

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1034

INTRODUCER: Senator Rodriguez

SUBJECT: State-administered Retirement Systems

DATE: March 14, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	<b>Pre-meeting</b>
2.			CA	
3.			AP	

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**I. Summary:**

SB 1034 allows a correctional officer participating in the Florida Retirement System Pension Plan to extend participation in the Deferred Retirement Optional Program (DROP) up to 36 months beyond the general 60-month limitation. To be eligible to extend for the additional 36 months, the correctional officer must in be the DROP on or after July 1, 2023, and before June 30, 2028.

State and local governments participating in the Florida Retirement System will incur increased costs associated with funding the benefits granted in this legislation. At this time, the bill does not include the requisite contributions to fund these benefits.

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

The bill takes effect July 1, 2023.

**II. Present Situation:**

**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. The FRS was amended in 1998 to add the Deferred Retirement Option Program

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

The FRS is a multi-employer, contributory plan<sup>2</sup> governed by the Florida Retirement System Act.<sup>3</sup> As of June 30, 2022, the FRS had 629,073 active members,<sup>4</sup> 448,846 retired members and beneficiaries, and 28,827 members in DROP.<sup>5</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and state universities. The FRS also serves as the retirement plan for participating employees of the 180 municipalities, 153 special districts, and two independent hospitals that have elected to join the system.<sup>6</sup>

The membership of the FRS is divided into five membership classes:

- The Regular Class<sup>7</sup> has 537,128 active members and 7,806 in renewed membership.
- The Special Risk Class<sup>8</sup> has 72,925 active members and 1,100 in renewed membership.
- The Special Risk Administrative Support Class<sup>9</sup> has 104 active members and one in renewed membership.
- The Elected Officers' Class<sup>10</sup> has 2,075 active members and 109 in renewed membership.
- The SMSC<sup>11</sup> has 7,610 active members and 210 in renewed membership.<sup>12</sup>

## Plan Choice

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

- The defined contribution plan, also known as the FRS Investment Plan; and
- The defined benefit plan, also known as the FRS Pension Plan.

When an employee is initially hired in an FRS-covered position, the member has 8 months after the month of hire to choose to participate in either the pension plan or the investment plan. If the employee does not choose within that period, a member in the Special Risk Class is deemed to have chosen to participate in the pension plan and all other members are deemed to have chosen to participate in the investment plan. After a member has made an active election to participate in

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<sup>1</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2022, at 35, *available at*: [https://employer.frs.fl.gov/forms/2021-22\\_ACFR.pdf](https://employer.frs.fl.gov/forms/2021-22_ACFR.pdf) (last visited February 20, 2023).

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

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

<sup>4</sup> As of June 30, 2022, the FRS Pension Plan, which is a defined benefit plan, had 444,150 members, and the investment plan, which is a defined contribution plan, had 184,923 members. FRS Comprehensive Annual Report, *supra* note 1 at 260.

<sup>5</sup> FRS Comprehensive Annual Report, *supra* note 1 at 42.

<sup>6</sup> *Id.* at 298.

<sup>7</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>8</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>9</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>10</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>11</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.

<sup>12</sup> FRS Comprehensive Annual Report, *supra* note 1 at 263.

a plan or the member's choice window has expired, the member has one additional opportunity to choose to switch between plans (this is referred to as the second election).<sup>13</sup>

### ***Investment Plan***

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the pension plan. The earliest that any member could participate in the investment plan was July 1, 2002. The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>14</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>15</sup>

A member vests immediately in all employee contributions paid to the investment plan.<sup>16</sup> With respect to the employer contributions, a member vests after completing 1 work year with an FRS employer.<sup>17</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>18</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:<sup>19</sup>

<b>Membership Class</b>	<b>Percentage of Gross Compensation*</b>
Regular Class	9.30%
Special Risk Class	17.00%
Special Risk Administrative Support Class	10.95%
Elected Officers' Class:	
Justices and Judges	16.23%
County Elected Officers	14.34%
Others	12.38%
Senior Management Service Class	10.67%

\*Includes the three percent employee contribution.

The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>20</sup> An FRS member who qualifies for disability while enrolled in the

<sup>13</sup> Section 121.4501(4)(b), F.S.

<sup>14</sup> Section 121.4501(8), F.S.

<sup>15</sup> Art. IV, s. 4(e), FLA. CONST.

<sup>16</sup> Section 121.4501(6)(a), F.S.

<sup>17</sup> If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. S. 121.4501(6)(b) – (d), F.S.

<sup>18</sup> Section 121.591, F.S.

<sup>19</sup> Section 121.72(6), F.S.

<sup>20</sup> See s. 121.4501(16), F.S.

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>21</sup>

### ***Pension Plan***

The pension plan is a defined benefit plan administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>22</sup> The pension plan's investments are managed by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing 6 years of service with an FRS employer.<sup>23</sup> For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after 8 years of creditable service.<sup>24</sup> A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.<sup>25</sup> For members of the pension plan initially enrolled before July 1, 2011, normal retirement, which is when a member is first eligible for unreduced benefits, occurs at the earliest attainment of 30 years of service or age 62.<sup>26</sup> For members in the Special Risk and Special Risk Administrative Support Classes enrolled before July 1, 2011, normal retirement is the earliest of 25 years of service or age 55.<sup>27</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>28</sup>

### ***Deferred Retirement Option Program***

All membership classes in the FRS Pension Plan may participate in DROP.<sup>29</sup> The program allows eligible members<sup>30</sup> of the FRS to defer receipt of retirement benefits while continuing employment with the FRS employer. The deferred monthly benefits accrue, plus interest, in the FRS on behalf of the member for the period of time the member participates in DROP. Upon termination of the employment, the member receives the total DROP benefits and begins to receive the previously determined normal retirement benefits.<sup>31</sup>

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<sup>21</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. S. 121.091(4)(f), F.S.

<sup>22</sup> Section 121.025, F.S.

<sup>23</sup> Section 121.021(45)(a), F.S.

<sup>24</sup> Section 121.021(45)(b), F.S.

<sup>25</sup> Section 121.091(1), F.S.

<sup>26</sup> Section 121.021(29)(a)1., F.S.

<sup>27</sup> Section 121.021(29)(b)1., F.S.

<sup>28</sup> Section 121.021(29)(a)2. and (b)2., F.S.

<sup>29</sup> A member 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>30</sup> See s. 121.091(13)(a), F.S.

<sup>31</sup> Section 121.091(13), F.S.

Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months.<sup>32</sup> However, instructional personnel employed by the Florida School for the Deaf and the Blind, instructional personnel in grades K-12, and personnel employed by a developmental research school may participate in DROP for up to 36 calendar months beyond the 60-month period.<sup>33</sup> In addition, in 2022 the Legislature authorized a member of the Special Risk Class who is a law enforcement officer and who is a DROP participant on or after July 1, 2022, to participate for up to 36 calendar months beyond the 60-month period if the participant enters DROP on or before June 30, 2028.<sup>34</sup>

### **Actuarial Special Studies**

In 2022, the state actuary completed a special actuarial study on the recommended blended statutory rates for 2022-2023 reflecting the extension of the maximum length of DROP participation for law enforcement members by up to 36 months.<sup>35</sup> The study shows increases for the Special Risk Class by 0.09 percentage points in the normal cost contribution rate and 0.14 percentage points for the UAL contribution rate. An increase of 0.02 percentage points in the DROP rate is also necessary. These increases result in a \$13.1 million annual increase in contributions system-wide.

The state actuary has not completed a special actuarial study relating to the extension of DROP participation for correctional officers only. However, the state actuary has completed a study associated with a 36 month extension for all DROP members, regardless of class or occupation.<sup>36</sup> The results of that study indicate that Special Risk Class contribution rates need to be increased by 0.13 percentage points in the normal cost contribution rate and 0.19 percentage points for the UAL contribution rate. An increase of 0.06 percentage points in the DROP rate is also necessary. These increases result in a \$19.5 million annual increase in contributions system-wide.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 121.091, F.S., to allow a member of the Special Risk Class who is a correctional officer<sup>37</sup> and who is a DROP participant on or after July 1, 2023, to participate for up to 36 calendar months beyond the 60-month period if he or she enters DROP on or before June 30, 2028.

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<sup>32</sup> Section 121.091(13)(b), F.S.

<sup>33</sup> Section 121.091(13)(b)1.a., F.S.

<sup>34</sup> Ch. 2022-156, Laws of Fla., codified in S. 121.091(13)(b)1.c., F.S.

<sup>35</sup> Letter to Ms. Andrea Simpson, *Re: Extend Maximum DROP Participation by 36 Months for Law Enforcement Officer Members*, dated January 26, 2022 (on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>36</sup> Letter to Ms. Andrea Simpson, *Re: Extend Maximum DROP Participation to 8 years for all Membership Classes*, dated January 30, 2023 (on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>37</sup> In order to be designated as a special risk member, effective October 1, 1978, the member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395, F.S. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or as of July 1, 1984, the member must be the supervisor or command officer of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, are not included; however, wardens and assistant wardens, as defined by rule, are included. Section 121.0515(3)(c), F.S.

**Section 2** makes a legislative finding that the act 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.

**Section 3** provides that the act shall take effect on July 1, 2023.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the expenditure is required to comply with a law that applies to all persons similarly situated....”

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, state universities, community colleges, counties, municipalities, and special districts.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

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.

The bill does not provide the actuarially sound funding concurrently with the increase of benefits (effective July 1, 2023).

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The increase in retirement benefits will increase the liabilities of the Florida Retirement System by up to \$175 million. The bill does not provide funding for this increase in benefits.

**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 Changes:**

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

None.

**B. Amendments:**

None.