sup> has 100 active members;
- The Elected Officers' Class<sup>8</sup> has 2,088 active members and 112 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,767 active members and 214 in renewed membership.<sup>10</sup>

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.

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<sup>1</sup> Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems*, p. 35, available at [https://www.rol.frs.state.fl.us/forms/2018-19\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf) (last visited January 6, 2020).

<sup>2</sup> *Id.* at 158.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>5</sup> Effective July 1, 2017, retirees of specified defined contribution plans employed in a regularly established position are eligible to be enrolled as renewed members of the defined contribution plan covering the position held except the Senior Management Service Optional Annuity Program that is closed to new members. FRS Pension Plan retirees remain ineligible for renewed membership. Section 121.122, 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 Class 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 FRS. 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> Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems*, p. 161, available at [https://www.rol.frs.state.fl.us/forms/2018-19\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf) (last visited January 6, 2020).

***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.

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

[A]re 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>

Compared to Regular Class members, a person who is a member in the Special Risk Class of the FRS pension plan earns a higher annual service accrual rate, may retire at an earlier age and is eligible to receive higher disability and death benefits. As a result, the contribution rates to fund the normal cost of the Special Risk benefits is higher than the contribution rates to fund the normal cost of the Regular Class benefits. Similarly, the contribution rates to fund the unfunded liabilities of the Special Risk Class is higher than the similar type contribution rates for the Regular Class.<sup>12</sup> Special Risk Class members of the FRS investment plan receive total contributions into the individual investment accounts equal to 14 percent of salary. A Regular Class member receives total contributions equal to 6.3 percent of salary.

The table below shows the contribution rates for the Regular Class and the Special Risk Class as enacted for FY 2019-20<sup>13</sup> and as recommended by the state actuary<sup>14</sup> beginning FY 2020-21.

	2019-20		2020-21	
	Regular Class	Special Risk Class	Regular Class	Special Risk Class
Normal Cost	3.19%	12.61%	4.84%	15.13%
Unfunded Actuarial Liability	3.56%	11.15%	3.44%	7.60%
Total Contribution	6.75%	23.76%	8.28%	22.73%

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

<sup>12</sup> Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems*, p. 41, available at [https://www.rol.frs.state.fl.us/forms/2018-19\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf) (last visited January 6, 2020).

<sup>13</sup> Section 121.71(4) and (5), F.S.

<sup>14</sup> Letter to Mr. David DiSalvo, *Re: Blended Proposed Statutory Rates for the 2020-2021 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 5, 2019 (on file with the Senate Committee on Governmental Oversight and Accountability).

## Cost Sharing

Cost sharing is governed by s. 985.6865, F.S., which provides, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained<sup>15</sup> and that has dismissed any action or claim described in s. 985.6865(2), F.S.,<sup>16</sup> must pay 50 percent of the total shared detention cost.<sup>17</sup>

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for juveniles residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.<sup>18</sup>

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.<sup>19</sup> Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.<sup>20</sup> The DJJ will determine quarterly whether counties are complying with this section.<sup>21</sup>

The State must pay all costs of detention care for juveniles:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for juveniles.<sup>22</sup>

## Department of Juvenile Justice

JDOs serve as front-line direct care staff who supervise and manage all youth assigned to juvenile detention centers.<sup>23</sup> The DJJ operates 21 secure detention centers in 21 counties with a total of 1,243 beds. Youth placed in secure detention have been assessed as risks to public safety and must remain in a physically secure detention center while awaiting court proceedings.<sup>24</sup>

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<sup>15</sup> Section 985.6865(3)(b), F.S., defines “fiscally constrained county” as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

<sup>16</sup> Various counties and the DJJ have engaged in a multitude of legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. Such litigation has largely focused on how the DJJ calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Sections 985.6865(1) and (2), F.S.

<sup>17</sup> Section 985.6865(4), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 985.6865(6), F.S.

<sup>20</sup> Section 985.6865(7), F.S.

<sup>21</sup> Section 985.6865(8), F.S.

<sup>22</sup> Section 985.6865(5), F.S.

<sup>23</sup> Department of Juvenile Justice, *2020 Agency Analysis of SB 1146* (December 19, 2019). On file with the Senate Committee on Criminal Justice.

<sup>24</sup> Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last visited January 6, 2020).

Section 985.66, F.S., provides minimum requirements for program staff of the DJJ who deliver direct-care services. These minimum requirements include that the staff must:

- Be at least 19 years of age.
- Be a high school graduate or its equivalent as determined by the DJJ.
- Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States.
- Abide by all of s. 985.644(1), F.S., which provides requirements for fingerprinting and background investigations.
- Execute and submit to the department an affidavit-of-application form, adopted by the DJJ, attesting to his or her compliance with the above requirements.<sup>25</sup>

Section 985.66, F.S., also provides that the DJJ must establish staff development and training, and requires that DJJ staff who provide direct care must complete the DJJ-approved program of training pertinent to their areas of responsibility.<sup>26</sup>

The DJJ had a total of 1,172 JDO direct care worker positions that supervised a total of 12,290 youth during the FY 2018-19. The turnover rate for the entry-level JDO positions was 64 percent for FY 2018-19, and the average vacancy rate was 25 percent. According to the DJJ, this has led to the DJJ spending over \$6 million per year over the last four fiscal years in overtime pay to compensate these vacancies.<sup>27</sup>

As of July 2019, approximately 51 percent of the detention workforce had less than two years of experience. JDOs rely on hand-to-hand takedowns when a situation escalates to a physical altercation, and they do not carry tasers or pepper spray. The DJJ has a 63 percent higher workers' compensation claim rate than the Florida Department of Corrections. According to the DJJ, in FY 2018-19, 31 per 100 JDOs were injured on the job, 41 were victims of assault by youth, and 135 staff were injured while trying to restrain a youth in an emergency situation.<sup>28</sup>

JDOs and JDO supervisors are currently not eligible for Special Risk Class retirement.

### III. Effect of Proposed Changes:

**Section 1** amends s. 121.0515, F.S., to revise criteria for membership in the Special Risk Class of the FRS to include JDOs and JDO supervisors with the DJJ.

To be eligible for Special Risk Class membership, the employee must:

- Be employed as a JDO or JDO supervisor at the DJJ;
- Be certified or required to be certified in accordance with s. 985.66(3), F.S., which provides minimum requirements for staff and requires the DJJ to establish staff development and training programs; and either

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<sup>25</sup> Section 985.66(3), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Department of Juvenile Justice, *2020 Agency Analysis of SB 1146* (December 19, 2019). On file with the Senate Committee on Criminal Justice.

<sup>28</sup> *Id.*

- Have primary duties and responsibilities that include ensuring the custody, and applying physical restraint when necessary, of detained youth within a juvenile detention facility or while being transported; or
- Be the supervisor or command officer of a member who has such duties and responsibilities.

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

This bill takes effect July 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature....”

This bill reclassifies JDOs and JDO supervisors as members of the Special Risk Class in the FRS. This reclassification increases the costs incurred by the DJJ relating to detention of juveniles. While this bill does not expressly require a county or municipality to expend funds, counties will be responsible for 50 percent of the cost increase associated with the reclassification of county JDOs and JDO supervisors, in accordance with s. 985.6865, F.S., which establishes the cost-sharing requirements between the DJJ and counties.

The bill contains a declaration that this bill fulfills an important state interest (see section 2).

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

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill reclassifies JDOs and JDO supervisors as members of the Special Risk Class in the FRS rather than the Regular Class. This reclassification of retirement classes increases the personnel costs by 14.45 percent of payroll. Beginning in FY 2020-21, the DJJ will incur higher annual retirement contributions to fund these enhanced benefits for employees moving from the Regular Class to the Special Risk Class of the FRS as specified in this bill. The DJJ has requested \$6.2 million in recurring funds for Special Risk retirement benefits for JDOs and JDO supervisors.<sup>29</sup> Beginning in FY 2021-22, counties will be billed for their portion of the increase in cost in accordance with s. 985.6865, F.S.<sup>30</sup> Non-fiscally constrained counties are required to contribute 50 percent of the total detention costs to the DJJ.<sup>31</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 121.0515 of the Florida Statutes.

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<sup>29</sup> Florida Fiscal Portal, *Agency Legislative Budget Request for Fiscal Year 2020-2021, Exhibit D-3A: Expenditures by Issue and Appropriation Category*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=19211&DocType=PDF> (last visited January 6, 2020).

<sup>30</sup> Department of Juvenile Justice, *2020 Agency Analysis of SB 1146* (December 19, 2019). On file with the Senate Committee on Criminal Justice.

<sup>31</sup> Section 985.6865(4), F.S.

**IX. 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 January 21, 2020:**

The committee substitute changes the terms “juvenile detention officer” to “juvenile justice detention officers I and II” and “juvenile detention officer supervisor” to “juvenile justice detention officer supervisor.”

Additionally, the committee substitute provides a declaration that the bill fulfills an important state interest.

- B. **Amendments:**

None.