

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 Criminal Conflict and Civil Regional Counsel Membership in the Senior Management Service Class

SPONSOR(S): Brannan and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	16 Y, 0 N	Villa	Toliver
2) Appropriations Committee		Smith	Pridgeon
3) State Affairs Committee			

SUMMARY ANALYSIS

In 2007, the Legislature established five Offices of Criminal Conflict and Civil Regional Counsel (CCCRC). When an Office of the Public Defender determines it has a conflict in representing an indigent defendant, the CCCRC will be appointed to represent the defendant. The CCCRC 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. Each CCCRC district is led by a Regional Counsel, who is appointed by the Governor for a term of four years, subject to Senate confirmation.

The FRS is a contributory retirement system, with active members contributing 3.0 percent of their salaries. FRS Members 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. The membership of the FRS is divided into five membership classes:

- The Regular Class;
- The Special Risk Class;
- The Special Risk Administrative Support Class;
- The Elected Officers' Class; and
- The Senior Management Service Class (SMSC).

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. 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.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers. The amount of money contributed to each member's account varies by class with the Regular Class receiving 6.3 percent and SMSC receiving 7.67 percent.

The bill makes assistant regional counsel supervisors of the CCCRC members of the SMSC, rather than the Regular Class, of the FRS. For each employee participating in the pension plan, this shift means the employee earns 2.0 percent service credit for each year of service rather than 1.6 percent. For an employee participating in the investment plan, the employee will receive contributions into the investment account equal to 7.67 percent of salary rather than 6.3 percent. Any employee shifted from the Regular Class to the SMSC may purchase additional retirement credit, retroactive until October 1, 2007, and may upgrade retirement credit for service in the same position.

The bill would have a significant negative fiscal impact on state government expenditures.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Criminal Conflict and Civil Regional Counsel (CCCRC)

In 2007, the Legislature established five offices of the CCCRC.¹ When an Office of the Public Defender determines it has a conflict in representing an indigent defendant, a CCCRC will be appointed to represent the defendant. The CCCRC 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.² Each regional counsel, who serves as the lead in each CCCRC region, is recommended as part of a list of qualified candidates by the Supreme Court Judicial Nominating Commission.³ Thereafter, the Governor appoints the regional counsel from amongst those listed for a term of four years.⁴ The appointment is subject to Senate confirmation.⁵ Each CCCRC is housed, for administrative purposes, in the Justice Administrative Commission.⁶ Regional counsels serve on a full-time basis and may not engage in the private practice of law while holding office.⁷

Effective July 1, 2020, each appointed criminal conflict and civil regional counsel and each district's assistant regional counsel chiefs, administrative directors, and chief investigators are part of the Senior Management Service Class of the Florida Retirement System (FRS).⁸ All other employees of the CCCRC's, including assistant regional counsel supervisors are part of the Regular Class of the FRS.

The Florida Retirement System

The 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.⁹ The FRS is a contributory system, with active members contributing three percent of their salaries. It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities.

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

- The Regular Class¹⁰ consist of 541,698 active members and 7,645 in renewed membership;
- The Special Risk Class¹¹ includes 74,355 active members and 1,163 in renewed membership;
- The Special Risk Administrative Support Class¹² has 98 active members and one in renewed membership;

¹ S. 27.511(1), F.S.

² S. 27.511(5) and (6), F.S.

³ S. 27.511(3)(a), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ S. 27.511(2), F.S.

⁷ S. 27.511(4), F.S.

⁸ See ch. 2020-120, Laws of Fla.

⁹ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2021, at p. 35, available at: https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf (last visited February 18, 2022).

¹⁰ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

¹¹ 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.

¹² 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 FRS. Section 121.0515(8), F.S.

- The Elected Officers' Class¹³ has 2,095 active members and 110 in renewed membership; and
- The Senior Management Service Class¹⁴ has 7,875 active members and 220 in renewed membership.¹⁵

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.

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (Division).¹⁶ Investment management is handled by the State Board of Administration (SBA). The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

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.¹⁸ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.¹⁹ 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.²⁰ 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 62.²¹ Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, a member in the Regular Class or the Senior Management Service Class (SMSC) must complete 33 years of service or attain age 65.²²

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.²³

A member of the SMSC may upgrade service credit in the same position from Regular Class accrual value to the SMSC accrual value.²⁴ Generally, the service credit may be purchased by the employer on behalf of the member.²⁵

Investment Plan

In 2000, the FRS Investment Plan was created as a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.²⁶ The SBA is primarily responsible for administering the investment plan.²⁷

¹³ 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.

¹⁴ 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.

¹⁵ FRS Comprehensive Annual Report, *supra* note 9 at p. 163.

¹⁶ S. 121.025, F.S.

¹⁷ Article IV, s. 4(e), Fla. Const.

¹⁸ S. 121.021(45)(a), F.S.

¹⁹ S. 121.021(45)(b), F.S.

²⁰ S. 121.091, F.S.

²¹ S. 121.021(29)(a)1., F.S.

²² S. 121.021(29)(a)2., F.S.

²³ S. 121.091(1)(a), F.S.

²⁴ S. 121.055(1)(j), F.S.

²⁵ *Id.*

²⁶ S. 121.4501(1), F.S.

²⁷ S. 121.4501(8), F.S.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings.²⁸ Benefits are provided through employee-directed investments offered by approved investment providers.²⁹

A member vests immediately in all employee contributions paid to the investment plan.³⁰ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.³¹ Vested benefits are payable upon termination as a lump-sum distribution, direct rollover distribution, or periodic distribution.³² The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.³³ 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.³⁴

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 the percentage of the member's gross compensation for the month.

Allocation of Contributions	Regular Class	SMSC
Investment Account	6.30%	7.67%
Disability	0.25%	0.26%
In line of duty death	0.05%	0.05%
Administrative Assessments	0.06%	0.06%
Total	6.66%	8.04%

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the Division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.³⁵ The rate is determined annually based on an actuarial study provided by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

As of July 1, 2021, the current employer contribution for the Regular Class is 4.91 percent and the employer contribution rate for the SMSC is 6.49 percent. In order to address unfunded liabilities in the system, the required employer contribution is 4.19 percent for the Regular Class and 20.80 percent for the SMSC.³⁶ This represents a total blended contribution rate of 9.1 percent for the Regular Class and 27.29 percent for the SMSC.

Regardless of employee class, all employees contribute three percent of their compensation towards retirement.³⁷

Effect of the Bill

²⁸ S. 121.4501(1), F.S.

²⁹ *Id.*

³⁰ S. 121.4501(6)(a), F.S.

³¹ 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.

³² S. 121.591, F.S.

³³ See s. 121.4501(16), F.S.

³⁴ 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.

³⁵ S. 121.70(1), F.S.

³⁶ S. 121.71(4) and (5), F.S.

³⁷ S. 121.71(3), F.S.

The bill makes assistant regional counsel supervisors of the CCCRC offices members of the SMSC, 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 rather than 1.6 percent. For an employee participating in the investment plan of the FRS, the employee will receive contributions into the investment account equal to 7.67 percent of salary rather than 6.3 percent.

Any employee shifted from the Regular Class to the SMSC may purchase additional retirement credit, retroactive until October 7, 2007, and may upgrade retirement credit for service in the same position. The upgrade service credit may not be purchased by the member's employer.

B. SECTION DIRECTORY:

Section 1: Amends s. 121.055, F.S., relating to the Senior Management Service Class.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill would have a significant negative fiscal impact on state expenditures, due to increased employer retirement contribution costs. The bill adds the positions of the assistant regional counsel supervisor to the compulsory positions covered by the SMSC. Any member holding one of these positions upon the effective date provided in the bill would be eligible to upgrade service within the purview of the class retroactive to October 1, 2007, at the member's expense.³⁸

As of October 12, 2021, there were 51 FTE positions established as assistant regional counsel supervisors of the CCCRC's. DMS indicates that costs associated with the additional annual employer contributions for those 51 FTE is estimated to be \$719,855.³⁹ These funds will be deposited into the FRS Contributions Clearing Trust Fund to be used to pay benefits upon each member's retirement.

However, as of February 1, 2022, the state personnel system indicated that there were 57 FTE positions established as assistant regional counsel supervisors of the CCCRC's. Based upon the cost estimate calculations provided in the DMS bill analysis, the cost of additional annual employer contributions for 57 FTE positions is estimated to be approximately \$804,544.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³⁸ Department of Management Services, *Agency Bill Analysis: SB 338*, published December 17, 2021, On file with the House Appropriations Committee.

³⁹ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.