

**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 Committee on Criminal and Civil Justice

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BILL: SB 414

INTRODUCER: Senator Bradley

SUBJECT: Criminal Conflict and Civil Regional Counsel Membership in the Senior Management Service Class

DATE: April 11, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**I. Summary:**

SB 414 amends s. 121.055, F.S., to make certain supervising employees of the criminal conflict and regional counsel offices members of the Senior Management Service Class (SMSC) (rather than the Regular Class) of the Florida Retirement System (FRS).

For each employee who participates in the FRS pension plan, this shift means the employee earns 2.0 percent service credit for each year of service, rather than 1.6 percent service credit. For an employee who participates in the FRS investment plan, the employee will receive contributions into the investment account equal to 10.67 percent of salary rather than 9.3 percent of salary.

Any employee who is shifted from the Regular Class to the SMSC is permitted to upgrade retirement credit for service in the same position. The member's employer cannot purchase upgraded service credit on the employee's behalf.

The bill increases the personnel costs incurred by the five offices of the criminal conflict and civil regional counsel by roughly \$1,031,055 annually for the positions enumerated in the bill for membership in the SMSC. The bill appropriates \$950,000 from the General Revenue Fund to the offices to offset a portion of these costs.

The bill takes effect on July 1, 2023.

## 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 active members contributing three percent of their salaries.<sup>2</sup>

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

- The Regular Class<sup>3</sup> consists of 537,128 active members and 7,806 in renewed membership;
- The Special Risk Class<sup>4</sup> includes 72,925 active members and 1,100 in renewed membership;
- The Special Risk Administrative Support Class<sup>5</sup> has 104 active members and 1 in renewed membership;
- The Elected Officers' Class<sup>6</sup> has 2,075 active members and 109 in renewed membership; and
- The Senior Management Service Class<sup>7</sup> has 7,610 active members and 210 in renewed membership.<sup>8</sup>

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

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

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

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<sup>1</sup> Florida Department of Management Services (DMS), Division of Retirement, Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report, 35, available at [https://employer.frs.fl.gov/forms/2020-21\\_ACFR.pdf](https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf). (last visited Mar. 21, 2023).

<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. Between 1975 and 2011, the FRS was a non-contributory system. 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> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>4</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>5</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>6</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>7</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>8</sup> All figures are from *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 263.

### ***Pension Plan***

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>9</sup> Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing 6 years of service with an FRS employer.<sup>10</sup> For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after 8 years of creditable service.<sup>11</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>12</sup> For most current members of the pension plan (including members in the Regular Class and the Senior Management Service Class), normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.<sup>13</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements—a member in the Regular Class or the Senior Management Service Class (SMSC) must complete 33 years of service or attain age 65.<sup>14</sup>

The Regular Class and the SMSC share the same normal retirement dates, average final compensation calculation, and disability/survivor benefits. However, the Regular Class service credit provides a 1.6 percent accrual value for each year of creditable service, while the SMSC earns a 2.0 percent accrual value each year.<sup>15</sup>

Section 121.055(1)(j), F.S., authorizes a member of the SMSC to upgrade service credit in the same position from Regular Class accrual value to the SMSC accrual value. Generally, the service credit may be purchased by the employer on behalf of the member.

### ***Investment Plan***

In 2000, the Public Employee Optional Retirement Program (investment plan) was created as a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.<sup>16</sup> The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>17</sup> The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>18</sup>

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.<sup>19</sup>

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<sup>9</sup> Section 121.025, F.S.

<sup>10</sup> Section 121.021(45)(a), F.S.

<sup>11</sup> Section 121.021(45)(b), F.S.

<sup>12</sup> Section 121.091, F.S.

<sup>13</sup> Section 121.021(29)(a)1., F.S.

<sup>14</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>15</sup> Section 121.091(1)(a)1. and s. 121.055(4)(d), F.S.

<sup>16</sup> See, ch. 2000-169, Laws of Fla.

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

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

<sup>19</sup> Section 121.4501(1), F.S.

A member vests immediately in all employee contributions paid to the investment plan.<sup>20</sup> With respect to the employer contributions, a member vests after completing 1 work year of employment with an FRS employer.<sup>21</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>22</sup> The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>23</sup> An FRS member who qualifies for disability while enrolled in the investment plan may 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>24</sup>

The table below shows the allocation of contributions made into the FRS for members of the investment plan participating in the Regular Class and SMSC. The contributions are based on a percentage of the member’s gross compensation for the month.

<b>Allocation of Contributions</b>	<b>Regular Class</b>	<b>Senior Management Service Class</b>
Investment Account	9.30%	10.67%
Disability	0.25%	0.26%
In line of duty death	0.05%	0.05%
Administrative Assessments	0.06%	0.06%
<b>Total</b>	<b>9.66%</b>	<b>11.04%</b>

**Offices of the Public Defender**

In an effort to meet its responsibility to provide counsel to indigent defendants, as guaranteed under the Sixth Amendment and applied to the states in *Gideon v. Wainwright*,<sup>25</sup> the Legislature first established the office of the Public Defender in 1963.<sup>26</sup> Subsequently, the Legislature approved a proposal to amend the Florida Constitution to elevate the Office of Public Defender to the level of a constitutional officer, which was approved by the electorate and adopted in 1972.<sup>27</sup> The public defender in each circuit is primarily responsible for representing indigent defendants who have been charged or arrested for an enumerated list of criminal offenses and in

<sup>20</sup> Section 121.4501(6)(a), F.S.

<sup>21</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 5 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.

<sup>22</sup> Section 121.591, F.S.

<sup>23</sup> See s. 121.4501(16), F.S.

<sup>24</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>25</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963)

<sup>26</sup> See ch. 63-409, enacting s. 27.50, F.S. (1963).

<sup>27</sup> See FLA. CONST. art. V, s. 18.

a limited number of civil proceedings.<sup>28</sup> Participation in the SMSC of the Florida Retirement System is compulsory for assistant public defenders.<sup>29</sup>

### **Criminal Conflict and Civil Regional Counsel**

In 2007, the Legislature established five offices of criminal conflict and civil regional counsel.<sup>30</sup> When an Office of the Public Defender determines it has a conflict in representing an indigent defendant, the office of criminal conflict and civil regional counsel will be appointed to represent the defendant.<sup>31</sup> The office of criminal conflict and civil regional counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by law in civil proceedings, such as proceedings to terminate parental rights.<sup>32</sup>

Each regional counsel is recommended as part of a list of qualified candidates from the Supreme Court Judicial Nominating Commission.<sup>33</sup> Thereafter, the Governor appoints the regional counsel from amongst those listed for a term of 4 years.<sup>34</sup> The appointment is subject to Senate confirmation.<sup>35</sup> Regional counsels serve on a full-time basis and may not engage in the private practice of law while holding office.<sup>36</sup> Each office of criminal conflict and regional counsel is housed, for administrative purposes, in the Justice Administrative Commission (Commission). The regional counsel and the offices are not subject to control, supervision, or direction of the Commission in the performance of their duties.<sup>37</sup> Additionally, the regional counsels jointly recommend the classification and pay plans for their offices to the Commission, Senate President, and Speaker of the House.<sup>38</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 121.055, F.S., to make assistant regional counsel supervisors of the criminal conflict and civil regional counsel offices members of the Senior Management Service Class (rather than the Regular Class) of the FRS. For each employee participating in the pension plan of the FRS, this shift means the employee earns 2.0 percent service credit for each year of service. For an employee participating in the investment plan of the FRS, the employee will receive contributions into the investment account equal to 10.67 percent of salary rather than 9.3 percent of salary. There are currently 57.5 authorized assistant regional counsel supervisor positions<sup>39</sup> among the five offices of criminal conflict and civil regional counsel.

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<sup>28</sup> See s. 27.51(1), F.S.

<sup>29</sup> Section 121.055, F.S.

<sup>30</sup> Section 27.511(1), F.S.

<sup>31</sup> Section 27.511(5), F.S.

<sup>32</sup> Section 27.511(5) and (6), F.S.

<sup>33</sup> Section 27.511(3)(a), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Section 27.511(4), F.S.

<sup>37</sup> Section 27.511(2), F.S.

<sup>38</sup> Section 27.53(4), F.S.

<sup>39</sup> There are two FTE positions that are budgeted at a 0.75 rate.

**Section 2** appropriates \$950,000 in recurring funds from the General Revenue Fund to the Offices of the Criminal Conflict and Civil Regional Counsel to pay the additional employer contributions.

**Section 3** provides that the bill will take effect on July 1, 2023.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

Not applicable. 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.

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:

The additional annual, employer-paid contributions for the enumerated positions are estimated to cost approximately \$1,031,055, beginning Fiscal Year 2023-2024. These funds will be deposited into the Florida Retirement System Trust Fund to be used to pay benefits upon each member's retirement. This cost will be offset by the \$950,000 recurring appropriation from the General Revenue fund to the Offices of the Criminal Conflict and Civil Regional Counsel.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 121.055 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.