

STORAGE NAME: h0259s1a.frc.doc
DATE: February 11, 2002

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: CS/HB 259
RELATING TO: Instructional Personnel/K-12/DROP
SPONSOR(S): Committee on State Administration, Representative(s) Brummer & others
TIED BILL(S): None

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

- (1) FISCAL POLICY & RESOURCES YEAS 12 NAYS 0
 - (2) STATE ADMINISTRATION YEAS 4 NAYS 0
 - (3) FISCAL RESPONSIBILITY COUNCIL YEAS 25 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

DROP refers to the Deferred Retirement Option Program, administered by the Division of Retirement, which became effective July 1, 1998, and is for vested members of the Florida Retirement System (FRS) who have reached their normal retirement date. DROP is a program that allows a member to effectively retire without terminating his or her employment. While participating in DROP for a maximum of 60 months, the monthly retirement benefits accumulate in the FRS Trust Fund, earning tax-deferred interest, while the member continues to work and earn salary (but not earning additional service credit). When the member DROP period ends, the member must terminate all employment with all FRS employers or forfeit the DROP benefits. At that time, the member will receive payment of the accumulated DROP benefits, and begin receiving the monthly retirement benefit. For many members, this is the "best of both worlds," providing both a guaranteed lifetime benefit and a lump sum that can be spent or invested after DROP ends. For employers, it provides an incentive for experienced employees to remain in service longer while limiting the costs of retirement.

This bill increases the period of time members who are employed as instructional personnel in grades K-12 may participate in DROP from 60 months to 96 months (from 5 years to 8 years). The goal of the bill is to retain experienced instructional personnel in an effort to address the increasing demand for additional teachers.

This bill will take effect July 1, 2002, contingent upon the Division of Retirement within the Department of Management Services receiving certain favorable letters from the Internal Revenue Service regarding this program's tax status.

This bill does not appear to have any fiscal impact on local governments. This bill does require the Division of Retirement to seek favorable letters from the IRS, which is of minimal expense. See the "Fiscal Impact On State Government" section of this analysis for further detail.

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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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

DROP refers to the Deferred Retirement Option Program, administered by the Division of Retirement, which became effective July 1, 1998, and is for vested members of the Florida Retirement System (FRS) who have reached their normal retirement date. DROP is a program that allows a member to effectively retire without terminating his or her employment. While participating in DROP for a maximum of 60 months, the monthly retirement benefits accumulate in the FRS Trust Fund, earning tax-deferred interest, while the member continues to work and earn salary (but not earning additional service credit). When the member DROP period ends, the member must terminate all employment with all FRS employers or forfeit the DROP benefits. At that time, the member will receive payment of the accumulated DROP benefits, and begin receiving the monthly retirement benefit. For many members, this is the "best of both worlds," providing both a guaranteed lifetime benefit and a lump sum that can be spent or invested after DROP ends. For employers, it provides an incentive for experienced employees to remain in service longer while limiting the costs of retirement.

C. EFFECT OF PROPOSED CHANGES:

This bill increases the period of time in which members who are employed as instructional personnel in grades K-12 may participate in DROP from 60 months to 96 months (from 5 years to 8 years). The goal of the bill is to retain experienced instructional personnel in an effort to address the increasing demand for additional teachers. This bill will take effect July 1, 2002, contingent upon the division receiving certain favorable letters from the Internal Revenue Service regarding this program's tax status.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 121.091, F.S., to extend the maximum period of participation in the DROP from 60 months to 96 months for K-12 instructional personnel.

Section 2 provides legislative findings that this act fulfills an important state interest.

Section 3 provides contingent effective dates for this act. (See Comments Section below)

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Division of Retirement will be required to seek favorable letters from the IRS if the bill passes. Because the Division of Retirement does not have the required legal expertise in the area of federal tax law, the hiring of outside counsel would be necessary to obtain the private letter ruling needed. "The estimated cost is \$15,000.00, which is based upon an ongoing private letter ruling, where counsel has spent over 60 hours on the matter. Current tax counsel is at a cost of \$240/hour." ¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Based on current contribution rates applicable to the Regular Class (6.19%) and DROP (11.56%) and assuming that this bill delays the replacement of a longer tenured employee in DROP by an employee earning a lesser salary, this bill may increase the actual personnel costs incurred by school boards.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require a city or county to expend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of any city or county.

¹ Department of Management Services, 2002 Substantive Bill Analysis, Nov. 16, 2001, revision date Dec. 10, 2001, on HB 259 with amendment, at 7.

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

This bill does not reduce the amount of state taxes shared with a city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

Section 3 of the bill provides that the act takes effect only upon the Internal Revenue Service issuing a favorable determination letter and a favorable private letter ruling addressing certain specified items. The bill becomes effective July 1, 2002, if the favorable letters are received prior to the end of the 2002 Legislative Session; or January 1, 2003, if the letters are received between July 1, 2002, and January 1, 2003; or does not take effect if the favorable letters are not received.

Assuming that Florida's current DROP has received favorable responses on these issues from the Internal Revenue Service, it is unclear why additional responses from the Internal Revenue Service would be necessary. While it may be appropriate to request a determination letter regarding the continued "qualified status" of the retirement plan, it may be unnecessary to request the Internal Revenue Service to address issues not affected by the bill. Both the time limitations and the specificity of particular issues that must be addressed by the Internal Revenue Service reduce the likelihood that the favorable letters will be received timely enough to give this act any effect.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On November 28, 2001, the Committee on Fiscal Policy & Resources adopted an amendment, which was traveling with the bill. The amendment added a statutory cross reference to the definition of "instructional personnel" found in s. 228.041(9), F.S. There are five paragraphs contained in subsection (9) of s. 228.041, F.S.: (a) Classroom teachers; (b) Pupil personnel services; (c) Librarians/media specialists; (d) Other instructional staff; (e) Instructional paraprofessionals. Accordingly, "instructional personnel" include each of these types of personnel.

On December 18, 2001, the Committee on State Administration adopted an amendment to the Fiscal Policy & Resources amendment. The bill was reported favorably as a committee substitute. The amendment to the amendment limited the types of personnel included as "instructional personnel", for the purposes of this bill, to the personnel described above in (a), (b), (c), and (d). "Instructional paraprofessionals", listed in paragraph (e), was eliminated from the group of personnel affected by the committee substitute. This comports with last years legislation which allowed "instructional personnel" as defined in (a), (b), (c), and (d) [but not (e), instructional paraprofessionals] to elect to join DROP at any time after reaching normal retirement date. All other FRS members (including instructional paraprofessionals) are required to begin DROP participation within the first 12 months of his or her normal retirement date or applicable deferral date, or lose the right to participate in the DROP.

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VII. SIGNATURES:

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