

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GAC 17-04 Florida Retirement System  
**SPONSOR(S):** Government Accountability Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Harrington	Williamson

### SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits. The FRS is the primary retirement plan for employees of the state and county government agencies, district school boards, state colleges, and universities and it also serves as the retirement plan for participating employees of the cities and independent hospitals and special districts that have elected to join the system.

Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan. In addition to the two primary plans, some eligible members have the choice of participating in optional retirement plans, which include the Senior Management Service Optional Annuity Program (SMSOAP), the State Community College System Optional Retirement Program (SCCSORP), and the State University System Optional Retirement Program (SUSORP).

Effective July 1, 2017, the bill authorizes renewed membership in the investment plan for retirees of the investment plan, the SMSOAP, the SUSORP, or the SCCSORP. Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the applicable optional retirement program.

Effective July 1, 2017, the bill expands the survivor benefit for members of the Special Risk Class. Specifically, it provides that such survivor benefits are retroactive to July 1, 2002. Effective July 1, 2017, the bill also establishes a survivor benefit for all other membership classes of the investment plan who are killed in the line of duty and provides that the benefit is retroactive to July 1, 2002. The survivor benefits are the same as those currently provided for other membership classes of the pension plan. It also provides a process for calculating the retroactive benefit.

Effective July 1, 2017, the bill closes the SMSOAP to new participants. The bill also prohibits elected officials from joining the Senior Management Service Class in lieu of the Elected Officers' Class.

Effective January 1, 2018, the bill changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan.

Effective July 1, 2018, the bill prohibits members initially enrolled in a position covered by the Elected Officers' Class from participating in the pension plan and requires participation in the investment plan. It also reduces the service accrual rate for purposes of calculating the pension plan benefit from 3.3 percent to 3.0 percent for certain members of the Elected Officers' Class.

The bill provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner. It also provides allocations for the survivor benefits authorized by the act and provides for adjustments to employer contribution rates in order to fund the proposed changes.

Based on the results of special actuarial studies performed by the Milliman actuarial and consulting firm, the bill will have a negative fiscal impact of \$17.3 million for fiscal year 2017-18. See Fiscal Comments.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** pcb04.GAC

**DATE:** 3/27/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### 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 multiple-employer, contributory plan<sup>2</sup> governed by the Florida Retirement System Act.<sup>3</sup> As of June 30, 2016, the FRS provides retirement income benefits to 630,350 active members,<sup>4</sup> 394,907 retired members and beneficiaries, and 29,602 members of the Deferred Retirement Option Program (DROP).<sup>5</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 173 cities and 261 independent hospitals and special districts that have elected to join the system.<sup>6</sup>

The membership of the FRS is divided into five membership classes:<sup>7</sup>

- Regular Class<sup>8</sup> consists of 549,389 members (87.16 percent of the membership);
- Special Risk Class<sup>9</sup> includes 70,695 members (11.21 percent);
- Special Risk Administrative Support Class<sup>10</sup> has 76 members (.01 percent);
- Elected Officers' Class<sup>11</sup> has 2,141 members (0.34 percent); and
- Senior Management Service Class<sup>12</sup> has 8,019 members (1.27 percent).

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

---

<sup>1</sup> *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016*, at 29. 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) (last visited March 25, 2016) [hereinafter *Annual Report*].

<sup>2</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011.

<sup>3</sup> Chapter 121, F.S.

<sup>4</sup> As of June 30, 2016, the FRS Pension Plan, which is a defined benefit plan, had 515,916 members, and the investment plan, which is a defined contribution plan, had 114,434 members. *Annual Report*, *supra* note 1, at 120.

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

<sup>6</sup> Florida Retirement System Participating Employers for Plan Year 2016-17, prepared by the Department of Management Services, Division of Retirement, Revised February 2017, at 8. A copy of the document can be found online at:

<https://www.rol.frs.state.fl.us/forms/part-emp.pdf> (last visited March 25, 2017).

<sup>7</sup> *Annual Report*, *supra* note 1, at 123.

<sup>8</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>9</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>10</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. Section 121.0515(8), F.S.

<sup>11</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>12</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.

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

- The pension plan, which is a defined benefit plan; and
- The investment plan, which is a defined contribution plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

#### FRS 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 State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>13</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>14</sup>

A member vests immediately in all employee contributions paid to the investment plan.<sup>15</sup> With respect to the employer contributions, a member vests after completing one work year with an FRS employer.<sup>16</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>17</sup>

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:

<b>Membership Class</b>	<b>Percentage of Gross Compensation</b>
Regular Class	6.30%
Special Risk Class	14.00%
Special Risk Administrative Support Class	7.95%
Elected Officers' Class	
• Justices and Judges	13.23%
• County Elected Officers	11.34%
• Others	9.38%
Senior Management Service Class	7.67%

#### FRS 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>18</sup> Investment management is handled by the SBA.

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>19</sup> For members initially enrolled on or after July

<sup>13</sup> Section 121.4501(8), F.S.

<sup>14</sup> Section 4(e), Art. IV, Fla. Const.

<sup>15</sup> Section 121.4501(6)(a), F.S.

<sup>16</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>17</sup> Section 121.591, F.S.

<sup>18</sup> Section 121.025, F.S.

<sup>19</sup> Section 121.021(45)(a), F.S.

1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>20</sup> A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.<sup>21</sup> The accrual rate varies by class as follows:

<b>Membership Class</b>	<b>Accrual Rate</b>
Regular Class	1.60%, 1.63%, 1.65%, 1.68% <sup>22</sup>
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%, 1.63%, 1.65%, 1.68% <sup>23</sup>
Elected Officers' Class	
• Justices and Judges	3.33%
• Others	3.00%
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.<sup>24</sup> For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.<sup>25</sup> Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.<sup>26</sup>

#### Default and Second Election

A new member has until the last business day of the fifth month following the member's month of hire to make a plan selection. If the member fails to make a selection, the member defaults to participation in the pension plan.<sup>27</sup>

After the initial election or default election to participate in either the pension plan or investment plan, a member has one opportunity, at the member's discretion and prior to termination or retirement, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.<sup>28</sup>

#### Disability Benefits

Disability retirement benefits are provided for both in-line-of-duty disability and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,<sup>29</sup> compensate a member who is disabled in the line of duty 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 a 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. A 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>30</sup>

<sup>20</sup> Section 121.021(45)(b), F.S.

<sup>21</sup> Section 121.091, F.S.

<sup>22</sup> Section 121.091(1)(a)1., F.S.

<sup>23</sup> Section 121.0515(8)(a), F.S.

<sup>24</sup> Section 121.021(29)(a)1., F.S.

<sup>25</sup> Section 121.021(29)(b)1., F.S.

<sup>26</sup> Section 121.021(29)(a)2. and (b)2., F.S.

<sup>27</sup> Section 121.4501(4), F.S.

<sup>28</sup> Section 121.4501(4)(g), F.S.

<sup>29</sup> See s. 121.4501(16), F.S.

<sup>30</sup> Section 121.091(4)(f), F.S.

## Death or Survivor Benefits

If the member is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.<sup>31</sup> Under the pension plan, if the member is vested at the time of his or her death, the member's joint annuitant<sup>32</sup> is entitled to receive the optional form<sup>33</sup> of payment for the annuitant's lifetime.<sup>34</sup> If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.<sup>35</sup> If the member dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime.<sup>36</sup> If there is no surviving spouse or the surviving spouse dies, the member's children under 18 years of age and unmarried may receive the benefits until the youngest child's 18th birthday. In general, members in the investment plan are not entitled to these death benefits; instead, the member's beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.<sup>37</sup>

In 2016, the Legislature increased survivor benefits for Special Risk Class members of the pension plan killed in the line of duty on or after July 1, 2013.<sup>38</sup> Rather than receiving a monthly benefit equal to one-half of the member's monthly salary at the time of death, the member's spouse and children are eligible to receive a monthly payment equal to the member's total monthly salary at the time of death. At the same time, the Legislature created a new survivor benefit for Special Risk Class members of the investment plan killed in the line of duty on or after July 1, 2013.<sup>39</sup> As a result, the spouses and children of such members receive the same survivor benefits provided to Special Risk Class members of the pension plan, including the new increased benefit. In addition, for Special Risk Class members of the investment plan or pension plan killed in the line of duty on or after July 1, 2013, survivor benefits may be extended to the 25th birthday of an unmarried child enrolled as a full time student if there is no surviving spouse or the surviving spouse dies.<sup>40</sup>

## DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.<sup>41</sup> While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.<sup>42</sup>

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.<sup>43</sup>

---

<sup>31</sup> For purposes of disbursement of benefits, a member is considered retired as of the date of the death.

<sup>32</sup> A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.

<sup>33</sup> Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.

<sup>34</sup> Section 121.091(7)(b)1., F.S.

<sup>35</sup> Section 121.091(7)(b)2., F.S.

<sup>36</sup> Section 121.091(7)(d)1., F.S. If the surviving spouse dies, or if the member is not married, the monthly payment that would have otherwise gone to the surviving spouse must be paid for the use and benefit of the member's child or children who are under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Section 121.091(7)(d)2. and 3., F.S.

<sup>37</sup> See s. 121.591(3)(b), F.S.

<sup>38</sup> Chapter 2016-213, L.O.F.; codified in ss. 121.091 and 121.591, F.S.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

<sup>42</sup> If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP is 1.3 percent.

<sup>43</sup> See s. 121.4501(2)(k) and (4)(f), F.S.

### Employment after Retirement

Section 121.091, F.S., governs the payment of benefits under the FRS. It requires a member of the FRS to terminate employment to begin receiving benefits or begin participation in DROP to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with her or his FRS employer.<sup>44</sup> Termination is void if any FRS-participating employer reemploys a member during a specified period of time.<sup>45</sup>

Subsection 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and authorizes those retirees to continue receiving retirement benefits.<sup>46</sup>

Before July 1, 2010, an FRS retiree was allowed to be reemployed by an FRS employer provided certain requirements were met. A member was allowed to be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree was reemployed during months two through 12 after retiring or terminating DROP, the retiree was not authorized to receive her or his pension benefit until month 13. However, a retiree was authorized to be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.<sup>47</sup>

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12 after retiring or terminating DROP, the retiree may not receive her or his pension benefit until month 13.<sup>48</sup> The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire and are reemployed on or after July 1, 2010.

### Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (the member could choose to participate in either the pension plan or the investment plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent child of a renewed member may qualify for survivor benefits.<sup>49</sup>

Currently, retirees initially reemployed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and do not earn creditable service toward a subsequent retirement benefit.<sup>50</sup> This restriction from renewed membership includes retirees of the FRS Pension Plan and the FRS Investment Plan, as well as members of an optional retirement program.

### Health Insurance Subsidy

Upon the conclusion of DROP, or upon service retirement or disability retirement, a retiree is eligible to receive the Health Insurance Subsidy (HIS), which assists retired members in paying for the costs of health insurance.<sup>51</sup> Eligible retirees receive \$5 per month for each year of creditable service used to

---

<sup>44</sup> Section 121.021(39)(a), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> Section 121.091(9)(a), F.S.

<sup>47</sup> Section 121.091(9)(b), F.S.

<sup>48</sup> Section 121.091(9)(c), F.S.

<sup>49</sup> Section 121.122(1), F.S.

<sup>50</sup> Section 121.122(2), F.S.

<sup>51</sup> Section 112.363(1) and (2), F.S.

calculate the retirement benefit. The HIS payment must be at least \$30, but not more than \$150 per month.<sup>52</sup>

### Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;<sup>53</sup>
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program,<sup>54</sup> and
- Members of a Florida College System institution may elect to enroll in the State Community College System Optional Retirement Program.<sup>55</sup>

### 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>56</sup> The rate is determined annually based on an actuarial study by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

The following are the current employer contribution rates for each class:<sup>57</sup>

Membership Class	Effective July 1, 2016
Regular Class	2.97%
Special Risk Class	11.80%
Special Risk Administrative Support Class	3.87%
Elected Officers' Class	6.63%
<ul style="list-style-type: none"> <li>• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders</li> <li>• Justices and Judges</li> <li>• County Officers</li> </ul>	11.68%
	8.55%
Senior Management Service Class	4.38%

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.<sup>58</sup>

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in

<sup>52</sup> Section 112.363(3)(e), F.S.

<sup>53</sup> The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

<sup>54</sup> Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

<sup>55</sup> If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

<sup>56</sup> Section 121.70(1), F.S.

<sup>57</sup> Section 121.71(4), F.S.

<sup>58</sup> Section 121.71(3), F.S.

the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.<sup>59</sup>

## **Effect of the Bill**

### Renewed Membership

Effective July 1, 2017, the bill allows for renewed membership for certain former participants of the investment plan, Senior Management Service Optional Annuity Program, State University System Optional Retirement Program (SUSORP), or State Community College System Optional Retirement Program (SCCSORP). Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSORP or the SCCSORP, as applicable. To be eligible for renewed membership, the member must have retired from one of the four specified plans and must be employed in a regularly established position with a covered employer on or after July 1, 2017.

Such renewed member may not qualify for disability retirement benefits and must satisfy the vesting requirements of the specific plan. The bill prohibits certain funds from being paid into the renewed member's account for any employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2017. A renewed member who is not receiving the maximum health insurance subsidy is entitled to earn additional credit toward the subsidy.

### Line-of-Duty Death Benefits

Effective July 1, 2017, the bill expands the survivor benefit for members of the Special Risk Class. Specifically, it provides that such survivor benefits are retroactive to July 1, 2002.

Effective July 1, 2017, the bill also establishes a survivor benefit for all other membership classes of the investment plan for members who are killed in the line of duty since 2002, which is when members were first allowed to participate in the investment plan. The survivor benefits are the same as those currently provided for other membership classes of the pension plan, which is a monthly payment equal to one-half of the member's salary at the time of death. To receive the benefit, the spouse and children must elect to transfer the balance of the member's investment plan account to the survivor benefit account of the FRS Trust Fund. The line-of-duty death benefits supersede any other distribution that may have been provided by the member's designation of beneficiary. For a member killed in the line of duty on or after July 1, 2002, but before July 1, 2017, the initial monthly benefit payable on or after July 1, 2017, will be equal to one-half the member's salary at the time of death, except that it will be:

- Actuarially reduced by the amount of the investment plan payout, if a payout was issued; and
- After the actuarial reduction, increased by the applicable cost-of-living adjustment that would have been payable if the survivor benefit payment had begun the month following the member's death. On each July 1 after the initial payment, the benefit will be increased by the applicable cost-of-living adjustment.

### Senior Management Service Optional Annuity Program

The bill closes the SMSOAP to new participants effective July 1, 2017. Currently, fewer than 30 members participate in this optional retirement program.

### Elected Officers' Class – Justices and Judges Subclass

Effective July 1, 2017, the bill reduces the accrual rate for purpose of determining a member's pension benefit for members in the Elected Officers' Class (EOC) – Justices and Judges Subclass from 3.3 percent to 3 percent, which is the same accrual rate for all other members of the EOC.

---

<sup>59</sup> See ss. 121.4503 and 121.72(1), F.S.



### Default

For members initially enrolled in the FRS on or after January 1, 2018, the bill changes the default from the pension plan to the investment plan. Thus, if the member does not make a selection, the member will default to the investment plan instead of the pension plan. The bill maintains the member's second election option.

### Elected Officers' Class

The bill provides that members initially enrolled in the FRS on or after July 1, 2018, in a position covered by the EOC may not participate in the pension plan. Instead of having a choice between two plans, such members must participate in the investment plan and may not utilize a second election option to become a member of the pension plan. Investment plan membership continues even if subsequent employment results in the member becoming covered by another membership class.

For a member initially enrolled in the FRS on or after July 1, 2018, in a position covered by another class, the member may choose to participate in the pension plan or the investment plan. If the member chooses to participate in the pension plan and subsequently participates in a position covered by the EOC, the member may continue to participate in the pension plan. Therefore, the prohibition against participation in the pension plan only affects members initially enrolling in the FRS on or after July 1, 2018, in positions covered by the EOC.

The bill prohibits elected officials from joining the Senior Management Service Class in lieu of participating in the EOC. Because the SMSOAP will not be offered to new members on or after July 1, 2017, elected officers will no longer be able to switch service classes for the purpose of participating in the optional annuity program. Instead, elected officials can participate in the FRS Investment Plan or withdraw from the system.<sup>60</sup>

### Uniform Rates

The bill adjusts the uniform rates for the required employer contribution for each membership class and subclass of the FRS for both retirement plans, effective July 1, 2017. It also adjusts the required employer contribution rates for each membership class and subclass of the FRS necessary to address the plan's unfunded actuarial liability.

### Important State Interest

The bill declares that it fulfills an important state interest. It provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

## B. SECTION DIRECTORY:

Section 1 amends s. 121.051, F.S., providing for compulsory membership in the investment plan for employees in the EOC initially enrolled on or after July 1, 2018.

Section 2 amends s. 121.052, F.S., prohibiting members of the EOC from joining the Senior Management Service Class; revising the accrual rate for certain members of the EOC.

Section 3 amends s. 121.053, F.S., relating to participation in the Elected Officers' Class for retired members.

Section 4 amends s. 121.055, F.S., relating to the Senior Management Service Class.

Section 5 amends s. 121.091, F.S., relating to benefits payable under the FRS.

Section 6 amends s. 121.122, F.S., relating to renewed membership in the FRS.

---

<sup>60</sup> Members of the Elected Officers' Class may withdraw from the FRS. Section 121.052(3), F.S.

Section 7 amends s. 121.4501, F.S., relating to the FRS Investment Plan.

Section 8 amends s. 121.591, F.S., relating to payment of benefits.

Section 9 amends s. 121.5912, F.S., relating to the survivor benefit retirement program.

Section 10 amends s. 121.71, F.S., relating to uniform rates.

Section 11 amends s. 238.072, F.S., conforming a cross-reference to changes made by the act.

Section 12 amends s. 413.051, F.S., conforming cross-references to changes made by the act.

Section 13 provides that the act fulfills an important state interest.

Section 14 provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

See Fiscal Comments.

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

None.

### D. FISCAL COMMENTS:

The Milliman actuarial and consulting firm conducted several studies at the request of the Speaker of the House of Representatives. The purpose of the studies was to determine the fiscal impact of requiring new enrollees who participate in the Elected Officers' Class to participate in the investment plan, changing the default for employees who fail to make a selection, establishing a new in-line-of-duty death benefit, authorizing renewed membership in the investment plan, and reducing the accrual rate for certain members who participate in the Elected Officers' Class.

Based on the results of the applicable studies, the bill is projected to have a negative fiscal impact of \$17.3 million in fiscal year 2017-18. The projected costs/(savings) for select subsequent years are summarized in the table below (in millions \$):

2017-2020				2017-18										
Concept		17-18	18-19	19-20	State		All GR			GR	TF	County	Local	Grand
					GR	TF	Schools	Univ	Colleges					Totals
1	Close to Elected *	-	(0.01)	(0.01)	-	-	-	-	-	-	-	-	-	-
2	Change Default	-	1.6	3.3	-	-	-	-	-	-	-	-	-	-
3	Renewed IP	9.5	9.50	9.50	1.8	1.8	2.1	0.4	0.3	6.4	1.8	2.7	0.4	9.5
5	Reduce Service Accrual - Judges	(1.6)	(1.60)	(1.60)	(1.4)	(0.2)				(1.4)	(0.2)			(1.4)
6	ILOD - IP	9.4	9.9	10.2	0.9	0.9	1.2	0.1	0.1	3.2	0.9	5.7	0.5	9.4
		17.3	19.4	21.4	1.3	2.5	3.3	0.5	0.4	8.2	2.5	8.4	0.9	17.5
* Fiscal cost/savings are insignificant in 17-18														

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exception may apply as the Legislature has determined that this bill satisfies an important state interest and similarly situated persons are all required to comply.

##### 2. Other:

###### 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.

###### Contractual Obligations

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provides that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.<sup>61</sup> This "preservation of rights" provision<sup>62</sup> was established by the Florida Legislature with an effective date of July 1, 1974.

<sup>61</sup> Section 121.011(3)(d), F.S.  
**STORAGE NAME:** pcb04.GAC  
**DATE:** 3/27/2017

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.<sup>63</sup> The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member under the previous benefit structure remain untouched, and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.<sup>64</sup>

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits that accrue for future state service.<sup>65</sup> More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.<sup>66</sup>

This bill does not change any benefits that a member earned prior to July 1, 2017.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

---

<sup>62</sup> The "preservation of rights" provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So. 2d 1033, 1037 (Fla. 1981).

<sup>63</sup> *Id.* at 1035.

<sup>64</sup> *Id.* at 1036.

<sup>65</sup> *Id.* at 1037.

<sup>66</sup> *Rick Scott, et al. v. George Williams, et al.*, 107 So. 3d 379 (Fla. 2013).