

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the General Government Appropriations Committee

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BILL: CS/CS/SB 1428

INTRODUCER: Governmental Operations Committee and Senator Fasano

SUBJECT: Retirement Program/Community Colleges & Universities

DATE: March 25, 2008 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>McVaney/Pigott</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |  |   |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

The bill permits participants in the separately established optional retirement programs for the community colleges and universities to transfer to the Florida Retirement System (FRS) during a defined period of time. It also provides that participants in state university optional annuity retirement programs shall have that plan as their exclusive pension benefit choice and shall not be an FRS member.

This bill substantially amends sections 121.021, 121.051, and 121.35 of the Florida Statutes.

The bill creates section 121.355, Florida Statutes.

**II. Present Situation:**

Sections 121.35 and 1012.875, F.S., establish an optional retirement program for eligible participants employed by each of the 28 community colleges and 11 institutions in the state university system. Participants become eligible during the first 90 days of employment and must affirmatively elect participation. A failure to adhere to the time frames defaults to membership in the FRS.

There were 16,937 state university system active participants in the optional annuity program as of June 30, 2007, a nearly ten percent increase from that number two years earlier. Community college participants totaled 1,137 for this same period. Higher education hiring tends to be national and international in scope and participants favor pension arrangements in which their contracts are portable across many public and private pension jurisdictions.<sup>1</sup> The optional plans provide immediate vesting, unlike comparable state retirement plans which have vesting periods of one year for the defined contribution plan and six years for the defined benefit plan.

### **III. Effect of Proposed Changes:**

The bill creates s. 121.355, F.S., to permit former participants in the Community College Optional Retirement Program and the State University Optional Retirement Program to transfer their membership to the Florida Retirement System during an election period commencing January 1, 2009, and ending December 31, 2009. The participant is responsible for the transfer of credit from the optional program, inclusive of any credits received under former membership in the FRS, and must replenish with personal funds any amount necessary to satisfy the actuarially determined amount. Amounts in excess of the required sums accrue to the participant.

The bill also amends three other sections of the retirement statutes to provide that faculty at a state academic college in a state university will be compulsory members in that university's optional annuity program established pursuant to s. 121.35, F.S. Participation will be governed by the terms of the contract between the participant and the provider company.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. Other Constitutional Issues:**

Since the bill requires the participant, and not the public employer, to make the FRS financially whole when the benefit obligation is determined, there is no residual liability to the employer that would impair the full pension funding provisions of s.14, Art. X of the State Constitution.

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<sup>1</sup> The five approved annuity providers are: ING, TIAA-CREF (Teachers Insurance and Annuity Association-College Retirement Equities Fund), VALIC (Variable Annuity Life Insurance Company), Jefferson National Life Insurance Company, and MetLife Investors USA Insurance Company.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Eligible individuals seeking to make the change may have a surplus or deficit of personal financial assets in their optional accounts. If the amount is in excess of the liability, the remainder accrues to the participant. If a deficit results, the individual is personally responsible for the remaining amount.

The underlying participant contracts are deferred annuities, which are contracts for payment of benefits in installments for the life of the participant. These contracts have an accumulation phase, in which participant contributions are collected and proportionately invested, and a distribution phase in which they are paid to the participant. Such contracts are invested long by the provider companies in anticipation that the participant will not make a claim until the expected date of retirement. When provider companies are presented with an account termination request they must liquidate their positions in assets that may not have yet reached their expected maturities. When a claim for payment or termination is presented sooner than assumed, the participant may deplete or liquidate the account only in several equal installments. A customary feature in such circumstances is to authorize a five to twenty percent transfer per calendar year without the imposition of a disintermediation or surrender fee. Full liquidation of account balances operates in a similar fashion. All such provisions are contractual between the participant and the provider company.

Usually, in such circumstances, a participant chooses to transfer out of an optional annuity because the investment experience has not produced the expected income needed for retirement. This may be due to a variety of reasons: underinvestment, overinvestment, poor asset allocation, high account fees and expenses, or the unsuitability of this product to a participant's changed income needs.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The provisions for transfer of participation are located in two separate chapters of the Florida Statutes. Subsequent revisions of ch. 121, F.S., should consider a single location for these similar provisions to make their identification easier.

Section 121.051(2), F.S., governs optional participation in and withdrawal from the FRS for members of the community college and state university system. Generally, the conditions established under this section provided a time-limited transfer of credits under similar circumstances. A person who has terminated participation in one of the optional annuities and received a full or partial liquidation of the account balance may be disqualified from this process if there has been a distribution of the proceeds.

### **VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS/CS by General Government Appropriations on March 26, 2008:**

The bill clarifies that the eligibility to receive service credit is limited to mandatory members of the FRS defined benefit plan.

The bill prohibits a member from receiving service credit for the period in which the member was a mandatory member of the State University System Optional Retirement Program or for the period for which the member has received a distribution from the optional retirement programs.

#### **CS by Governmental Operations on March 19, 2008:**

Provides that university clinical faculty participating in a practice plan shall have the institution's optional annuity program as the exclusive pension choice. The terms of participation will be governed by the contractual provisions between the faculty members and the provider annuity company.

- B. **Amendments:**

None.