

**STORAGE NAME:** h0697a.sa.doc  
**DATE:** February 6, 2002

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

**BILL #:** HB 697  
**RELATING TO:** FRS/Compensation & Bonus Definitions  
**SPONSOR(S):** Representative(s) Mealor and Justice

**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION
- (2) FISCAL POLICY & RESOURCES
- (3) FISCAL RESPONSIBILITY COUNCIL
- (4)
- (5)

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I. SUMMARY:

Benefits under the Florida Retirement System (FRS) are determined based on an average final compensation calculation of a career service employees' final five years of employment. Current law defines "compensation" as the monthly salary paid a member by his or her employer for work performed arising from that employment. This definition specifically does not include bonuses or other payments of a nonrecurring nature. Current law defines "bonus" as "a payment made in addition to an employee's regular or overtime salary." A payment to an employee is considered a bonus if any one of four circumstances applies: it is not made uniformly to all employees; it commences later than the eleventh year of employment; it is not based upon permanent eligibility; or it is made less frequently than annually.

This bill amends the definition of compensation currently found in law for the purposes of computing a pension benefit under the FRS to include bonus payments made to teachers pursuant to the Florida Mentor Teacher School Pilot Program and Excellent Teaching Program.

This bill does not appear to have a fiscal impact on local governments. It appears to have an impact on local district school boards and may indirectly impact all FRS employers. See "Fiscal Comments" and "Constitutional Issues" sections.

The bill takes effect upon becoming law.

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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 checked="" type="checkbox"/> | N/A <input 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"/> |

Depending on the result of a actuarial special study, contribution rates could increase to cover the unfunded liability arising from the implementation of the bill.

B. PRESENT SITUATION:

**The Florida Retirement System**

The Florida Retirement System (FRS) is a defined benefit, non-participatory, multi-employer pension plan covering the employees, survivors and dependents of some 800 state and local government employers. Section 121.011, F.S., created the FRS in 1970 as the successor benefit plan to the separate Teachers' Retirement System, Highway Patrol retirement plan, and State and County Officers' and Employees Retirement System. Section 121.046, F.S., incorporated the separate Judicial Retirement System into the FRS in 1972. The Division of Retirement indicates that the FRS now covers about 600,000 active employees and nearly 200,000 retirees. The Division's records indicates that as of June 30, 2001, school board employees constitute approximately 48 percent (292,351) of the active membership in the FRS.

The FRS offers an annuitized monthly benefit payable over a retiree's lifetime that is calculated as a percentage of the highest five years of a member's average final pay, as defined in s. 121.021(24), F.S. Section 121.091, F.S., provides for several subclasses of membership with separate benefit accrual rates: Regular (1.60 percent); Special Risk (3.0 percent); Special Risk, Administrative Support (1.6 percent); Senior Management (2.0 percent); Justices and Judges (3.33 percent); and Elected Officers (3.0 percent).

Section 121.091(1), F.S., describes the accrual rate methodology. Accrual rate is the pension value per year of service. The benefit payment is equivalent to the accrual rate multiplied by total creditable service length in years multiplied times average final compensation (inclusive of up to 500 hours of annual leave). The standard benefit option (Option 1) provides a monthly payment over the annuitant's lifetime and terminates upon the death of the annuitant. There are three other reduced payment options that provide for survivors' benefits. Chapter 2001-169, L.O.F., collapsed the three separate minimum benefit qualification, or vesting periods of 7, 8, and 10 years (depending on the retiree's FRS subclass membership and whether the member retires normally or under a disability) into one uniform 6-year period.

Section 121.021(22), F.S., defines compensation as the monthly salary paid a member by his or her employer for work performed arising from that employment. There are other payments that may count towards one's compensation, including overtime payments, accumulated leave payments and

other payments that are generally applicable to all eligible employees. This definition specifically excludes bonuses, as defined in s. 121.021(47), F.S.

Section 121.021(47), F.S., specifically defines "bonus" as "a payment made in addition to an employee's regular or overtime salary." That definition identifies a payment as a bonus if any one of four circumstances applies: it is not made uniformly to all employees; it commences later than the eleventh year of employment; it is not based upon permanent eligibility; or it is made less frequently than annually. The definition lists specific examples of bonuses: exit or severance pay; longevity payments; salary agreements incidental to an employee's agreement to retire; accumulated overtime, compensatory, or holiday time not taken within 11 months of the month in which the work was performed; Quality Instructional Incentives Program payments; and lump sum payments in recognition of employee accomplishment.

Section 121.021(24), F.S., specifically exempts from the average final compensation calculation any payments of a nonrecurring nature.

### **The Florida Mentor Teacher School Pilot Program**

Section 231.700, F.S., creates the Florida Mentor Teacher School Pilot Program, to attract, retain, and motivate high-quality teachers. Implementation of the program began in the 2001-2002 school year. The pilot schools were selected by the Commissioner of Education prior to July 1, 2001. Each approved school receives an equivalent grant based upon the number of schools selected by the commissioner and the amount of the legislative appropriation. The Department of Education indicates that because of the recent implementation of this program, the pilot schools have not yet implemented their plans and therefore costs cannot be accurately determined. No bonuses have yet been awarded under this program.

### **The Excellent Teaching Program**

Section 236.08106, F.S., creates the Excellent Teaching Program to provide categorical funding for monetary incentives and bonuses for teaching excellence. That section provides that the Department of Education distributes to each school district, or to the National Board of Professional Teaching Standards, an amount as prescribed annually by the Legislature for the Excellent Teaching Program. The Department of Education reports<sup>1</sup>:

- In FY 1999/00, 568 teachers received bonuses under the program and the overall cost for that fiscal year, including bonuses and professional development funding, was \$8,862,458;
- In FY 2000/01, there were 1,268 teachers who received bonuses under the program. Overall program costs totaled \$19,082,714 and
- As of February 5, 2002, the year-to-date totals for the program in the first 6 months of FY 2001/02 include 2,154 teachers in 58 of the 67 school districts and university lab schools who have received bonuses amounting to \$18,140,863.

#### **C. EFFECT OF PROPOSED CHANGES:**

The bill amends s. 121.021(22), F.S., the definition of compensation, to include as an element in determining compensation for purposes of FRS benefit calculations, and notwithstanding specific

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<sup>1</sup> Information originally found in the the Department of Management Services analysis of HB 697 and updated by the Department of Education by request of committee staff, February 5, 2002.

provisions within the definition to the contrary, bonus payments made to teachers pursuant to the Florida Mentor Teacher School Pilot Program and Excellent Teaching Program.

The bill also amends s. 121.021(47), F.S., to remove an obsolete reference to the Quality Instructional Incentives Program, a defunct teacher incentive program.

The bill is effective July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes," above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill permits additional amounts to be recognized as salary for the purposes of computation of average final compensation. This impacts school districts and employees of charter schools leased from public employers that will have to assess 10 percent on the bonus payments as part of the normal cost contributions as an FRS employer.<sup>2</sup>

The Department of Management Services indicates in its analysis of the bill that it would be unable to determine the true cost of this change because the program is rapidly increasing in size and therefore at this time, it cannot determine future participation rates and bonus amounts. It also

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<sup>2</sup> While nominally private entities, charter schools may employ leased public school instructional personnel who retain their FRS benefit status.

indicates that an actuarial special study should be conducted to determine the impact on the FRS to determine whether any increase in the contribution rates would be necessary.<sup>3</sup>

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The 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:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Department of Management Services' actuary indicated in his analysis of the bill that in its current form, the bill would appear to violate section 12, Art. X, Florida Constitution, which provides that the FRS be funded on an actuarial sound basis. The provisions of the bill would appear to pass on the costs of funding the provisions of the bill onto future taxpayers.<sup>4</sup>

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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David M. Greenbaum

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

<sup>3</sup> Department of Management Services, 2002 Substantive Bill Analysis, HB 697 (Jan. 2002).

<sup>4</sup> *Id*