

**STORAGE NAME:** h0905.go  
**DATE:** March 18, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 905

**RELATING TO:** Miscellaneous Retirement Provisions

**SPONSOR(S):** Representative Crady

**STATUTE(S) AFFECTED:** This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: ss. 121.011, 121.021, 121.052, 121.053, 121.055, 121.091, 121.1115, 121.1120, 121.122, 121.123, 121.35, 123.01, 123.02, 123.03, 123.04, 123.05, 123.051, 123.06, 123.07, 123.08, 123.10, 123.11, 123.12, 123.13, 123.14, 123.15, 123.16, 123.17, 123.18, 123.19, 123.21, 123.22, 123.23, 123.24, 123.25, 123.26, 123.27, 123.28, 123.29, 123.30, 123.31, 123.32, 123.33, 123.34, 123.35, 123.36, 123.37, 123.38, 123.39, 123.40, 123.41, 123.42, 123.43, 123.44, and 123.45.

**COMPANION BILL(S):** SB 1824 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) GOVERNMENTAL OPERATIONS
- (2) CIVIL JUSTICE & CLAIMS
- (3) GENERAL GOVERNMENT (FISCAL)
- (4)
- (5)

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**I. SUMMARY:**

This bill makes a number of technical changes to the Florida Retirement System (FRS). It provides guidelines for a member to claim retirement credit for periods of suspension after reinstatement, and for periods of dismissal when the dismissal is rescinded and the member is reinstated; defines "phased retirement program;" allows newly elected or reelected officers to choose membership in the Senior Management Service Class (SMSC) in lieu of the Elected State and County Officers' Class (ESCOC); allows the purchase of service with the Federal government as out-of-state service; allows FRS members the same right to purchase retirement credit for periods of non-FRS, public, in-state service as they now have to purchase out-of-state public service, up to a total of 5 years of combined in- and out-of-state service; and makes other minor technical changes.

This bill repeals the various obsolete sections of Chapter 123, Florida Statutes, pertaining to the Judicial Retirement System. The Judicial Retirement System has been closed to new members since July 1, 1972, when it was consolidated with the Florida Retirement System, and has no active members. This repeal of an obsolete chapter of the Florida Statutes will clean up and streamline Florida law.

Enacting the provisions in this bill will have minimal fiscal impact on the FRS. The fiscal impact on other state or local governments is outlined in the "Fiscal Comments" section of this analysis.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The Florida Retirement System (FRS) is a tax-qualified, non-contributory, defined benefit system providing pension benefits to employees of more than 800 units of state and local government. It is run by a semi-autonomous state agency, the Division of Retirement, which pays nearly \$2 billion annually to the annuitants and beneficiaries of the plan. It is structured as a non-contributory **defined benefit system**, that is, a system which assures the retiree of a guaranteed benefit at retirement expressed as a percentage of average final compensation. Retirees have the option of receiving benefits in one of four different annuity types based upon their income needs and estate planning preferences. Since the FRS became non-contributory in 1975, plan members do not build equity in the plan which they may withdraw or cash-out upon their separation from employment or retirement. In this sense the plan is to be distinguished from a **defined contribution arrangement** in which fixed employer and employee contributions fund a retirement account with an unguaranteed variable benefit over which the employee has complete ownership and portability.

The FRS is a relatively young system, having been created in the early 1970s through the merger of the former Teachers' Retirement System, State and County Officers' and Employees Retirement System, the retirement plan for the Highway Patrol, and the Judicial Retirement System. Despite its youth, the FRS is the nation's third largest public pension plan with the **lowest** administrative costs. Unlike many state pension plans the Legislature deliberately separates the payment of benefits from the investment of pension assets. A constitutional agency, the State Board of Administration (SBA), acts as the investment authority for pension funds. The SBA oversees \$80 billion in assets, some \$60 billion of which are part of the FRS pension trust. The SBA invests these assets in world-wide markets through its internal and external portfolio managers on behalf of the FRS and other state and local government agencies with whom it contracts. Additionally, many local governments maintain separate pension plans for their own employees which they separately manage. Of particular note are the firefighter and municipal police retirement plans authorized under Chapters 175 and 185, F.S., which predate the creation of FRS. The FRS is composed of several retirement classes each with its own payroll contribution rate, benefit accrual rate, and vesting period.

### B. EFFECT OF PROPOSED CHANGES:

**Section 1. Section 121.011, F.S.**, is amended to replace the current indefinite period with a twenty-four month limit on the period of retirement service credit a member may retroactively receive for an employer suspension which ultimately results in reinstatement. The returning, reinstated employee must remain on the payroll for at least 30 days in order to receive the retirement service credit. The compensation amount to be used as the basis for FRS contributions will be the amount for the pay period immediately preceding the suspension period.

Active members of the FRS, or the other predecessor systems incorporated within the FRS, who are subject to a dismissal action which is subsequently rescinded, shall have their FRS employer contributions made retroactively to the date of the initial personnel action plus interest. In the event the dismissal action is subsequently changed to a suspension,

it will be the employee's responsibility to make the contributions plus interest.

**Section 2.** Retirement programs applicable to the state university and community college systems permit the reemployment of eligible faculty retirees. Amendments to **s. 121.021(43), F.S.**, provide a definition for "phased retirement program" and continue the authorization of such programs subject to three criteria: the member retired and met the definition of termination under this section; the retired member is reemployed for not more than 780 hours during the first 12 months of retirement; and the retired member is reemployed with the university or community college from which he or she retired. Renewed membership for a retiree participating in a phased retirement program shall be determined in accordance with s. 121.22 or s.121.053, F.S.

**Section 3.** Currently, members of the Elected State Officers' Class (ESCOC) are compulsory participants in FRS. Amendments to **s. 121.052, F.S.**, in this bill, will permit any elected officer, within 6 months of assuming office, or within 6 months of this act becoming law for serving elected officers, to elect membership in the Senior Management Service Class in lieu of membership in the ESCOC.

This bill further provides that affected current or former members of the ESCOC, as well as other former elected officers who chose to join an FRS class other than the ESCOC, may purchase additional retirement credit to upgrade their service within the purview of the ESCOC by paying the required contributions plus interest. This clarification of the upgrade provisions for ESCOC service makes them equitable for all current and former elected officers.

**Section 4.** This section amends **s. 121.053, F.S.**, to remove the language allowing only Regular Class renewed membership service to be used in conjunction with creditable service earned under the renewed membership provisions of the ESCOC. This will allow retirees with renewed membership in the ESCOC to be able to use Senior Management Service Class renewed membership, as well as Regular Class renewed membership service, in conjunction with their ESCOC service toward a second benefit.

**Section 5.** This section amends **s. 121.055, F.S.**, to allow newly elected or reelected officers who choose membership in the Senior Management Service Class (SMSC) in lieu of the ESCOC to subsequently withdraw from the FRS and participate in the Senior Management Optional Annuity Program (SMSOAP) or a local lifetime monthly annuity plan.

This section also amends **s. 121.055(6), F.S.**, concerning the SMSOAP. It provides that employer funded benefits shall be paid only as a lifetime annuity to the participant, a beneficiary, or estate, of the participant, except for a lump sum payment in two situations: a payment to the beneficiary upon the death of the participant, and a payment to a participant who has been terminated for at least six months when the account contains \$3,500 or less.

The State Board of Administration (SBA) is authorized to review and make recommendations on SMSOAP investment products proposed by provider companies before they are offered to participants, and to advise the Division of Retirement on changes deemed necessary to ensure an acceptable mix of investment products. The Division will have final approval of any such products or changes.

- Section 6.** This section allows the employer of current and former members of the ESCOC and certain former elected officers to pay all or a portion of the upgrade of elected officer service, if paid before January 1, 1998. This provision is repealed effective January 1, 1998.
- Section 7.** This section amends **s. 121.091, F.S.**, to require that a member's beneficiary who is found guilty of unlawfully and intentionally killing the member, or pleads guilty or nolo contendere, must forfeit all rights to the deceased member's benefits; and to provide guidelines for establishing the effective date for the change of joint annuitant.
- Section 8.** Under **s.121.1115, F.S.**, members may purchase up to 5 years of FRS retirement credit for public service in another state. The individual cost varies, depending on the number of years of retirement credit the member purchases, the year in which the member began his or her FRS employment, and the amount of the first annual FRS salary. The employer may pay part or all of the cost. Under **s. 121.111, F.S.**, employers pay retirement contributions for members who serve in the military while on a leave-of-absence, and members whose initial date of employment is before January 1, 1987 may purchase retirement credit for wartime military service. **Section 121.1115, F.S.**, currently does not allow the purchase of service with the Federal government and prohibits the purchase of military service under that section.

This section amends **s. 121.1115, F.S.**, to allow purchase of service with the Federal government as out-of-state service, and the prohibition against claiming military service is removed. Service with the Federal government would include military service not otherwise claimed under **s. 121.111, F.S.**, as out-of-state service. This would include peacetime active duty service and service by a member whose initial date of employment was on or after January 1, 1987.

- Section 9.** This section creates **s. 121.1120, F.S.**, which allows an FRS member to purchase a total of up to 5 years of retirement credit (including both in-state and out-of-state service) in the FRS for periods of non-FRS public employment in Florida, employment in charter schools, or employment in any nonpublic school or college in Florida that is accredited by the Southern Association of Colleges and Schools. Certain limitations and conditions are provided. Allowing members to purchase retirement credit for their non-FRS employment in Florida provides a more equitable situation since the purchase of out-of-state service is allowed. The cost to purchase retirement credit under this section shall be calculated in the same manner as set forth in **s. 121.1115(2), F.S.**, for purchase of credit for out-of-state service.

**Section 10.** This section amends **s. 121.122, F.S.**, to allow a retiree reemployed in a Senior Management Service Class (SMSC) position to have renewed membership in the SMSC rather than the Regular Class. Such retiree may participate in the Senior Management Service Optional Annuity Program in lieu of the SMSC.

**Section 11.** This section amends **s. 121.23, F.S.**, to provide for payment of reasonable attorney's fees and taxable cost for any disability order issued by the State Retirement Commission which sustains the application of the member. Such amount cannot exceed 50 percent of the initial yearly benefit of the member. This provision will allow members who appeal their disability applications to the State Retirement Commission the opportunity to have competent legal assistance. When they prevail, it will limit such attorney's fees to 50 percent of the initial yearly benefit the member receives. Currently, the average yearly benefit received by members retired on disability is \$6,168, so the average individual payment for attorney's fees would be approximately \$3,084.

**Section 12.** This section amends **s. 121.35, F.S.**, to provide that Optional Retirement Program (ORP) participants who do not select a provider company within 90 days from the time they become eligible to participate in the ORP, and participants who terminate without choosing a provider company, will be deemed to have elected membership in the FRS Regular Class or SMSC, as appropriate. All contributions paid to that point will be transferred to the FRS Trust Fund and the member will be given retroactive FRS credit for the 90 day period or the period of their participation. The amended language also stipulates that employee contributions shall not exceed federal limits.

Employer funded benefits shall be paid only as a lifetime annuity to the participant, his beneficiary, or estate, except for a lump sum payment in two situations: a payment to the beneficiary upon the death of the participant, and a payment to a participant who has been terminated for at least six months when the account contains \$3,500 or less.

The State Board of Administration (SBA) is authorized to review and make recommendations on investment products proposed by provider companies before they are offered to participants, and to advise the Division on changes deemed desirable to ensure an acceptable mix of investment products. The Division of Retirement will have final approval of any such products or changes.

**Section 13.** This section repeals **Chapter 123, F.S.**, the Judicial Retirement System. The Judicial Retirement System has been closed to new members since July 1, 1972, when it was consolidated with the Florida Retirement System, and has no active members. This section repeals an obsolete chapter of the Florida Statutes which will clean up and streamline Florida law.

**Section 14.** This section gives the Division of Retirement rulemaking authority for implementing all the provisions of this bill. A 1996 amendment to **s.**

**120.535, F.S.**, provides that “[a] grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required.” This section is added in order to give the Division the proper authority to adopt necessary rules to implement the provisions of this bill.

**Section 15.** Budget authority of \$300,000 annually is appropriated to the Division for payment of attorney’s fees and taxable costs as directed by the State Retirement Commission in matters connected to disability retirement determinations.

**Section 16.** An important state interest clause is provided. Article X, Section 14, of the State Constitution, requires that publicly funded retirement systems be funded on a sound actuarial basis.

**Section 17.** Provides that this act shall take effect upon becoming a law except as otherwise provided herein.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. This bill gives the Division of Retirement rulemaking authority for implementing all the provisions of this bill. It is necessary for them to have this authority.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

Qualified FRS members will be allowed to purchase up to 5 years of retirement credit for periods of non-FRS public employment, (including both in-state and out-of-state service), by payment of the actuarially required contributions.

b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program, however, it does repeal an obsolete chapter of the Florida Statutes.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

This bill will allow qualified members of the FRS to purchase up to 5 years of retirement credit for periods of non-FRS public employment (including both in-state and out-of-state service) by payment of the actuarially required contributions. Other qualified members may be allowed to upgrade certain service by payment of the actuarially required contributions.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The beneficiaries may only receive credit for this service if the actuarially required contributions are paid into the system. Provision is allowed for an employer to elect to pay any portion of the required contribution provided such payment is made prior to January 1, 1998.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill provides an option to qualified individuals to purchase or upgrade retirement credit by payment of the actuarially required contributions.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A



- b. Does the bill directly affect the legal rights and obligations between family members?

This bill requires that an FRS member's beneficiary who is found guilty of unlawfully and intentionally killing the member, or pleads guilty or nolo contendere, must forfeit all rights to the deceased member's benefits.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

**Please see the section-by-section analysis under II. B, Effect of Proposed Changes.**

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Please see Fiscal Comments.

2. Recurring Effects:

Please see Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

Please see Fiscal Comments.

4. Total Revenues and Expenditures:

Please see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Please see Fiscal Comments.

2. Recurring Effects:

Please see Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

Please see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Please see Fiscal Comments.

2. Direct Private Sector Benefits:

Please see Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

Please see Fiscal Comments.

D. FISCAL COMMENTS:

According to the Division of Retirement, enacting the provisions in this bill will have minimal fiscal impact on the FRS. There will be some slight savings and costs resulting from the amendments in this bill as follows:

- ◆ There will be no cost to the system for allowing members of the ESCOC to choose to transfer to the SMSC and to then elect to participate in the Optional Annuity Program. If such members do change classes, their employers will pay lower retirement contributions with the amount of savings dependent on the subclass of the ESCOC from which they transfer. For the employers of Justices and Judges, there will be a 7.97 percent savings in contributions; for the employers of the Governor, Lt. Governor, Cabinet Officers, Legislators, State Attorneys, and Public Defenders, there will be a 1.49 percent savings in contributions; and for the employers of county elected officers there will be a 5.75 percent savings in contributions.

- ◆ There will be a 4.81 percent increase in the employer contribution rate for any retiree reemployed with renewed membership in the SMSC instead of the Regular Class. Based on the ratio of SMSC members to Regular Class Members, the number of renewed members currently in the Regular Class whose position would be assigned to the SMSC would be less than 10 persons of the more than one-half million members of the FRS.
- ◆ Up to \$300,000 of budget authority, annually, is requested to be appropriated from the Florida Retirement System Trust Fund to pay attorney's fees if ordered by the State Retirement Commission.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

This bill complies with the requirements of Article X, Section 14 of the State Constitution and Chapter 112, Part VII, Florida Statutes.

This bill is being sponsored at the request of the Division of Retirement. It is important and necessary for the proper administration of the FRS.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

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Jimmy O. Helms

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