

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- State Board rule making authority

The bill increases the State Board of Education's rulemaking authority. It also increases the responsibilities of the Auditor General by requiring monitoring of the compliance of district performance-based pay plans. The Department of Education is also required to assist in such monitoring.

B. EFFECT OF PROPOSED CHANGES:

Background

Background on the Florida Retirement System

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.² The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.³

The FRS offers both an investment plan and a defined benefit plan which provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.⁴ Members of the FRS belong to one of five membership classes:

Regular Class ⁵	570,888 members	88.00%
Special Risk Class ⁶	68,466 members	10.59%
Special Risk Administrative Support Class ⁷	80 members	0.01%
Senior Management Service Class ⁸	6,823 members	1.10%
Elected Officers Class ⁹	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.¹⁰

To receive benefits under the FRS, a member must reach his or her "normal retirement date."¹¹ The normal retirement date depends on the membership class of the member and is based on a minimum number of years of credible service and age (e.g., six or more years and age 62 for a Regular Class

¹ FLA. STAT. § 121.025 (2005).

² Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/>>.

³ *Id.*

⁴ *Id.*

⁵ FLA. STAT. § 121.021(12) (2005).

⁶ FLA. STAT. § 121.0515 (2005).

⁷ FLA. STAT. § 121.0515(7) (2005).

⁸ FLA. STAT. § 121.055 (2005).

⁹ FLA. STAT. § 121.052 (2005).

¹⁰ See, e.g., FLA. STAT. 121.055(3)(a)1. (2005).

¹¹ FLA. STAT. § 121.021(29) (2005).

member) or specified amount of credible service regardless of age (e.g., 30 years for a Regular Class member).¹²

Deferred Retirement Option Program

In 1997, the Florida Legislature created another retirement option for members of the Florida Retirement System: the Deferred Retirement Option Program or “DROP.”¹³ The DROP allows a member of the Florida Retirement System, who has reached his or her normal retirement date, to defer the receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer.¹⁴ The deferred monthly benefits accrue on behalf of the member, plus interest compounded monthly, for the period of the DROP participation.¹⁵ After completing the DROP period and terminating employment, the member not only receives the total of the DROP benefits, but also the previously determined normal retirement benefits.¹⁶

Changes in DROP for Educational Personnel

There have been several changes to the DROP which benefit educational personnel, certain “instructional personnel” in particular. Instructional personnel are K-12 staff members who provide direct instructional services to students or direct support in the learning process of students.¹⁷ Classroom teachers,¹⁸ student personnel services,¹⁹ librarians/media specialists,²⁰ and other instructional staff²¹ are specifically included as instructional personnel.²²

- Instructional personnel may elect to participate in DROP at any time following the date on which the member reaches his or her normal retirement date,²³
- Instructional personnel who have received authorization by the district superintendent may participate in the DROP up to 96 months,²⁴ more than the 60 months normally allowed,²⁵
- Instructional personnel employed by a developmental research school and authorized by the school’s director or principal may participate in the DROP up to 96 months;²⁶
- Instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind may participate in the DROP up to 96 months.²⁷

¹² *Id.*

¹³ Ch. 97-180, Laws of Fla., § 8.

¹⁴ FLA. STAT. 121.091(13) (2005) (For most members of the Florida Retirement System, the election to participate in DROP must be made within 12 months immediately following the date on which the member first reaches his or her normal retirement date.).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ FLA. STAT. 1012.01(2) (2005).

¹⁸ FLA. STAT. 1012.01(2)(a) (2005) (staff members who are assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers).

¹⁹ FLA. STAT. 1012.01(2)(b) (2005) (staff members, including guidance counselors, social workers, career specialists, and school psychologists, who are responsible for: advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions.)

²⁰ FLA. STAT. 1012.01(2)(c) (2005) (staff members who are responsible for providing school library media services).

²¹ FLA. STAT. 1012.01(2)(d) (2005) (other staff members including primary specialists, learning resource specialists, instructional trainers, adjunct educators, and similar positions).

²² *But see* FLA. STAT. 1012.01(2)(e) (2005) (Education paraprofessionals are also included in the definition of instructional personnel, but educational paraprofessionals have not been provided additional participation in the DROP).

²³ Ch. 2001-47, Laws of Fla., § 2; FLA. STAT. § 121.091(13)(a)6. (2005).

²⁴ Ch. 2003-260, Laws of Fla., §2; FLA. STAT. § 121.091(13)(a)2. (2005).

²⁵ FLA. STAT. § 121.091(13)(b)1. (2005).

²⁶ Ch. 2004-355, Laws of Fla., § 3 (2005).

²⁷ *See, e.g.,* FLA. STAT. § 121.091(13)(b)1. (2005).

Under current law, charter school employees are not eligible to participate in extended DROP. This bill allows charter school employees that are in FRS to participate in the DROP beyond 60 months, up to the 96-month maximum participation period.

Charter Schools

The Florida Legislature authorized charter schools in 1996. Since their introduction in 1996, the number of charter schools operating in Florida has grown from 5 to 333.²⁸ In 1996, the 5 schools served 574 students and in 2005-06 the 333 schools currently serve approximately 92,158 students.²⁹ The legislative principles guiding Florida charter schools are to meet high standards of student achievement while increasing parental choice within the public school system, align responsibility with accountability, and provide parents with sufficient information relating to their child's reading level and learning gains.³⁰

As provided in s. 1002.33, F.S., charter schools are nonsectarian public schools of choice that operate under a performance contract (a charter) with a public sponsor. Under current law, district school boards, the Florida Schools of Excellence and its approved cosponsors can sponsor charters. Additionally, four state universities are currently authorized to grant charters and sponsor development research (laboratory) schools created under s. 1002.32, F.S.³¹ Pursuant to s. 1002.335, F.S., districts may apply to the State Board of Education to be the exclusive sponsors of charter schools within their districts.

Application to become a charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of the state.³² Under current law, district school board employees who are involved in an application for a charter school are protected from retribution by the school district by a process that prohibits unlawful reprisals against that employee. Any complaints of such reprisals are made to the Department of Education which must conduct an investigation and issue findings which may be used as evidence in any legal proceedings related to the matter.

Applications for charters are reviewed by the public sponsors referenced above. Approved applications require that the school and the sponsor enter into a charter which is an agreement signed by the governing body of the school and the sponsor that addresses all major issues involving the operation of the charter school including, but not limited to, the school's mission, students served, curriculum, methods of student academic assessment, method for conflict resolution, financial and administrative management, and the term of the charter. Charter schools are held accountable to the sponsor that grants their application and to the parents who choose them for the academic and financial performance of the school and its students.

Pursuant to s. 1002.33(16), F.S., charter schools are exempt from the requirements of the school code (Chapters 1000-1013, F.S.), with the exception of statutes:

1. specifically applicable to charter schools;
2. relating to student assessment and school grading;
3. relating to provision of services to students with disabilities;
4. relating to civil rights and discrimination;
5. relating to student health, safety, and welfare.

²⁸ www.floridaschoolchoice.org

²⁹ *Id.*

³⁰ FLA. STAT. ch. 1002.33(2)

³¹ FLA. STAT., S. 1002.32(2), provides that for the purpose of state funding, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, and the University of Florida, and other universities approved by the State Board of Education and the Legislature are authorized to sponsor a lab school.

³² FLA. STAT. s. 1002.33(3)(a)

Charter schools are funded through the Florida Education Finance Program (FEFP) as provided in s. 1011.62, F.S. The funds are distributed by the Department of Education to the districts who may take up to 5% in administrative costs before forwarding the funding to the charter schools. Charter schools are eligible to receive federal Title I funding and any other federal funds to which they are otherwise eligible.

Charter school facilities must comply with the Florida Building Code or may choose to comply with the State Requirements for Educational Facilities. These facilities must comply with the Florida Fire Prevention Code and are exempt from assessments of fees for building permits, building and occupational licenses, and impact fees or service availability fees. A school district is also required to make any surplus property or facility available to charter schools for use on the same basis as it is available for use by other public schools within the district.

Effects of Proposed Changes

The bill revises section of Ch. 121, F.S. and includes provisions to allow charter school instructional personnel that are in FRS to participate in the extended DROP program. It also attempts to include prekindergarten teachers at public schools for eligibility in DROP as well.³³

The bill also clarifies the purpose of charter schools and it revises provisions relating to unlawful reprisal against public school employees involved in a charter school application to include protection for charter schools against “an action taken by a sponsor or sponsor’s employee that directly or indirectly impacts the operations and funding of the charter school, submission of reports, or the school’s compliance with the charter.” The bill sets forth a new provision for relief provided in a successful legal action against a sponsor for unlawful reprisal against a charter school as follows:

1. immediate cease and desist
2. compensation for lost funding as a result of the reprisal
3. costs and attorney’s fees
4. issuance of an injunction
5. issuance of an order granting immediate transfer of the charter to an alternate sponsor.

The bill specifically provides that charter schools are exempt from the new requirements relating to school start date. There are also numerous conforming changes to clarify that applications may be made for charter schools to the Florida Schools of Excellence Commission and its cosponsors as well as to school districts.

The bill requires that charter schools be allowed to correct data and information in the online accountability report provided that the district be able to review the report prior to submission to the department. It also provides that FEFP funds for a charter school must be forwarded by the district each month within 10 days of the district’s receipt of such funds. Further, the bill clarifies that charter schools must receive their proper federal funding for all federal programs they are otherwise eligible for, including IDEA funding.

The bill provides facilities fee exemptions for charter schools that are available for all public schools, including, fees and assessments for building permits other than those provided in s. 553.80, F.S., building and occupational licenses, fees for fire and health inspections, impact fees, service availability fees, and assessments for special benefits.

The bill clarifies that when a public school is closed down, the district must make the property and facility available for lease or purchase by a charter school for educational purposes within the first 60 days of closure.

³³ FLA. STAT. s. 1012.01 only includes K-12 employees. This section of law would need to be revised to prevent conflict within the provision that is amended by the bill.

The bill sets forth legislative findings that a proper and legitimate state purpose is served by including charter school employees as eligible for participation in DROP.

C. SECTION DIRECTORY:

Section 1. The bill revises section of Ch. 121, F.S. and includes provisions to allow charter school instructional personnel that are in FRS and ESE prekindergarten teachers to participate in the extended DROP program for instructional personnel.

Section 2. The bill amends s. 1002.33, F.S., relating to charter schools; prohibiting unlawful reprisal against a charter school by the sponsor and providing and for relief; provides duties of a sponsor relating to charter school applications; revises provisions relating to charter school renewal term; provides for monthly distribution of funds to charter schools by the school district; clarifies charter school fee exemptions; provides for availability of unused public school property and facilities for charter schools.

Section 3. The bill provides a declaration of important state interest.

Section 4. Provides that it shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive longer, and likely increased, DROP contributions for certain charter school teachers and for ESE prekindergarten teachers.

2. Expenditures:

This bill may have a fiscal impact on state government expenditures if this bill adversely affects future valuations of the Florida Retirement System.³⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill clarifies that charter schools are not required to pay assessments for special benefits to local government entities with the authority to levy such assessments.

2. Expenditures:

This bill will require the K-12 district school boards and the Florida School for the Deaf and Blind to fund the DROP contribution rate for any extended period for school administrators.³⁵ This bill also may have two additional fiscal impacts: differentials between the DROP contribution rates and the Florida Retirement System contribution rates and salary differentials between the DROP employees and the employees who could replace the DROP employee.³⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

³⁴ Fla. Dep't of Mgmt. Serv., HB 659 (2006) Substantive Bill Analysis (Feb. 3, 2006) (on file with dep't) at pg. 5.

³⁵ *Id.*

³⁶ *Id.*

D. FISCAL COMMENTS:

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

Expansion of the members eligible for extended DROP participation would have a nominal fiscal impact and depend upon how liberally the district school boards permit this to happen. This impact would be determined in future valuations and incorporated into the rates recommended at that time.³⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

2. Other:

Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.³⁸ According to the Department of Management Services, the actuarial impact of extending the DROP is properly funded as long as employers pay the required contribution rate.³⁹ As such, this bill appears to satisfy this constitutional requirement.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The conflict in definitions of “instructional personnel” as raised in footnote 33 should be amended to clarify that prekindergarten ESE teachers and charter school instructional personnel are both added to those eligible for the extended DROP program.

The section in lines 348-356 is overbroad with respect to what constitutes “unlawful reprisal” by the sponsor.

The bill section regarding the relief available to charter school’s that are prevailing party in an “unlawful reprisal” action includes provision requiring the offending party to cease and desist while also requiring an injunction. These remedies appear to be repetitive and requiring both is unnecessary.

The language stating that the terms of a charter shall be in effect for the duration of the agreement is unnecessary.

³⁷ *Id.* at pg. 6.

³⁸ Part VII of chapter 112, Florida Statutes, the “Florida Protection of Public Employee Retirement Benefits Act,” was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

³⁹ Fla. Dep’t of Mgmt. Serv., HB 659 (2006) Substantive Bill Analysis (Feb. 3, 2006) (on file with dep’t) at pg. 5.

D. STATEMENT OF THE SPONSOR

No statement submitted

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 27, 2007, the Committee on K-12 adopted a strike-all amendment. The Committee reported the bill favorably as amended. The strike-all amendment amended the bill as follows:

The strike-all revises the DROP extension eligibility language to clarify the conflict with the definition in s. 1012.01, and like the bill, adds pre-K ESE teachers to those employees eligible to participate in DROP and clarifies that the appropriate charter school governing board will determine what charter school teachers may participate. The strike-all also revises charter school provisions charter school facilities to provide clarification that charter schools shall not be charged for special assessments.

The strike-all also removes the following provisions:

- Language revising charter school purposes
- Unnecessary language specifying an exemption for charter schools on the school start date
- Unnecessary language regarding the duration of a charter contract terms
- Language allowing charter schools to apply to transfer sponsors after two years
- Language including procedures and relief for “unlawful reprisal” by a district against a charter school
- Language allowing charter schools to review and revise data in the online accountability report sent to DOE
- Unnecessary language requiring monthly payment of funds to charter schools and payment within 10 days of receipt by district
- Language stating that facilities and property from closed schools must be first made available to charter schools for initial 60 days after closure

The strike-all also revises the enacting clause to make the provision clarifying charter schools’ exemption from special assessments fees retroactive to January 7, 2003.