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HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: HB 933
RELATING TO: Public Employee Optional Retirement
SPONSOR(S): Representative(s) Rubio
TIED BILL(S): HB 935

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 11 NAYS 0
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

The Public Employee Optional Retirement Program (PEORP), is an optional defined contribution retirement program, within the Florida Retirement System (FRS). The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees have the opportunity to choose to participate in either the defined benefit retirement program or the PEORP.

This bill clarifies and refines statutory authority for the program. The bill authorizes the participation of renewed FRS members in the PEORP. The bill provides for the acceptance of roll-over funds from approved retirement plans into a participant's PEORP account. The bill provides for the notification of the participant's spouse in the event the participant does not designate the spouse as beneficiary under the program. The bill provides for penalties against an FRS employer in the event the employer deposits its required contributions later than the 5th working day of the month, and provides that the employer make whole any participant harmed by the tardiness.

The bill is not expect to have a fiscal impact on state and local governments that participate in the Florida Retirement System.

The bill takes effect June 1, 2002.

On February 7, 2002, the Committee on State Administration adopted four amendments that are traveling with the bill. These amendments clarify the authority of the State Board of Administration in implementing certain activities proposed in the bill.

On February 14, 2002, the Committee on Fiscal Policy & Resources adopted two amendments that are traveling with the bill. These amendments clarify the dates for the administration of the program, and clarify the disposition of the penalties for late contributions by employers. See section VI, "Amendments or Committee Substitutes," for details.

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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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

B. PRESENT SITUATION:

The Public Employee Optional Retirement Program (PEORP)

Chapter 2000-169, L.O.F., created s. 121.4501, F.S., which regulates an optional defined contribution retirement program, the Public Employee Optional Retirement Program (PEORP), within the Florida Retirement System. The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees have the opportunity to choose to participate in either the defined benefit retirement program or the defined contribution program.

The PEORP is administered by the Trustees of the State Board of Administration.

Unlike the defined benefit retirement program, the PEORP offers retirement benefits that are not fixed for a lifetime. Rather, a participant may elect to receive the benefits in a lump sum, in a lump-sum distribution that is rolled over to another qualified investment, or in periodic distributions. However, both programs are specifically regulated under the Internal Revenue Code.

Chapter 2000-169, L.O.F., provides a phase-in schedule for current employees to elect participation in the optional program. Employees of state entities are given the option to join the program between June 1, 2002, and August 31, 2002; employees of education-related employers between September 1, 2002, and November 30, 2002; and, other local government employees between December 1, 2002, and February 28, 2003.

C. EFFECT OF PROPOSED CHANGES:

This bill amends ss. 121.4501 and 121.571, F.S., clarifying and refining statutory provisions that implement the PEORP. See "Section-by-Section Analysis," below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 121.4501(2)(d), F.S., the definition of eligible employee, to include a renewed member of the Florida Retirement System as a person eligible to participate in the PEORP. The definition previously excluded these members from the definition of an eligible member. A renewed member, defined in s. 121.122, F.S., is an FRS member who has retired, receives a retirement annuity under the FRS, and returns to employment in a regularly established

position with an FRS employer. This would appear to provide for consistent treatment of renewed members under the defined benefit plan and the PEORP.

Amends s. 121.4501(3)(c)4., F.S., relating to eligibility requirements and retirement service credit for participating in the PEORP, to provide that in the event of an unforeseen serious disruption of financial markets which causes the suspension of the financial markets, the 30 day period in which a transfer of funds from the defined benefit retirement program into a participant's PEORP account must occur is to be extended by a resolution of the trustees (of the State Board of Administration). There is no limitation on the number of days the State Board of Administration may extend such transfer period.

Creates s. 121.4501(5)(c), F.S., to provide that the PEORP may accept for deposit into a participant's account contributions from outside sources, i.e., roll-over transfers or trustee-to-trustee transfers from qualified accounts. The State Board of Administration (Board) or other program administrator are to reasonably determine what roll-over or trustee-to-trustee transfers are acceptable. These contributions are to be accounted for in accordance with applicable Internal Revenue Code requirements and the rules of the Board.

Amends s. 121.4501(6)(a)2., F.S., to authorize the investment of funds transferred in the suspense account of the PEORP Trust Fund when the participant has elected to participate in the PEORP but has not vested prior to employment termination. If the participant reemploys with an FRS employer within 5 years, that participant shall receive those funds plus the actual earnings generated while those funds are in the suspense account. The subparagraph currently provides the funds transferred into the suspense account under this subsection earn 3.0 percent annually.

Amends s. 121.4501(6)(b)2., F.S., to authorize the investment of funds transferred in the suspense account of the PEORP Trust Fund when the participant has elected to participate in the PEORP but has not vested (for purposes of the defined benefit plan) prior to employment termination. If the participant reemploys with a FRS employer within 5 years, that participant shall receive those monies plus the actual earnings generated while those funds are in the suspense account. The subparagraph currently provides the monies transferred in to the suspense account under this subsection earn 6.0 percent annually.

Amends s. 121.4501(7)(c)1., F.S., to direct that a participant's spouse be notified in the event the participant does not designate the spouse as beneficiary. This requirement does not apply to a contingent beneficiary so designated in the event the spouse dies before the contingent beneficiary. The Board indicates that this provision is similar to one found in federal ERISA regulations and in s. 121.091(6)(a), F.S.

Amends s. 121.4501(7)(e)2., F.S., to provide that survivor benefits may be payable to the survivor's eligible retirement plans provided for in s. 402(c)(8)(B) of the Internal Revenue Code. The subparagraph currently directs payment to a survivor's individual retirement account or individual retirement annuity. This appears to be a restating of the sentence to provide for other plan types that may be created under Internal Revenue Code provisions.

Amends s. 121.4501(8)(a), F.S., to authorize the Board to require oaths and acknowledgements from persons in connection with the administration of its duties and responsibilities under this chapter.

Section 2. Amends s. 121.571, F.S., to provide that employer contributions must be received by the third-party administrator no later than the 5th working day of each month or the contribution is considered late. If the contribution is late, the employer will be assessed a penalty equal to one percent of the contribution amount and will also be required to make whole on any market losses

suffered by a participant as a result of the late contributions. The third-party administrator is directed to calculate the market loss for each participant affected by the late contribution and notify the employer of the amount due from this calculation. The employer pays the cost of determining the market losses and is directed to remit the amount to the third-party administrator. The Board is authorized to adopt rules to implement provisions regarding late contributions, the process for making participants whole as a result of market losses, and the penalties charged.

This section allows for both actual damages (the losses a participant realizes as a result of the employer's failure to timely deposit) as well as liquidated damages (the one percent penalty for the same failure to timely deposit) against a late-depositing employer in the event of that employer's failure to timely deposit contributions with the Board. Additionally, the employer is to pay the costs of determining actual damages.

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:

The third-party administrator is given additional responsibilities under the bill.

D. FISCAL COMMENTS:

Comments of State Administration Committee staff: In section 2 (amending s. 121.571, F.S.), it is unclear where the one percent penalty assessed against late employers would be deposited.

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:

None.

B. RULE-MAKING AUTHORITY:

The Board is authorized to adopt rules to implement provisions regarding late contributions, the process for making participants whole as a result of market losses, and the penalties charged.

C. OTHER COMMENTS:

Comments of State Administration Committee staff: In section 1 (amending s. 121.4501(5)(c), F.S.), it is unclear to whom the term "other program administrator" applies. Arguably, this is a policy decision for which the Board is responsible. It may be appropriate for the Board to consult with program administrators to determine the policy. However, assigning the decision to an program administrator without explicit oversight by the Board or not providing for statutory criteria upon which to base the decision could impact the program adversely. (*Amendment 1 by State Administration addresses this.*)

In section 1 (amending s. 121.4501(8)(a), F.S.), it is not clear which persons or entities would be required to submit to oath-taking or otherwise acknowledge actions done pursuant to Board activity. (*Amendment 2 by State Administration addresses this.*)

Comments of Fiscal Policy & Resources: Amendment 2 by Fiscal Policy & Resources addresses the fiscal concern of State Administration staff regarding section 2 (amending s. 121.571, F.S.), in which it is unclear where the one percent penalty assessed against late employers would be deposited. With the adoption of the several traveling amendments which address the same section of the bill, staff recommends either a strike-all amendment or committee substitute to incorporate all the changes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on State Administration adopted four amendments that are traveling with the bill.

Amendment 1 removes authority for a program administrator to determine what types of outside retirement accounts can roll-over into a PEORP account. This policy decision is left to the Board.

Amendment 2 limits the authority of the Board to require oaths or other acknowledgements to activities not associated with an employee's election to participate in the PEORP.

Amendment 3 revises the penalty against late-depositing employers to provide that a late-depositing employer is to pay the greater of one percent of the amount of the contribution or the amount necessary to make its employees whole from the resultant market losses arising from the delinquent deposit.

Amendment 4 revises the responsibility of the third party administrator to require that it provide the delinquent employer the results of the calculations that determine the penalty.

On February 14, 2002, the Committee on Fiscal Policy & Resources adopted two amendments that are traveling with the bill.

Amendment 1 clarifies the dates for the administration of the program.

Amendment 2 clarifies the disposition of the penalties for late contributions by employers.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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