

**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: SB 224

INTRODUCER: Senator Hooper and others

SUBJECT: Special Risk Class Retirement Date

DATE: March 21, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 224 modifies the normal retirement date for a Special Risk Class member enrolled in the Florida Retirement System (FRS). Currently, a special risk class member who enrolled in the Florida Retirement System before July 1, 2011, reaches his or her normal retirement date, at which the member may receive full retirement benefits from their chosen FRS retirement plan, at either age 55 or after 25 years of service—whichever comes first. However, Special Risk Class members who enrolled on or after July 1, 2011, reach their normal retirement date at either age 60, or after 30 years of service—whichever comes first. This bill lowers the age or service requirement the normal retirement date for special risk class personnel who enrolled after July 1, 2011. This allows all Special Risk Class members to receive full retirement benefits at either age 55, or after 25 years of service, whether or not they enrolled after July 1, 2011.

The bill is expected to have a significant fiscal impact on state and local governments that employ members of the Special Risk Class of the FRS. The bill takes effect July 1, 2023.

**II. Present Situation:**

**The Florida Retirement System (FRS)**

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 3 percent of their salaries.<sup>2</sup>

The FRS is a multi-employer plan, governed by ch. 121, F.S., the “Florida Retirement System Act.” As of June 30, 2022, the FRS had 629,073 active non-retired members, 448,846 annuitants, 14,858 disabled retirees, and 28,827 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> As of September 2022, the FRS consisted of 990 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 180 cities and 153 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 537,128 active members and 7,806 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 72,925 active members and 1,100 in renewed membership;
- The Special Risk Administrative Support Class<sup>7</sup> has 104 active members and one in renewed membership;
- The Elected Officers’ Class<sup>8</sup> has 2,075 active members and 109 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,610 active members and 210 in renewed membership.<sup>10</sup>

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

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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. 20, 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. Employees were again required to contribute to the system after July 1, 2011. *See*, ch. 2011-68, s. 33, Laws of Fla. Members in the Deferred Retirement Option Program do not contribute to the system.

<sup>3</sup> DMS, Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 260, 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. 20, 2023).

<sup>4</sup> DMS, Division of Retirement, *Participating Employers for Fiscal Year 2022-2023* (Sept. 2022), available at <https://employer.frs.fl.gov/forms/part-emp.pdf> (last visited Mar. 20, 2023).

<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 includes elected state and county officers, and 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 are from *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 263.

Members of the FRS have two primary plan options available for participation:<sup>11</sup>

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

### *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>12</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>13</sup>

A member vests immediately in all employee contributions paid to the investment plan.<sup>14</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>15</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>16</sup> The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>17</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>18</sup>

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>19</sup> The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>20</sup>

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<sup>11</sup> Florida State Board of Administration (SBA), *Plan Comparison Chart* (Jul. 2020), available at <https://www.myfrs.com/pdf/forms/plancomparison.pdf> (last visited Mar. 20, 2023).

<sup>12</sup> See, ch. 2000-169, Laws of Fla.

<sup>13</sup> Section 121.4501(1), F.S.

<sup>14</sup> Section 121.4501(6)(a), F.S.

<sup>15</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, 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>16</sup> Section 121.591, F.S.

<sup>17</sup> See s. 121.4501(16), F.S.

<sup>18</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate a 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>19</sup> Section 121.4501(8), F.S.

<sup>20</sup> FLA. CONST. art. IV, s. 4.

### ***Pension Plan***

The pension plan is administered by the Secretary of Management Services (DMS) through the Division of Retirement.<sup>21</sup> The SBA manages the pension fund's assets.<sup>22</sup>

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>23</sup> For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>24</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>25</sup>

For most current 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>26</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>27</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; members in the Special Risk classes must complete 30 years of service or attain age 60.<sup>28</sup>

### ***Actuarial Study***

The DMS requested an actuarial study to determine the required increase in employer contributions to fund the change in normal retirement date for Special Risk Class members who enrolled on or after July 1, 2011. According to the actuarial study, total combined employer contributions to the FRS Trust Fund will need to be increased by approximately \$77.5 million annually beginning in Fiscal Year 2023-2024.<sup>29</sup> The estimated increase in contributions by employer group for Fiscal Year 2023-2024 are as follows:

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<sup>21</sup> Section 121.025, F.S.

<sup>22</sup> Florida SBA, *Summary Overview of the State Board of Administration of Florida*, 4, available at [https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview\\_20211025.pdf?ver=2021-10-28-120954-217](https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217) (last visited Mar. 21, 2023).

<sup>23</sup> Section 121.021(45)(a), F.S.

<sup>24</sup> Section 121.021(45)(b), F.S.

<sup>25</sup> Section 121.091, F.S. See also, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 35-37, *supra* at 1.

<sup>26</sup> Section 121.021(29)(a)1., F.S.

<sup>27</sup> Section 121.021(29)(b)1., F.S.

<sup>28</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>29</sup> Letter to Andrea Simpson, Florida DMS Division of Retirement Director, from Milliman Actuarial Services, entitled "Restore Normal Retirement and DROP Entry Eligibility Criteria to Pre-2011 Requirements for Tier II Special Risk Class Members" Feb. 20, 2023 (on file with the Senate Committee on Governmental Oversight and Accountability).

<b>Employer Contribution Group</b>	<b>Estimated Increase in Contributions</b>
State Agencies	\$13.8 m
School Boards	\$2.9 m
State Universities	\$0.6 m
Colleges	\$0.2 m
Counties	\$55.1 m
Other	\$4.8 m
<b>Total</b>	<b>\$77.5 m</b>

***Deferred Retirement Option Program (DROP)***

Members who retire from the FRS pension plan are eligible to enroll in the DROP, which allows a member to continue employment with an FRS employer for up to 60 additional months.<sup>30</sup> While in the DROP, the member’s retirement benefits accumulate in the FRS Trust Fund increased by a cost-of-living adjustment (COLA) each July and earn monthly interest equivalent to an annual rate of 1.30 percent on the preceding month’s DROP accumulation until termination of participation in the DROP.<sup>31</sup>

Generally, eligible FRS pension plan members must elect to participate in the DROP within 12 months of their normal retirement date.<sup>32</sup> However, a member initially enrolled in the FRS before July 1, 2011, who reaches normal retirement date based on years of service before he or she reaches age 62 (or age 55 for special risk class members) may defer his or her entry into DROP until 12 months immediately following their 57<sup>th</sup> birthday, or 52<sup>nd</sup> birthday for special risk class members. A member who enrolled in the FRS pension plan on or after July 1, 2011, and who reaches normal retirement date based on service before age 65, (or 60 for special risk class) may defer DROP participation until the 12 months immediately following his or her 60th birthday, or 55<sup>th</sup> birthday for special risk class.<sup>33</sup>

K-12 instructional personnel employed with an FRS employer may extend their DROP participation for up to an additional 36 months, for a total of 8 years of DROP participation. Administrative personnel who are employer with a K-12 FRS employer may extend his or her DROP participation through the end of the current school year.<sup>34</sup>

Similarly, law enforcement officers who are in the special risk class,<sup>35</sup> who elect to participate in DROP on or after July 1, 2022, may participate in DROP for an additional 36 calendar months

<sup>30</sup> Section 121.091(13), F.S.

<sup>31</sup> *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, supra note 1 at pp. 38-39.

<sup>32</sup> Section 121.091(13)(a), F.S.

<sup>33</sup> Section 121.091(13)(a)2., F.S.

<sup>34</sup> Section 121.091(13)(b)1., F.S.

<sup>35</sup> See, s. 121.0515(3)(a), F.S. This is a narrow permission that excludes sheriffs and elected police chiefs and does not encompass the special risk class as a whole.

beyond the 60-month DROP period, for a total of 8 years enrollment in the DROP. To qualify, the participant must enter DROP on or before June 30, 2028.<sup>36</sup>

***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>37</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 rate 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 rate to fund the unfunded liabilities of the Special Risk Class is higher than the same type contribution rate for the Regular Class. Special Risk Class members of the FRS investment plan receive total contributions into the individual investment accounts equal to 17 percent of salary. A Regular Class member receives total contributions equal to 9.3 percent of salary.<sup>38</sup>

The table below shows the contribution rates for the Regular Class and the Special Risk Class as enacted for FY 2022-2023<sup>39</sup> and as recommended by the state actuary<sup>40</sup> beginning FY 2023-2024.

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<sup>36</sup> Section 121.091(13)(c), F.S.

<sup>37</sup> Section 121.0515(1), F.S.

<sup>38</sup> Section 121.72(6), F.S.

<sup>39</sup> Section 121.71(4) and (5), F.S.

<sup>40</sup> Letter to Andrea Simpson, Florida DMS Division of Retirement Director, from Milliman Actuarial Services, entitled “Blended Proposed Statutory Rates for the 2023-2024 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP: Table 1” Dec. 2, 2022 (on file with the Senate Committee on Governmental Oversight and Accountability).

	2022-23		2023-24	
Rates to fund	Regular Class	Special Risk Class	Regular Class	Special Risk Class
Normal Cost	5.96%	16.44%	6.14%	17.05%
Unfunded Actuarial Liability	4.23%	9.67%	4.72%	10.83%
Total Contribution	10.19%	26.11%	10.86%	27.88%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.<sup>41</sup>

**III. Effect of Proposed Changes:**

**Section 1** reduces the normal retirement date requirements for members of the Special Risk Class of the FRS who enrolled on or after July 1, 2011, from age 60 with 8 years of service or at any age with 30 years of service to age 55 with 8 years of service or at any age with 25 years of service. This standardizes the normal retirement date for all members of the FRS Special Risk Class, whether enrolled before or after July 1, 2011. Therefore, Special Risk Class members will reach their normal retirement date, or eligibility for unreduced benefits, at the earlier of 25 years of creditable service instead of 30 years, or age 55 instead of age 60.

In order to collect retirement benefits on or after their normal retirement date, members of the Special Risk Class must also complete the total year(s) of creditable service in the Special Risk Class equal to or greater than the years of service required by their retirement plan to vest. A member of the Special Risk Class who enrolled in the pension plan on or after July 1, 2011, will still be required to complete 8 years of creditable service in the Special Risk Class, while members who enrolled before July 1, 2011, will be required to complete 6 years of service in the Special Risk Class. A member of the Special Risk Class who enrolled in the investment plan will be required to complete 1 year of creditable service in the Special Risk Class.

**Sections 2 and 3** amends ss. 121.091 and 121.4501, F.S., respectively, to adopt the amended normal retirement date for Special Risk Class members who enrolled in an FRS retirement plan on or after July 1, 2011.

**Section 4** finds that the act fulfills an important state interest based on the legitimate and proper state purpose of extending basic protections afforded by governmental retirement systems in a manner that is managed, administered, and funded in an actuarially sound manner.

**Section 5** provides that the bill takes effect July 1, 2023.

**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

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<sup>41</sup> Section 121.71(3), F.S.

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; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

The bill requires a county or municipality that employs special risk class personnel to increase their contributions to an FRS retirement plan. This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System and employing members of the Special Risk Class), including state agencies, school boards, state universities, community colleges, counties, municipalities, and special districts.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

Actuarial requirements: Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida 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, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act” (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits 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 bill does not provide the actuarially sound funding concurrently with the increase of benefits (effective July 1, 2023).

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The revision of the FRS normal retirement date for Special Risk Class members who enrolled on or after July 1, 2011, will increase the liabilities of the Florida Retirement System. The present value of these projected benefits is \$422.5 million. The bill, as filed, does not provide funding for this change in benefits.

**VI. Technical Deficiencies:**

This bill may inadvertently disqualify certain special risk class members who enrolled in an FRS retirement plan on or after July 1, 2011, from participation in the DROP. For example, if a member who enrolled on or after July 1, 2011, has vested, and reached age 59 in 2023—he or she would not be eligible to enroll in DROP under current law because they have not reached either 30 years of service or age 60. However, he or she would also be ineligible to enroll in DROP after this bill takes effect because he or she has not reached 25 years of service, but waited more than 12 months after the new normal retirement age of 55 to enroll. This may be rectified with an amendment that allows members of the special risk class who have not reached DROP eligibility, and who would otherwise be past their 12-month DROP election limitation period, to enroll for participation in DROP within 12 months of the effective date of this bill

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 121.021, 121.091, 121.4501.

**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.

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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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