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DATE: March 29, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1505
RELATING TO: Teacher Recruitment and Retention
SPONSOR(S): Representative(s) Frankel and others
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION YEAS 6 NAYS 0
 - (2) GENERAL EDUCATION
 - (3) FISCAL POLICY & RESOURCES
 - (4) SMARTER GOVERNMENT COUNCIL
 - (5)
-

I. SUMMARY:

This bill provides that district school board employees may opt into the state group health insurance program, and the prescription drug program. Adding district school board employees to the group of employees eligible to opt into the state group insurance program and into the prescription drug program could have a substantial fiscal impact.

This bill eliminates the 12 month limitation on retired teacher re-employment, and adds that a district school board may reemploy a member of the instructional staff after he or she has been retired for one calendar month. This provision could lead to increased normal benefit costs and unfunded actuarial liabilities for all members of the Regular Class of the Florida Retirement System (FRS).

This bill directs the State Board of Administration to invest no less than 80 percent of the domestic equity assets of the FRS through passive management, to effect a reduction in contributions by school districts to the FRS, by \$200 million annually. This figure is not based on an actuarial study, required by Article X, Section 14 of the State Constitution. (There is an amendment traveling with the bill that removes this provision from the bill.)

This bill creates the Teacher Salary Improvement Program, to provide for improved salaries for instructional personnel in K-12 public schools. This program is to be funded by *the investment savings and employer contribution reductions provided earlier in this bill*. There are concerns with funding this program in this manner.

This bill amends provisions regarding teacher certification, recruitment, and retention; and, provides alternate methods for teachers to attain certification.

Because funding provided in this bill is not based on an actuarial study, this bill does not comply with the requirements of Article X, Section 14 of the State Constitution. See "Fiscal Comments" and "Constitutional Issues" sections of this bill analysis for further detail. This bill appears to have a substantial fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

This bill also provides rule-making authority. See the "Rule-making Authority" section of this analysis for further detail.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

See "Section by Section Analysis."

C. EFFECT OF PROPOSED CHANGES:

See "Section by Section Analysis."

D. SECTION-BY-SECTION ANALYSIS:

Section 1:

Provides the short title of the "911 Emergency Call for Recruiting and Retaining Teachers in Florida."

Section 2:

Creates s. 110.12305, F.S., regarding participation by employees of district school boards.

Present Situation:

Section 110.123, F.S. provides for the State Group Health Insurance program. Under s. 110.123(2)(b), F.S., enrollees in the program include "all state officers and employees, retired state officers and employees, surviving spouses of deceased state officers and employees, and terminated employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program." For fiscal year 1999 - 2000, the Division of State Group Insurance estimates that the average number of participants (active employees and retirees) in the self-insurance program is approximately 95,000 and the average number of enrollees in the HMOs is 67,000.¹ There are approximately 375,000 covered lives in the program (active employees, retirees, spouses, dependents, continuation coverage eligible individuals).²

¹ Senate Staff Analysis on SB 414, Committee on Governmental Operations and Productivity, April 17, 2000.

² *Id.*

Currently, district school boards may contract with a private vendor for health insurance or prescription drug insurance. Since current law does not provide health insurance guidelines for district school boards, a district school board has the sole discretion in choosing whether or not to contract with a private vendor to provide health insurance or prescription drug coverage to their employees.

Effect of Proposed Changes:

This bill creates s. 110.12305, F.S., which allows district school boards to apply to the Department of Management Services for participation in the state group health insurance program, and the prescription drug program. Adding district school board employees to the group of employees eligible to opt into the state group insurance program and into the prescription drug program could have a substantial fiscal impact.

The Senate Analysis of SB 414³ states that the outcome of certain factors will impact the administrative costs borne by the state and, potentially, the premium costs borne by the state and its enrollees. Those factors are as follows:

- The number of entities that would actually participate is unknown;
- The participation rate of enrollees remains unknown, as does their likely plan choice (e.g., PPO or HMO) and contract status (e.g., individual or family coverage); and,
- The risk profile (claims experience) which these entities would have.

Finally, the division is unable to make any reasonable assumptions regarding whether or not the level of service utilization and health care costs of these employees would be the same as, or different from, that of state employees. This uncertainty creates much difficulty in estimating the cost impact of this proposal for the various health insurance plans.

This bill requires a district school board to pass a resolution ratifying its application to the state group health insurance program and the prescription drug program. This bill also requires, if the Department of Education determines that a district school board is eligible to enroll, the district school board to agree that

- The minimum enrollment or contractual period is three years;
- Withdrawal of participation of a district school board must be provided within one year prior to the withdrawal;
- If coverage is terminated, a district school board may not reapply for participation for two years;
- If any employer other than a state employer fails to make the premium payment required, the Department of Revenue or the Department of Banking and Finance, must, upon the request of the Department of Management Services, deduct the amount owed by the employer from any funds to be distributed by it to the district school board; and,
- The district school board shall furnish the Department of Management Services such information, in the form and format requested by the Department, necessary to administer the program.

This bill provides that ss. 624.436-624.446, F.S., relating to regulation of certain welfare arrangements, do not apply.

³ This bill was offered last year, and allowed city, county, and school district employees to opt into the state group health insurance program. However, this provision was amended out of the bill before it was passed by both chambers and became law.

This bill authorizes the Department of Management Services to adopt rules.

This section of the bill becomes effective July 1, 2001, if the Department of Management Services receives a favorable letter pursuant to s. 1, Chapter 2000-363, L.O.F.⁴

Section 3:

Amends s. 121.051(1)(a), F.S. to conform a cross-reference changed in the bill.

Section 4:

Amends s. 121.091(9)(b), F.S., regarding benefits payable under the system; employment after retirement, limitation.

Present Situation:

Section 121.091(9)(b), F.S., currently provides that after retiring under the Florida Retirement System (FRS), a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his or her FRS benefits.

However, if a retiree is reemployed by an employer participating in the FRS the following limitations apply:

- A retiree who returns to work during the first month of retirement voids his or her retirement. All retirement benefits must be repaid and the retiree must reapply for retirement, establishing a later effective date of retirement.
- For 12 months after his or her effective date of retirement, a retiree cannot earn both a salary from a participating employer and FRS retirement benefits. A retiree who works with a participating employer during the 2nd through 12th months after his or her effective retirement date must inform the Division. The Division will suspend benefits for any months worked during the 12-month limitation period, except as noted below. There are no reemployment limitations after the first 12 months of retirement.
- A retiree in DROP is subject to reemployment limitations as soon as his or her period of DROP participation ends.

Effect of Proposed Changes:

This bill amends s. 121.091(9)(b), F.S., to except members of instructional staff of public school from the 12 month limitation on retiree re-employment. This bill adds that a district school board may reemploy a member of the instructional staff after he or she has been retired for one calendar month, in accordance with s. 121.012(39), F.S.⁵

The Department of Management Services states that

[l]iberalization of reemployment limitations could lead to increased normal benefit costs and unfunded actuarial liabilities. This group of employees that are hired by local school boards is not a separate subclass of the Regular Class. Therefore all employers with

⁴ s. 1, Chapter 2000-363, L.O.F, requires the Department of Management Services “to request from the Internal Revenue Service, by October 1, 2000, a written determination letter and a favorable private letter ruling, stating that the State Group Self-Insurance Program is a facially qualified plan.”

⁵ Section 121.021(39), F.S. defines “termination” as not occurring if the FRS retiree is reemployed within one calendar month after the member ceases all employment relationships with FRS employers.

Regular Class employees would pay the higher retirement contribution costs that result from these proposed changes, not just the school boards that reemploy eligible retirees who are encouraged to retire sooner due to these liberalized reemployment exceptions.⁶

Also, according to Article X, Section 14 of the Constitution

[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.

Currently, no actuarial study exists to provide the cost of eliminating the reemployment restriction, nor does this bill provide funding for the increased cost to the retirement system. Therefore, this bill does not comply with the requirements of the Constitution.

This bill also provides that a retired employee may work up to 78 hours within the first month of his or her retirement, without voiding his or her retirement. However, if the employee is going to exceed that 78 hour limitation, the employee must provide notice to their employer, and a written statement that he or she is not retired from the FRS. The Division of Retirement will suspend the employee's retirement benefits for the rest of that month. Any employee that does not provide notice and exceeds the 78 hours will be jointly and severally liable for reimbursement to the FRS trust fund for any benefits that the employee receives during the reemployment limitation period.

Section 5:

Creates ss. 215.47(17) and (18), F.S., regarding investments; authorized securities; loan of securities.

Present Situation:

Section 215.47, F.S., provides investment guidelines for the State Board of Administration in the investment of state trust fund monies.

Effect of Proposed Changes:

This bill creates s. 215.47(17), F.S., which directs the State Board of Administration to invest no less than 80 percent of the domestic equity assets of the FRS through passive management, to effect a reduction in contributions by school districts to the FRS.

This recommendation is based on an Office of Program Policy Analysis and Government Accountability Program Review, 99-52, Investment of Florida Retirement Assets Meets Goals, But Earnings Could Be Increased. The review essentially asserts that passive management is less expensive, and that therefore if the State Board of Administration had invested a higher percentage of the domestic equities through passive management, there would have been higher returns.

However, in response the State Board of Administration stated that placing a majority of all "of our Domestic Equity assets in passive management . . . would be contrary to the interests of the FRS beneficiaries and Florida taxpayers."⁷

⁶ Bill Analysis on HB 723, Department of Management Services, March 12, 2001. HB 723 also eliminates the re-employment restriction for certain school board employees.

⁷ Correspondence from Mr. Tom Herndon, State Board of Administration, to Mr. John Turcotte, Director of OPPAGA, May 8, 2000.

This bill assumes that passive management of assets is less expensive than active management. This provision of the bill also assumes that the stock market will not experience a downturn. Predicting the future of the investment market, especially in light of its current status, would seem to be difficult, and any reliance on the stability of such market may be inappropriate.

This bill also creates s. 215.47(18), F.S., which reduces the required district school board contributions to the FRS by **\$200 million annually**, to be prorated among the school districts. This figure is not based on an actuarial study, required by the Constitution. See "Constitutional Issues."

This bill directs the savings resulting from the reduction of contributions to the Teacher Salary Improvement Program pursuant to s. 236.08108, F.S., created by this bill.

Section 6:

Amends s. 231.096, F.S., on teachers teaching out-of-field; assistance.

Present Situation:

Section 231.096, F.S., provides that district school boards must adopt and implement a plan to assist any teacher teaching out-of-field, and give priority consideration in professional development activities to such teachers.

Effect of Proposed Changes:

This bill amends s. 231.096, F.S., to add that each district school board must contact its regional workforce board to identify and access resources that may assist teachers teaching out-of-field, and are pursuing certification.

Section 7:

Amends s. 231.36, F.S., on contracts with instructional staff; supervisors, and principals.

Present Situation:

Section 231.36, F.S., provides for employment contracts between school districts and the instructional staff, including permanent and substitute teachers. This section of law also provides, in part, for termination of the employment contract, just cause for termination, contract requirements, and renewal of employment contracts for instructional staff.

Effect of Proposed Changes:

This bill amends s. 231.36, F.S., to add that each school district must recognize and accept all prior years of teaching service under the FRS for every year a transferring teacher has had a satisfactory performance evaluation in another Florida school district.

Section 8:

Creates ss. 231.625(2)(l), (m), and (n), F.S., regarding teacher recruitment and retention.

Present Situation:

Section 231.625(2), F.S., provides that the Department of Education must, in the recruitment and retention of teachers:

- a) Advertise teacher positions in targeted states.
- b) Advertise in major newspapers, national professional publications, and other professional publications and in schools of education.
- c) Utilize state and nationwide toll-free numbers.
- d) Develop standardized resumes for teacher applicant data.
- e) Conduct periodic communications with district personnel directors regarding applicants.
- f) Provide district access to the applicant database by computer or telephone.
- g) Develop and distribute promotional materials related to teaching as a career.
- h) Publish and distribute information pertaining to employment opportunities, application procedures, teacher certification, and teacher salaries.
- i) Provide information related to certification procedures.
- j) Develop and sponsor the Florida Future Educator of America Program throughout the state.
- k) Review and recommend to the Legislature and school districts incentives for attracting teachers to this state.

Effect of Proposed Changes:

This bill creates s. 231.625(2)(l), F.S., which requires the Department of Education to conduct quarterly communications with Workforce Florida, Inc., and regional workforce boards, to access available federal, state, and local resources to improve teacher recruitment and retention.

This bill creates s. 231.625(2)(m), F.S., which requires the Department of Education to seek waivers or reductions in matching contributions that may be required of district school boards to access workforce funding.

This bill also creates s. 231.625(2)(n), F.S., which requires the Department of Education to seek additional funding for instructional aides, who want to become certified teachers; for teachers who are teaching out of field to become certified in that subject area; and, for expansion of the Florida Future Educator of America Program.

Section 9:

Creates s. 236.08108, F.S., the Teacher Salary Improvement Program.

Present Situation:

Currently, the only teacher bonus or salary improvement program provided by statute is found in s. 236.08106, F.S., which provides for the Excellent Teaching Program. The Excellent Teaching Program was created to provide categorical funding for monetary incentives and bonuses for teaching excellence. The Department of Education distributes to each school district an amount as prescribed annually by the Legislature for the Excellent Teaching Program.

Effect of Proposed Changes:

This bill creates s. 236.08108, F.S., which provides the Teacher Salary Improvement Program. This program is created by the bill to "provide funding for improved salaries for instructional personnel . . . in the K-12 public school system."

Under this program, each school district is required to increase the salaries of each member of the instructional personnel, to be funded by *the investment savings and employer contribution reductions provided earlier in this bill*. There are concerns with funding this program in this manner. See "Fiscal Comments" section of this analysis.

Only members of the instructional personnel that have received a satisfactory performance review for that year are eligible for the salary increase. Also, the school district may establish additional criteria that must be met before a member of the instructional staff can receive the salary increase.

This bill authorizes the Department of Education to provide technical assistance to the school districts, and to adopt rules to implement the provisions of this section.

Section 10:

Amends s. 240.529, F.S., on public accountability and state approval for teacher preparation programs.

Present Situation:

Section 240.529, F.S., provides a system for development and approval of teacher preparation programs intended to free postsecondary teacher preparation institutions to employ varied and innovative teacher preparation techniques while being held accountable for producing graduates with the competencies and skills necessary to achieve the state education. This section of law provides for the development of such teacher preparation programs, the approval of such programs, preservice field experience courses and internships requirements, state and national standards, community colleges to provide such programs, preteacher education and teacher education pilot programs, and, rulemaking authority to the State Board of Education to implement teacher preparation programs.

Effect of Proposed Changes:

This bill creates a new subsection (10) of s. 240.529, F.S., and renumbers the existing subsections. Subsection (10) provides for an "[a]lternative routes to certification." This subsection encourages institutions of higher education to develop partnerships with local public schools to develop alternative routes for prospective teachers to attain certification.

This bill sets forth several possible alternative routes. The first is a program for college graduates who enroll in accelerated teacher certification programs offering off-schedule classes, while the college graduate is employed part-time by a public school as an instructional paraprofessional, or as a teacher with a temporary certificate.

The second alternative provided by this bill is a program for public school employees who have attended at least 2 years of college, are motivated to become teachers, and are willing to attend an accelerated special education program that compacts two years of college education and an internship into one calendar year.

The third alternative route provided by this bill is a tuition-free program that provides re-certification and English as a second language programs at locations close to or on public school campuses that use federal, state, and local sources of funding.

This bill provides that each of the alternative routes to certification programs must include a follow-up provision to support new teachers during their first two years of teaching in a public school.

Also, the bill provides that collaborative program plans proposing alternative routes must be reviewed by the Department of Education, to correct any deficiencies before seeking initial state program approval.

This bill encourages prospective partners to pursue certain grants through the Department of Education.

Section 11:

Amends s. 445.002, F.S., regarding definitions under Workforce Innovation.

Present Situation:

Section 445.002, F.S., provides the definitions to be used within Workforce Innovation law. Currently, there are no definitions provided in this statute for “businesses” or for “dislocated workers.” The term “business” is defined throughout the Florida Statutes in chapters regarding copyright owners, corporation income tax, evidence, foreign business records, partnerships, and sales tax, for example. The term “dislocated worker” is defined in s. 443.231, F.S., as “an individual who has been terminated or laid off or has received a notice of termination or layoff from employment, who is eligible for, or has exhausted his or her entitlement to, unemployment compensation and who is unlikely to have an opportunity to return to his or her previous industry or occupation, making a change in occupation necessary for reemployment in the labor market area.” However, that definition is intended for use only by the Florida Training Investment Program under the Unemployment Compensation law.

Effect of Proposed Changes:

This bill amends s. 445.002, F.S., to add definitions for the terms “businesses” and “dislocated workers.” This bill defines the term “businesses” to include public school districts when used in reference to the Incumbent Worker Training Program.

In addition, this bill provides a definition for “dislocated workers,” to include state employees whose state position is cut and who are interested in becoming public school teachers.

Section 12:

Amends s. 445.004(6)(g), F.S., regarding Workforce Florida, Inc.

This bill expands the occupations identified by the Workforce Estimating Conference to include public school K-12 teachers.

Section 13:

Provides an effective date of July 1, 2001, except as otherwise provided herein.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The State Group Insurance Program and the Prescription Drug Program

The Senate Analysis of SB 414⁸ states that in adding school board employees, the outcome of certain factors will impact the administrative costs borne by the state and, potentially, the premium costs borne by the state and its enrollees. Those factors are as follows:

- The number of entities that would actually participate is unknown;
- The participation rate of enrollees remains unknown, as does their likely plan choice (e.g., PPO or HMO) and contract status (e.g., individual or family coverage); and,
- The risk profile (claims experience) which these entities would have.

Finally, the division is unable to make any reasonable assumptions regarding whether or not the level of service utilization and health care costs of these employees would be the same as, or different from, that of state employees. This uncertainty creates much difficulty in estimating the cost impact of this proposal for the various health insurance plans.

Although, the cost of adding district school board employees to the group of employees eligible to opt into the state group insurance program and the prescription drug program is indeterminable, it appears to be significant.

Increased Investment through Passive Management

This bill assumes that passive management of assets is less expensive than active management. This provision of the bill also assumes that the stock market will not experience a downturn. Predicting the future of the investment market, especially in light of its current status, would seem to be difficult, and any reliance on the stability of such market may be inappropriate.

This bill also creates s. 215.47(18), F.S., which reduces the required district school board contributions to the FRS by **\$200 million annually**, to be prorated among the school districts.

⁸ This bill was offered last year, and allowed city, county, and school district employees to opt into the state group health insurance program. However, this provision was amended out of the bill before it was passed by both chambers and became law.

This figure, provided to decrease employer contributions to the FRS, is not based on an actuarial study, as required by the Constitution.

Reemployment Provision

The Department of Management Services states that

[I]beralization of reemployment limitations could lead to increased normal benefit costs and unfunded actuarial liabilities. This group of employees that are hired by local school boards is not a separate subclass of the Regular Class. Therefore all employers with Regular Class employees would pay the higher retirement contribution costs that result from these proposed changes, not just the school boards that reemploy eligible retirees who are encouraged to retire sooner due to the these liberalized reemployment exceptions.⁹

Currently, no actuarial study exists to provide the cost of eliminating the reemployment restriction, nor does this bill provide funding for the increased cost to the retirement system. Therefore, this bill does not comply with the requirements of the Constitution.

Other Costs

The cost of implementing the provisions of this bill for the Department of Management Services, the Department of Education, the Agency for Workforce Innovation, and possibly for the Department of Revenue and the Department of Banking and Finance, are indeterminable. The Department of Management Services and the Department of Education would shoulder the majority of the cost of the added administrative services provided in this bill, which could be significant.

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 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:

A. CONSTITUTIONAL ISSUES:

Currently, no actuarial study exists to provide the cost of eliminating the reemployment restriction, nor does this bill provide funding for the increased cost to the retirement system. In addition, no actuarial study exists with regard to the decreased employer contributions provided in this bill.

⁹ Bill Analysis on HB 723, Department of Management Services, March 12, 2001. HB 723 also eliminates the re-employment restriction for certain school board employees.

Therefore, this bill does not comply with the requirements of Article X, Section 14 of the Constitution.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Department of Management Services to adopt rules to implement the inclusion of district school boards in the state group health insurance and prescription drug programs, and to implement the Teacher Salary Improvement Program.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2001, the Committee on State Administration heard HB 1505, and adopted three amendments.

Amendment #1 removed the provisions in the bill directing the State Board of Administration to invest 80 percent of the domestic equities FRS monies through passive management, and requiring the savings as a result of that investment strategy to be used, \$200 million annually, to reduce school district board employer contributions to the FRS, and that the \$200 million be used to fund the Teacher Salary Improvement Program created by this bill.

Amendment #2 removed the "whereas" language associated with the provisions removed in Amendment #1; and, Amendment #3 conformed the title to the above changes.

The Chairman and the sponsors of the bill, Representatives Frankel and Richardson, agreed that the sponsors would continue to work on the bill and try to resolve the funding concerns expressed by members of the committee.

This bill, as amended, was reported favorably.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Jennifer D. Krell, J.D.

J. Marleen Ahearn, Ph.D., J.D.