

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 Committee on Governmental Oversight and Accountability

BILL: CS/SB 1240

INTRODUCER: Governmental Oversight and Accountability and Senator Mayfield

SUBJECT: Retirement

DATE: January 24, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	GO	Fav/CS
2.	_____	_____	ED	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1240 authorizes participation of employees of a special district or a not-for-profit corporation or association created by the Escambia County Board of commissioners for the purpose of owning, operating, or managing a public bus transit system in the Florida Retirement System (FRS). Beginning March 31, 2018, a current employee may elect to participate in the FRS. Such election must be in writing to the employer, be received before August 31, 2018, and is irrevocable. Employees who are hired on or after March 31, 2018, are required to participate in the FRS.

The bill also revises time limits for certain public employees who qualify to participate in the Deferred Retirement Option Program (DROP). Specifically, the bill modifies DROP for instructional and administrative personnel in grades K-12 to prevent potential classroom disruption due to the maximum participation date being reached during the school year.

Current law authorizes eligible members of DROP who are specified instructional personnel in grades K-12 to participate in DROP for up to 36 calendar months beyond the 60-month period.

Effective July 1, 2018, an employer must extend a DROP termination date to after the last day of the last calendar month of the school year for instructional personnel employed after the 60-month period. In contrast, the bill authorizes, rather than requires an employer of an instructional personnel whose 36-month extension has been reached to extend DROP participation through the last day of the last calendar month of the school year.

An employer may also extend DROP participation beyond the 60-month period for administrative personnel to accommodate the end of the school year.

An employer must notify the Division of Retirement of any change in termination date and the additional period of DROP participation for affected personnel.

The bill contains a legislative finding that its provisions fulfill an important state interest. Additionally, the bill is expected to be fiscally neutral.

The bill takes effect July 1, 2018.

II. Present Situation:

Compulsory Participation in the Florida Retirement System

Participation in the Florida Retirement System (FRS) is compulsory for all officers and employees except as otherwise provided.¹ Each officer or employee, as a condition of employment, becomes a member of the system on the date of employment. Section 121.051, F.S., provides for exceptions to the compulsory participation for various officers and employees of the certain participating employees as of specified dates.²

The Deferred Retirement Option Program

The Deferred Retirement Option Program (DROP) is a program under which an eligible member of the Florida Retirement System who has reached his or her normal retirement date may elect to participate. While participating in DROP, a member's retirement benefits accumulate in the Florida Retirement System (FRS) Trust Fund, earning tax-deferred interest compounded monthly for the specified period of the DROP participation, while continuing employment with his or her Florida Retirement System employer. When the drop participation period ends, the employee must terminate all employment with all FRS employers or forfeit his or her DROP benefits and any monthly retirement benefits received after DROP participation ended. Upon termination of employment, the member receives the total DROP benefits and also receives the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in DROP by an eligible member beyond the initial 60-month period as authorized by law is on an annual contractual basis for all participants.³

An eligible member may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months. However, an exception to participate in DROP for up to 36 calendar months beyond the 60-month period apply to members:

- Who are instructional personnel employed by the Florida School for the Deaf and the Blind and authorized by the Board of Trustees of the Florida School for the Deaf and the Blind,

¹ Section 121.051, F.S.

² See s. 121.051(1)(a)-(d), F.S.

³ Section 121.091, F.S. See also FRS TODAY, Florida Retirement System, Pension Plan Member Handbook, 2017 Edition, p. 39 https://www.rol.frs.state.fl.us/forms/member_handbook.pdf (last visited January 15, 2017).

- Who are instructional personnel as defined in s. 1012.01(2)(a)-(d), F.S., in grades K-12 and authorized by the district school superintendent, or
- Who are instructional personnel as defined in s. 1012.01(2)(a), F.S., employed by a developmental research school and authorized by the school's director, or if the school has no director, by the school's principal.

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.⁴ For most members of the pension plan, normal retirement occurs at 30 years of service or age 62.⁵ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement occurs at 25 years of service or age 55.⁶ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.⁷

There are certain termination requirements and reemployment limitations that affect retirement benefits if a retiree is employed with an FRS-participating employer during the first 12 calendar months after the effective retirement date without DROP participation or after the DROP termination date. If a retiree returns to work during the first six calendar months of retirement or after his DROP termination date, then his retirement application is voided and all retirement benefits, including any funds accumulated during DROP participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. A retiree cannot become a newly hired employee until after meeting the definition of termination by remaining unemployed for six calendar months.⁸

A retiree may not receive both wages paid by an FRS-participating employer and an FRS retirement benefit in the same month during the seventh through twelfth calendar months of retirement or after the DROP termination date. There are no exceptions to this reemployment limitation during this period. This restriction applies even if the particular position held is not covered by the FRS. A retiree must inform the Division of Retirement if he works for an FRS-participating employer during the reemployment limitation period.

Suspended retirement benefits for the months a reemployed retiree is employed by an FRS-participating employer during the reemployment limitation period will never be paid to the retiree. The reemployed retiree and his employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS-participating employer after a retiree has been retired for 12 calendar months.

⁴ Section 121.091, F.S.

⁵ Section 121.021(29)(a)1., F.S.

⁶ Section 121.021(29)(b)1., F.S.

⁷ Sections 121.021(29)(a)2. and (b)2., F.S.

⁸ Section 121.021(39), F.S.

If a retiree is re-employed with an FRS participating employer, he or she will be required to sign a statement that his reemployment does not violate these provisions.

III. Effect of Proposed Changes:

Section 1 amends s. 121.051, F.S., relating to compulsory participation to authorize participation of employees of a special district or a not-for-profit corporation or association created by the Escambia County Board of commissioners for the purpose of owning, operating, or managing a public bus transit system in the FRS. Beginning March 31, 2018, a current employee may elect to participate in the FRS. Such election must be in writing to the employer, be received before August 31, 2018, and is irrevocable. Employees who are hired on or after March 31, 2018, are required to participate in the FRS.

Section 2 amends s. 121.091(13)(b), F.S., to require instructional personnel who are authorized to extend DROP participation beyond the 60-month period to have a termination date that is the last day of the last calendar month of the school year⁹ within the DROP extension granted by the employer beginning July 1, 2018. To illustrate, if a member enters DROP December 2019, the termination date would be the last day of the school year 2021 (approximately 30 to 31 months).

In addition, if, on July 1, 2018, a member's DROP participation has already been extended for the maximum 36 calendar months and the extension period concludes before the end of the school year, the member's DROP participation may be extended through the last day of the last calendar month of that school year. To illustrate this instance, assume a member's termination date is again December 2019. Under this bill, the member could continue working an additional six months (assuming the school year ends May 31, 2020). The employer is required to notify the Division of Retirement (division), Department of Management Services, of the change in termination date and the additional period of DROP participation for the affected instructional personnel.

The bill also provides for administrative personnel in grades K-12, as defined in s. 1012.01(3), F.S., who have a DROP termination date on or after July 1, 2018, may be authorized to extend DROP participation beyond the initial 60 calendar month period if the administrative personnel's termination date is before the end of the school year. Such administrative personnel may have DROP participation extended until the last day of the last calendar month of the school year in which their original DROP termination date occurred if a date other than the last day of the last calendar month of the school year is designated. The employer is required to notify the division of the change in termination date and the additional period of DROP participation for the affected administrative personnel. Illustrations in the preceding paragraphs apply to this provision as well.

Section 3 provides a legislative finding that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by

⁹ Section 1001.42(4)(f), F.S.: provides that school districts are responsible for adopting policies for the opening and closing of schools and fix uniform dates and requires that schools do not open before Aug. 10. In addition, S. 1011.62(1)(f), F.S.: provides the supplemental academic instruction categorical fund for the operation of schools through the Florida Education Finance Program (FEFP) and references the regular 180-day school term.

governmental retirement systems. The finding further declares that these persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of ch. 112, F.S. The Legislature determines and declares that this act fulfills an important state interest.

Section 4 provides that the act takes effect July 1, 2108.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 14, art. X, of the State Constitution provides:

A government 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.

The impact of the bill is expected to be fiscally neutral (see below). Therefore, as the provisions of the bill are actuarially sound, the bill appears to be constitutionally compliant.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Qualifying instructional and administrative personnel will not incur potential penalties for continued employment to the end of the school year, and instead may earn additional interest on their deferred benefits as a result of the extended time spent in DROP.

C. Government Sector Impact:

Indeterminate. A school may otherwise have to hire to fill the vacant position, therefore the effect of the bill appears to have a neutral fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.091 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on January 23, 2018:

The CS:

- Revises the title to be an act relating to retirement.
- Amends s. 121.051, F.S., relating to compulsory participation to authorize participation by employees of a special district or a not-for-profit corporation or association created by the Escambia County Board of commissioners for the purpose of owning, operating, or managing a public bus transit system in the FRS.
- Beginning March 31, 2018, a current employee may elect to participate in the FRS. Such election must be in writing to the employer, be received before August 31, 2018, and is irrevocable.
- Employees who are hired on or after March 31, 2018, are required to participate in the FRS.

B. Amendments:

None.