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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL APPROPRIATIONS
ANALYSIS

BILL #: HB 61

RELATING TO: The Florida Retirement System

SPONSOR(S): Representative Lynn

COMPANION BILL(S): SB 1216 (Identical)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 1
(2) GENERAL APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

This legislation allows the employers of Florida Retirement System (FRS) Senior Management Service Class (SMSC) members, who opted out of the FRS prior to January 1, 1999, for the purpose of participating in a local annuity plan, to discontinue payment of unfunded actuarial liability (UAL) contributions and to no longer be limited on the amount and type of retirement benefits that can be provided to these SMSC employees.

The effective date of this bill is October 1, 1999.

An amendment traveling with the bill provides that assistant state attorneys ,assistant public defenders, and assistant statewide prosecutors are compulsory members of the Senior Management Service Class rather than the Regular Class of the Florida Retirement System, effective January 1, 2000. This allows these employees to earn retirement credits at the rate of 2% of their average final compensation rather than 1.6%. Moreover, these employees will vest in the FRS after 7 years rather than 10 years. To fund these additional retirement benefits, the employers' annual contribution rate will increase 1.98% from 9.21% of salary paid to these employees based on the rates recommended to become effective July 1, 1999. The fiscal impact of this provision is estimated to be $1.5 million in FY 1999-2000 and $3.0 million annually thereafter from the General Revenue Fund.

The amendment also provides that the judicial branch is permitted to offer additional health benefits to judicial assistants, effective October 1, 1999. The fiscal impact of this provision is estimated to be $1.0 million in FY 1999-2000 and $1.3 million annually thereafter from the General Revenue Fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Senior Management Service Class (SMSC) is one of five membership classes of the Florida Retirement System. SMSC membership is open only to employees in the following positions, as specified by statute:

- **Senior Management Service with the State of Florida -** these positions are generally division director level and above and were included in the SMSC on February 1, 1987.

- **Local Senior Managers -** these positions include community college presidents, appointed school superintendents, the county manager and the city manager of each participating local government and were included in the SMSC on January 1, 1990; and

  effective January 1, 1994, local government employers, including community college boards of trustees, may designate additional senior management positions to be included in the SMSC.

- **Legislative Managers -** these positions include selected managerial staff of the Legislature, the Auditor General and his managerial staff, and the Executive Director of the Ethics Commission and were included in the SMSC on January 1, 1990.

- **State University System Managers -** these positions include the Executive Service of the State University System and state university presidents and were included in the SMSC on January 1, 1991.

- **State Board of Administration Managers -** these positions are senior-level management with the State Board of Administration and were included in the SMSC on January 1, 1991.

- **Judicial Branch Employees -** effective January 1, 1994, the following Judicial Branch Employees were included in the SMSC: State Court Administrator; Deputy State Courts Administrators; Clerk of the Supreme Court; Marshal of the Supreme Court; Executive Director of the Justice Administration Commission; Clerks of the District Courts of Appeals; and the Trial Court Administrator in each judicial circuit.

  Effective January 1, 1994, the public defender and state attorney in each of the 20 judicial circuits were permitted to designate additional positions in their offices to be included in the SMSC.

COMPULSORY MEMBERSHIP - Membership in the SMSC is compulsory if a position is designated as eligible for the Senior Management Service Class, unless the member elects to participate in an optional plan as outlined below.

OPTIONAL MEMBERSHIP - SMSC membership is optional in the following cases:

- **Senior Management Service of the State of Florida, Senior-level Management with the Florida Legislature, and Senior-level Management with the State Board of Administration**

  1. Within 90 days of appointment to a SMSC position with any of these entities, a member may choose to participate in the Senior Management Service Optional Annuity Program (SMSOAP) instead of the SMSC.

  2. Members of a closed retirement system or the Special Risk or Special Risk Administrative Support Classes of the FRS may, within 90 days of appointment to a position eligible for the SMSC, elect to remain in the current retirement plan, transfer to the SMSC, or join the Senior Management Service Optional Annuity Program.

- **Local Senior Management**

Local Senior Managers may elect to withdraw from the Senior Management Service Class and participate in a lifetime annuity program which may be provided by the employing agency.

- **Senior Management With the State University System**

  An employee appointed to the Executive Service of the State University System or to the presidency of a state university on or after January 1, 1993, will be automatically enrolled in the State University System Optional Retirement Program (SUSORP) at the beginning of his or her employment. Participation in SUSORP will be compulsory unless he or she elects membership in the SMSC within 90 days of his or her eligible employment. Election to the SUSORP is irrevocable as long as he or she is employed in an eligible position.

- **Elected Officer's Class**

  Effective July 1, 1997, members of the Elected Officers' Class (EOC) may, within 6 months of assuming office or 6 months of the effective date of this law for current officeholders, elect membership in the SMSC instead of EOC. Elected **state** officers may then transfer to the Senior Management Service Optional Annuity Program within 90 days of electing SMSC membership. **Local** elected officers may, within 90 days of electing SMSC membership, transfer to a locally provided optional annuity program, if offered.

OPTIONAL PLANS - Optional retirement programs, including SUSORP, SMSOAP, local annuity programs and the State Community College System Optional Retirement Program (available for certain community college Regular Class members), are defined contribution plans that provide immediate vesting. Contributions to the plan are paid by the employer, and the employee if desired, and may be invested in mutual funds, guaranteed accounts, etc. The total contributions to the plan plus the investment earnings determine the final balance of the account. Payout of the account must be paid as a lifetime annuity.

The total contribution currently required to be paid by the employer on behalf of participants in a **local annuity plan** is 23.10% of the participant's salary. This percentage is equal to the total retirement contribution rate required for SMSC members of the FRS. The total percentage is divided in two ways:

- a percentage contributed to the employee's annuity fund - 12.49%, and
- a percentage to the Unfunded Actuarial Liability (UAL) of the FRS - 10.61%.

The employee may choose to contribute to his or her annuity account any amount of his or her gross taxable income not to exceed the total contribution paid by the employer less the UAL percentage, and not to exceed limitations set by the Internal Revenue Code.

Participation in an optional plan is irrevocable as long as the employee remains in an eligible position. If a participant becomes ineligible to continue participating in the optional retirement plan, the employee becomes a member of the FRS.

B. EFFECT OF PROPOSED CHANGES:

This bill changes two major aspects of the local annuity plan, as follows:

1. **Eliminate Employer's Contribution to the Unfunded Actuarial Liability (UAL) -** The UAL of the FRS, which can best be described as the debt of the FRS Trust Fund, is derived by taking the difference between the total actuarial value of the assets and the total actuarial value of the liabilities of the FRS Trust Fund. If total liabilities exceed total assets as determined in accordance with chapters 121 and 112, Part VII, F.S., a UAL exists. When the FRS was first established in 1970, the system consolidated a number of retirement systems that had a preexisting UAL due to a failure to properly fund the systems' benefits. A payment schedule was devised by the legislature to pay off this UAL by requiring a portion of the retirement contributions paid on behalf of **all** FRS members and **all** optional plan employees to be paid

towards the UAL. Effective with the 1998 FRS Actuarial Valuation, the UAL for the FRS Trust Fund has been eliminated for all FRS classes. This means no UAL contribution will be required of any employer effective July 1, 1999, subject to legislative enactment of proposed contribution rates.

This bill sets a precedent by discontinuing payment of the UAL contribution for this fixed group of local annuity plan members. There will be no immediate impact on the FRS Trust Fund because no UAL will be required of any member. The Senior Management Service Class is one of the smaller classes of FRS membership. Whereas the elimination of the UAL for a small group of members would not have an impact on a class as large as the Regular Class, the SMSC has a small membership number and could be sufficiently affected to result in an increase in the employer contribution rate, if a new UAL was to occur. Therefore, any future UAL that occurs in the SMSC would be distributed among a smaller group because the employees targeted by this bill would no longer be contributing toward the UAL. This future UAL amount would be determined by a future valuation and contributions would be determined based on the membership at that time.

In fiscal year 1997-98, 60 employees with a total payroll of $4,523,825.97 participated in local annuity plans. The contributions paid on behalf of these employees towards the UAL equaled $479,977.94.

2. **Eliminate the Amount and Type of Retirement Benefits Provided -** Establishing an alternative local annuity plan with no monetary limitations (or guarantees of benefits) will result in wide variation in future benefits for such employees and will cause problems of equity. The **state** and **local** senior managers eligible to participate in the FRS should be provided equal benefits on a statewide basis. It would not be equitable to allow local governments to offer different retirement benefits to their senior management personnel than state agencies can offer.

   There is also an implication that the participant be allowed a benefit payable other than as a lifetime monthly benefit. Current law requires a lifetime benefit be paid to all eligible FRS members and optional plan employees. Rollover provisions and or lump sum distributions are not permitted. This law is intended as a form of protection for employees to prevent them from outliving their retirement benefits or receiving inadequate benefits due to poor investment experience or payout decisions that they might make.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

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

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

      No.

      (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?

      Contributions to the FRS Trust Fund on behalf of certain SMSC participants for unfunded actuarial accrued liability shall no longer be required and the limitation on the amount and type of retirement benefits which can be provided for such participants shall no longer be applicable.

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

This bill does not eliminate or reduce an agency or program.

(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. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

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

If a future unfunded actuarial liability should occur, this liability would be distributed among a smaller group because the employers of the employees targeted by this bill would no longer be contributing to the UAW for salaries paid to the targeted employees.

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. <u>Personal Responsibility:</u>

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

This bill would remove any limitation on the amount and type of retirement benefits which can be provided for certain SMSC employees in a local optional retirement plan. It allows local government employers to pay a different amount into the annuity (higher or lower) than is currently provided by law (currently limited to normal cost rate for the SMSC). It allows local government employees currently participating in the optional annuity program to renounce any accrued FRS service credit such members may have with their current employers, and allow such employers to make up the loss (value) of this renounced service in employer contributions paid into a local annuity and purchased on behalf of such member participants.

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

In these local optional plans, in addition to the current employer contribution of 23.10%, the employee may choose to contribute to his or her annuity account any amount of his or her gross taxable income not to exceed the total normal cost contribution by the employer of 12.49% of the participant's salary (23.10% less the UAL percentage of 10.61%), and not to exceed limitations set by the Internal Revenue Code. This bill frees up the employer to contribute additional tax dollars to fund additional retirement benefits for these local senior managers.

4. Individual Freedom:

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

This bill allows certain local optional plan employers to no longer make UAL contributions to the FRS Trust Fund should a future unfunded actuarial liability occur in the Senior Management Service Class of employees and would remove current limitations on the amount and type of retirement benefits that they can provide to SMSC employees with local tax dollars.

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?

No.

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. STATUTE(S) AFFECTED:

s. 121.055, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 121.055(2), F.S., with respect to Senior Management Class participants who have withdrawn from the Florida Retirement System prior to January 1, 1999; providing that contributions to the Florida Retirement System Trust Fund on behalf of such Senior Management Service Class participants for unfunded actuarial accrued liability shall no longer be required; and providing that the limitation on the amount and type of retirement benefits which can be provided for such participants shall no longer be applicable.

Section 2 provides an effective date of October 1, 1999.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects</u>:

None.

2. <u>Recurring Effects</u>:

None. But see VI. Amendments and Committee Substitute Changes below.

3. <u>Long Run Effects Other Than Normal Growth</u>:

None.

4. <u>Total Revenues and Expenditures</u>:

None. But see VI. Amendments and Committee Substitute Changes below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   Unknown, however savings equal to elimination of the UAL percentage for applicable employees would be realized for local agency employers. Also, these employers would have to pick up future UAL costs formerly shared by the withdrawn employees.

3. Long Run Effects Other Than Normal Growth:

   Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   None.

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

   None.

D. FISCAL COMMENTS:

The Division of Retirement maintains that under the FRS, **positions** are covered for retirement, rather than the **individual** incumbents of positions. Although one senior manager may withdraw from the FRS, his or her replacement may choose to participate in the FRS. The system relies on contributions on behalf of all covered positions to lower the rates for all members. Therefore, local government employers should not be relieved of their responsibility to properly fund the FRS.

Additionally, establishing an alternative local annuity retirement plan with no monetary limitations (or guarantees of benefits) would result in a wide variation in future benefits for such SMSC employees, and will cause some equity or fairness problems for those managers who might receive smaller or no retirement benefits. The **state** and **local** senior managers eligible to participate in the FRS are currently provided and should continue to be provided equal benefits on a statewide basis.

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 expend funds nor does it require them to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Operations, at its March 8, 1999, meeting, adopted one amendment which is traveling with the bill. This amendment includes assistant state attorneys, assistant statewide prosecutors, and assistant public defenders as compulsory participants in the Senior Management Service Class of the Florida Retirement System, effective January 1, 2000. It also authorizes the state courts to pay Selected Exempt Service benefits to all judicial assistants within the state courts system, effective October 1, 1999. Assuming increased benefits to the judicial assistants and the retirement enhancements for the attorneys based on the rates recommended to be effective July 1, 1999, the fiscal impact of this amendment is estimated to be $2.5 million from the General Revenue Fund in FY 1999-2000 and $4.3 million from the General Revenue Fund each year thereafter.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Staff Director:
Jimmy O. Helms	Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON GENERAL APPROPRIATIONS:

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