

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 589 Criminal Conflict and Civil Regional Counsel Membership in the Senior Management Service Class

**SPONSOR(S):** Brannan

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	13 Y, 0 N	Villa	Miller
2) Appropriations Committee			
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 is 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, appointed by the Governor for a term of four years, subject to Senate confirmation.

The Florida Retirement System (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, known as the pension plan, and the defined contribution plan, known as the investment plan. The membership of the FRS is divided into five membership classes: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected Officers' Class, and 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 11.3 percent of salary and SMSC receiving 12.67 percent.

The bill makes assistant regional counsel supervisors of the CCCRC members of the SMSC of the FRS, rather than the Regular Class. For each employee participating in the pension plan, this change 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 12.67 percent of salary rather than 11.3 percent. Any employee moved from the Regular Class to the SMSC may purchase additional retirement credit, retroactive to October 1, 2007, and may upgrade retirement credit for service in the same position. The upgraded service credit may not be purchased by the member's employer.

The bill provides an appropriation of \$950,000 in recurring funds from the General Revenue Fund to the offices of the CCCRC for the purpose of paying retirement benefits of assistant regional counsel supervisors.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Criminal Conflict and Civil Regional Counsel (CCCRC)

In 2007, the Legislature established five offices of the CCCRC.<sup>1</sup> When an Office of the Public Defender determines it has a conflict in representing an indigent defendant, a CCCRC is appointed to represent the defendant. The CCCRC has primary responsibility for representing persons entitled to court-appointed counsel under the federal or state Constitutions or as authorized by law in civil proceedings, such as proceedings to terminate parental rights.<sup>2</sup> 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.<sup>3</sup> Thereafter, the Governor appoints the regional counsel from amongst those listed for a term of four years.<sup>4</sup> The appointment is subject to Senate confirmation.<sup>5</sup> Each CCCRC is housed, for administrative purposes, in the Justice Administrative Commission.<sup>6</sup> Regional counsels serve on a full-time basis and may not engage in the private practice of law while holding office.<sup>7</sup>

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

##### State Board of Administration

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer, and the Attorney General, commonly referred to as the "Board of Trustees."<sup>9</sup> The SBA has responsibility for investing the assets of the Florida Retirement System (FRS) Pension Plan<sup>10</sup> and administering the FRS Investment Plan,<sup>11</sup> which combined represent approximately \$194.7 billion, or approximately 84.5 percent of the \$230.2 billion in assets managed by the SBA, as of July 31, 2023.<sup>12</sup> The SBA also manages over 25 other investment portfolios, with combined assets of approximately \$35.5 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.

##### Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated and closed 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 closed and 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. The FRS was amended in 1998 to include the Deferred Retirement Option Program (DROP)

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<sup>1</sup> Ch. 2007-62, Laws of Fla., codified in s. 27.511, F.S.

<sup>2</sup> S. 27.511(5) and (6), F.S.

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> S. 27.511(2), F.S.

<sup>7</sup> S. 27.511(4), F.S.

<sup>8</sup> See ch. 2020-120, Laws of Fla.

<sup>9</sup> See *also* art. XII, s. 9, FLA. CONST.

<sup>10</sup> S. 121.151, F.S.

<sup>11</sup> S. 121.4501(8), F.S. See *also*, rule 19-13.001, F.A.C.

<sup>12</sup> See State Board of Administration, *Performance Report Month Ending: September 30, 2023*,

<https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Trustees/9.23.September%202023%20Monthly%20Trustee%20Report.Posted.pdf?ver=2023-11-21-095016-763> (last visited December 4, 2023).

under the defined benefit plan and in 2000 was amended to provide a defined contribution plan alternative to the defined benefit plan for FRS members effective July 1, 2002.<sup>13</sup>

The FRS is a multiple-employer, contributory plan<sup>14</sup> governed by the Florida Retirement System Act.<sup>15</sup> As of June 30, 2022, the FRS had 629,073 active members,<sup>16</sup> 448,846 retired members and beneficiaries, and 28,827 members in DROP.<sup>17</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and state universities. The FRS also serves as the retirement plan for the employees of the 180 cities, 153 special districts, and two independent hospitals that have elected to join the system.<sup>18</sup>

Membership of the FRS is divided into the following membership classes:<sup>19</sup>

- Regular Class<sup>20</sup> consists of 537,128 members (85.38 percent of the total 2022 FRS membership). This class is for all members who are not assigned to another class.
- Special Risk Class<sup>21</sup> includes 72,925 members (11.59 percent). This class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency medical technicians, among others.
- Special Risk Administrative Support Class<sup>22</sup> has 104 members (0.017 percent). This class is for former Special Risk Class members who provide administrative support within an FRS special risk employing agency. Members of this class must maintain the certification required for their former Special Risk Class position and be subject to recall into those positions if needed.
- Elected Officers' Class<sup>23</sup> has 2,075 members (0.33 percent). This class is for 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.
- SMSC<sup>24</sup> has 7,610 members (1.21 percent). This class is for members who fill senior management level positions assigned by law to the SMSC or authorized by law as eligible for SMSC designation.

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 a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (Division).<sup>25</sup> Investment management is provided by the SBA.

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<sup>13</sup> DMS, *Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Comprehensive Financial Report Fiscal Year Ended June 30, 2022*, at p. 35. A copy of the report can be found online at: [http://www.dms.myflorida.com/workforce\\_operations/retirement/publications/annual\\_reports](http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports) [hereinafter *Annual Report*] (Last visited December 1, 2023).

<sup>14</sup> Prior to 1975, members of the FRS were required to make employee contributions of either four percent of their salaries for Regular Class members or six percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011, at three percent of their salary regardless of membership class.

<sup>15</sup> Ch. 121, F.S.

<sup>16</sup> As of June 30, 2022, the FRS Pension Plan, which is a defined benefit plan, had 444,150 members, and the investment plan, which is a defined contribution plan, had 184,923 members. *Annual Report*, *supra* note 13, at p. 260.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, at 298.

<sup>19</sup> *Id.*, at 263.

<sup>20</sup> S. 121.021(12), F.S.

<sup>21</sup> S. 121.0515, F.S.

<sup>22</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 FRS. S. 121.0515(8), F.S.

<sup>23</sup> S. 121.052, F.S.

<sup>24</sup> S. 121.055, F.S.

<sup>25</sup> See s. 121.025, F.S.

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>26</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>27</sup> A member vests immediately in all employee contributions paid to the pension plan.<sup>28</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>29</sup>

For non-special risk members of the pension plan initially enrolled before July 1, 2011, normal retirement is the earlier of 30 years of service or age 62.<sup>30</sup> Those members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of credible service or attain age 65.<sup>31</sup> For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earlier of 25 years of credible service or age 55.<sup>32</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>33</sup>

A member of the SMSC may upgrade service credit in the same position from Regular Class accrual value to the SMSC accrual value.<sup>34</sup> Generally, the service credit may be purchased by the employer on behalf of the member.<sup>35</sup>

### *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 pension plan. The earliest that any member could participate in the investment plan was July 1, 2002. The SBA is primarily responsible for administering the investment plan.<sup>36</sup>

A member vests immediately in all employee contributions paid to the investment plan.<sup>37</sup> With respect to the employer contributions, a member vests after completing one work year with an FRS employer.<sup>38</sup> Vested benefits are payable upon termination of employment with the FRS employer or death, as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>39</sup> The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>40</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>41</sup>

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<sup>26</sup> S. 121.021(45)(a), F.S.

<sup>27</sup> S. 121.021(45)(b), F.S.

<sup>28</sup> See s. 121.091(5)(a), F.S.

<sup>29</sup> S. 121.091, F.S.

<sup>30</sup> S. 121.021(29)(a)1., F.S.

<sup>31</sup> S. 121.021(29)(a)2., F.S.

<sup>32</sup> S. 121.021(29)(b), F.S.

<sup>33</sup> S. 121.091(1)(a), F.S.

<sup>34</sup> S. 121.055(1)(j), F.S.

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

<sup>36</sup> S. 121.4501(8), F.S.

<sup>37</sup> S. 121.4501(6)(a), F.S.

<sup>38</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. S. 121.4501(6)(b) – (d), F.S.

<sup>39</sup> S. 121.591, F.S.

<sup>40</sup> See s. 121.4501(16), F.S.

<sup>41</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate a n 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. S. 121.091(4)(f), F.S.

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 as follows:<sup>42</sup>

<b>Membership Class</b>	<b>Percentage of Gross Compensation<sup>43</sup></b>
Regular Class	11.30%
Special Risk Class	19.00%
Special Risk Administrative Support Class	12.95%
Elected Officers' Class	
• Justices and Judges	18.23%
• County Elected Officers	16.34%
• Others	14.38%
Senior Management Service Class	12.67%

### *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.<sup>44</sup> 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, 2023, the current employer contribution for the Regular Class is 6.73 percent and the employer contribution rate for the SMSC is 8.56 percent. In order to address unfunded liabilities in the system, the required employer contribution is 4.78 percent for the Regular Class and 23.90 percent for the SMSC.<sup>45</sup> This represents a total blended contribution rate of 11.51 percent for the Regular Class and 32.46 percent for the SMSC.

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.<sup>46</sup>

### **Effect of the Bill**

The bill makes assistant regional counsel supervisors of the CCCRC offices members of the SMSC of the FRS, rather than the Regular Class. 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 12.67 percent of salary rather than 11.3 percent.

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

The bill provides an appropriation of \$950,000 in recurring funds from the General Revenue Fund to the offices of the CCCRC for the purpose of paying retirement benefits of assistant regional counsel supervisors.

## **B. SECTION DIRECTORY:**

<sup>42</sup> S. 121.72(7), F.S.

<sup>43</sup> Includes the three percent employee contribution.

<sup>44</sup> S. 121.70(1), F.S.

<sup>45</sup> S. 121.71(4) and (5), F.S.

<sup>46</sup> S. 121.71(3), F.S.

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

Section 2 provides an appropriation.

Section 3 provides an effective date of July 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill provides an appropriation of \$950,000 in recurring funds from the General Revenue Fund to the offices of the CCCRC for the purpose of paying the retirement benefits of assistance regional counsel supervisors.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

The bill neither provides nor requires any additional rulemaking authority.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.