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.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/CS/SB 2024

INTRODUCER: Budget Committee, Governmental Oversight and Accountability Committee and Governmental Oversight and Accountability Committee

SUBJECT: State Retirement

DATE: February 29, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	**Fav/CS**
2.	McSwain	Rhodes	BC	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes
B. AMENDMENTS........................ [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

This bill clarifies some issues in the Florida Retirement System (FRS), by doing the following:

- Clarifies that the provisions of part I of the Florida Retirement System Act are applicable to parts II and III of the act.
- Revises definitions to make clarifying changes.
- Allows a retiring member of optional retirement programs to receive a benefit distribution of up to 10 percent of their account balance one month after termination.
- Clarifies that the existing prohibition on hardship loans does not apply to a requested distribution for retirement, a mandatory distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.
- Conforms the deferral age for participants of the Deferred Retirement Option Program initially enrolled in the FRS on or after July 1, 2011, to changes made in Senate Bill 2100.
- Clarifies that a retiree of the FRS investment plan, or optional retirement program, who is reemployed on or after July 1, 2010, is prohibited from being reenrolled as a renewed member of a state-administered retirement system.

- Clarifies that members of the State University System Optional Retirement Program may receive payment of benefits from either annuity contracts or investment contracts, and clarifies the definition of the term "benefit."

This bill amends the following sections of the Florida Statutes: 121.012, 121.021, 121.0515, 121.055, 121.071, 121.091, 121.122, 121.35, 121.4501, 121.591, and 1012.875.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to the 572,000 active and 319,000 retired members and beneficiaries of its more than 900 state and local government public employers. Originally established in 1970 as the successor to the Teachers' Retirement System and the State and County Officers' and Employees' Retirement System, the FRS is today a combination of five previously separate pension plans. Benefit payments are administered by the Department of Management Services through its Division of Retirement while investment management is undertaken by the Board of Administration. Established as a Section 401(a) government plan under the Internal Revenue Code, its benefits are exempt from federal taxation until received by the employee.

As a defined benefit plan, the FRS "Pension Plan" provides retirement income expressed as a percent of final pay. Members accrue retirement credits based upon their eligibility in one of several membership classes. Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus specified annual leave, yield a monthly annuity benefit at normal retirement. The accrual rates range from 1.60 percent for the Regular Class to 3.33 percent for Justices and Judges. Members seeking early retirement dates receive a five percent reduction in the benefit for each year below their normal age threshold.

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DROP) under which a participant may extend employment for an additional five years - eight years for instructional personnel in district school boards - and receive a lump sum benefit at a fixed rate of interest for that additional service. Enrollment in DROP requires the participant to serve the employer with a deferred resignation from employment at the end of the period.

Reenrollment in the FRS is prohibited for retirees who are initially reemployed on or after July 1, 2010.

Management employees and instructional employees in higher educational units are also permitted to enroll in one of three other separate optional retirement programs that exist outside of FRS authority.

Optional Retirement Plans

State University System Optional Retirement Program

The optional retirement program for the State University System (SUSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State University System faculty, administrators, administrative professionals, and executive service personnel.[1,2] As of June 30, 2011, there were 16,999 SUSORP participants.[3]

Through this program, participants elect coverage as an alternative to membership in the traditional FRS and direct their own investments (retirement and death benefits).[4] Members of the SUSORP who have executed a contract may make voluntary contributions by salary reduction or deduction in an amount not to exceed the percentage amount contributed by the employer.[5] Current law provides that members may receive a payout of benefits funded by the member's voluntary contributions at any time within the limits of the contract between the member and the provider company.[6]

State Community College System Optional Retirement Program

The optional retirement program for the State Community College System (SCCSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State Community College employees.[7] Employees of public community colleges and charter technical career centers sponsored by public community colleges[8] who are members of the Regular Class of the FRS may, in lieu of participating in the FRS, elect to withdraw from the system and participate in the SCCSORP.[9]

Senior Management Service Optional Annuity Program

The Senior Management Service Optional Annuity Program (SMSOAP) is a retirement plan that is provided as an alternative to FRS membership for members of the Senior Management Service Class.[10] Under this optional annuity plan, eligible members may purchase retirement, death, and disability benefits.[11] As of June 30, 2011, there were 38 members of the SMSOAP.[12]

[1] Section 121.35(2)(a), F.S., provides that SUSORP is available to certain instructional and research faculty, administrative and professional personnel, and the Chancellor and university presidents. Section 121.051(1)(a)2., F.S., requires faculty members at a college with faculty practice plans to participate in the optional retirement program.
[2] *See* s. 121.35, F.S.
[3] The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 74.
[4] Section 121.35(1), F.S.
[5] Section 121.35(4)(e), F.S.
[6] Section 121.35(5)(g), F.S.
[7] Section 1012.875, F.S.
[8] *See* s. 1000.21(3)(a)-(bb), F.S., for a list of public community colleges and charter technical careers that are sponsored by public community colleges.
[9] Section 121.051(2)(c)
[10] Section 121.055(6)(a), F.S.
[11] *Id.*
[12] The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 76.

Changes to the FRS in 2011

The 2011 Legislature enacted[13] sweeping changes to the FRS, by providing for the following:

- Effective July 1, 2011, required 3 percent employee contribution for all FRS members. DROP participants are not required to pay employee contributions.
- For employees initially enrolled on or after July 1, 2011, the definition of "average final compensation" means the average of the 8 highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculation of retirement benefits. For employees initially enrolled prior to July 1, 2011, the definition of “average final compensation” continues to be the average of the 5 highest fiscal years of compensation.
- For employees initially enrolled in the pension plan on or after July 1, 2011, such members will vest in 100 percent of employer contributions upon completion of 8 years of creditable service. For existing employees, vesting will remain at 6 years of creditable service.
- For employees, initially enrolled on or after July 1, 2011, increased the normal retirement age and years of service requirements, as follows:
    - For Special Risk Class: Increased the age from 55 to 60 years of age; and increased the years of creditable service from 25 to 30.
    - For all other classes: Increased the age from 62 to 65 years of age; and increased the years of creditable service from 30 to 33 years.
- Maintained DROP; however, employees entering DROP on or after July 1, 2011 will earn interest at a reduced accrual rate of 1.3 percent. For employees currently in DROP or entering before July 1, 2011, the interest rate remains 6.5 percent.
- Eliminated the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011. Subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the reinstatement of the COLA, the new COLA formula will expire effective June 30, 2016, and the current 3 percent cost-of-living adjustment will be reinstated.
- To implement the bill for the 2011-12 fiscal year, funded the Division of Retirement with four positions and $207,070 in recurring funds and $31,184 in non-recurring funds.

III. Effect of Proposed Changes:

Section 1 creates s. 121.012, F.S., to clarify that the General Provisions (Part I) of Chapter 121, F.S., apply also to the parts of the chapter relating to the Public Employee Optional Retirement Program (Part II) and the FRS contribution rates (Part III).

Section 2 amends s. 121.021, F.S., to provide that for investment plan members, normal retirement age is the date a member attains the normal date or is vested in the investment plan pursuant to s. 121.4501(6), F.S., whichever is later.

Section 3 corrects a reference in s. 121.0515(3)(k), F.S., to the appropriate section describing employees eligible for membership in the Special Risk Class. Without this change, the cross-reference in s. 121.0515(3)(k), F.S., incorrectly refers to inclusion of certain forensic employees in s. 121.0515(2)(f), F.S., instead of the correct cross-reference for continued Special Risk Class

[13] Chapter 2011-68, L.O.F.; Senate Bill 2100.

membership by members who suffer a specified in-line-of-duty injury and can no longer perform Special Risk Class duties, but who remain employed by the same employer at the time of injury in s. 121.0515(2)(i), F.S.

Section 4 amends s. 121.055, F.S., to clarify that a retiree of a state retirement system who is reemployed as an official in the Elected Officers' Class cannot be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program (SMSOAP). The bill clarifies that loans and hardship withdrawals are prohibited in the SMSOAP, except for a requested retirement distribution, a mandatory de minimis distribution authorized by the administrator, or a required distribution provided pursuant to the Internal Revenue Code.

Section 5 amends s 121.071, F.S., to clarify that that loans and hardship withdrawals are prohibited in the FRS, except for a requested retirement distribution, a mandatory de minimis distribution authorized by the administrator, or a required distribution provided pursuant to the Internal Revenue Code.

Section 6 amends s. 121.091, F.S., to adjust the DROP deferral ages for members enrolled after July 1, 2011, for those entering DROP based on years of service instead of normal retirement age. This change makes the DROP deferral age 5 years before normal retirement age - age 55 for Special Risk Class members and age 60 for all other members, which will line up the DROP deferral age with the normal retirement ages.

Section 7 amends s. 121.122, F.S., to clarify that a retiree of the pension plan who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

Section 8 amends s. 121.35, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State University System Optional Retirement Program, except for a requested retirement distribution, a mandatory de minimis distribution authorized by the administrator, or a required distribution provided pursuant to the Internal Revenue Code. The bill provides a definition of the term "benefit," to clarify when distributions received by a member prohibit enrollment as a renewed member in a state-administered retirement system. The bill provides that the department may authorize a distribution of up to 10% of the member's account after termination for 1 calendar month, if the member has reached normal retirement date.

Section 9 amends s. 121.4501, F.S., to specify that the definition of "eligible employee" does not include certain members reemployed in a regularly established position; to clarify that a retiree who is reemployed after a certain date is not eligible to be enrolled as a renewed member.

Section 10 amends s. 121.591, F.S., clarify that that loans and hardship withdrawals are prohibited in the FRS Investment Plan, except for a requested retirement distribution, a mandatory de minimis distribution authorized by the administrator, or a required distribution provided pursuant to the Internal Revenue Code.

Section 11 amends s. 1012.875, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State Community College System Optional Retirement Program, except for a requested retirement distribution, a mandatory de minimis distribution authorized by the administrator, or a required distribution provided pursuant to the Internal Revenue Code.

Benefit payments may not be made until a member has been terminated for 3 calendar months, except that the college may authorize a distribution of up to 10% of the member's account after termination for 1 calendar month, if the member has reached normal retirement date.

The bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.[14] The "Florida Protection of Public Employee Retirement Benefits Act" 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."[15]

This bill appears to meet the requirements of Article X, s. 14 of the State Constitution, because it does not provide benefit improvements under the FRS pension plan.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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[14] Section 14, Art. X, Florida Constitution.
[15] Section 112.61, F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Committee on February 28. 2012:
The committee substitute removed substantive changes related to Special Risk Class retirement age, vesting, renewed membership, and Investment Plan default, and added provisions that plan administrators could authorize a distribution of up to 10% of the member's account after termination for 1 calendar month, if the member has reached normal retirement date.

CS by Governmental Oversight and Accountability on January 26, 2012:
The committee substitute:
- Adds a definition of "normal retirement age" for investment plan members.
- Changes normal retirement age for Special Risk Class members to age 55, or age 48 with 25 years of service, or age 52 with 25 years of service, including 4 years of military service.
- Adjusts the calculation for early retirement and DROP election dates for Special Risk members, consistent with the changed normal retirement dates.
- Changes vesting in the pension plan from 8 to 10 years.
- Places all new employees eligible for the investment plan into the investment plan, with one year only to elect participation in the pension plan. After the first year, there is no further option to switch.
- Allows a retired member of the investment plan or specified optional annuity programs who returns to state employment to become a renewed member in the Regular Class of the investment plan.
- Requires a retired member returning to a job eligible for the State University Optional Retirement Program or the State Community College Optional Retirement Program to become a renewed member of those programs.

B. Amendments:

None.