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.)

Prepared By: The Professional Staff of the Higher Education Committee

BILL: CS/SB 2170

INTRODUCER: Higher Education Committee and Senator Oelrich

SUBJECT: Retirement/Medical Faculty/State Universities

DATE: April 16, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	**Fav/CS**
2.			GO	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [x] Statement of Substantial Changes
B. AMENDMENTS........................ [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

This bill would clarify that compensation for members of the Florida Retirement System (FRS) who are faculty at colleges at state universities that have a faculty practice plan may not include fees or salary paid by a faculty practice plan. The bill would exclude any faculty member appointed after July 1, 2008, at a college having a faculty practice plan from participating in the FRS. Those faculty members would be required to participate in the State University System Optional Retirement Plan (SUSORP). Salary or fee payments made to such faculty members could be included in the gross monthly compensation used to calculate contributions to SUSORP.

The bill would provide certain former members of either the Community College or State University System Optional Retirement Program a one-time opportunity, during 2009, to transfer their assets from the optional retirement plans to purchase service credit in the Florida Retirement System.

This bill amends ss. 121.021, 121.051, and 121.35, Florida Statutes, and creates section 121.355, Florida Statutes.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) includes the defined benefit retirement program, a pension plan, and the defined contribution retirement program, known as the Public Employees Optional Retirement Program, which is an investment plan.[1] According to the Department of Management Services, the FRS is the fourth largest public retirement system in the country, covering 680,302 active employees, 264,763 pension plan annuitants (retirees and their surviving beneficiaries), and 31,562 participants in the Deferred Retirement Option Program (DROP). All state and county employees are compulsory members of the FRS, and approximately 164 cities cover firefighters, police, or general employees under the FRS.

State University System Optional Retirement Program

On July 1, 1984, the State University System Optional Retirement Program (SUSORP) was established as an optional program under the Florida Retirement System (FRS) for eligible state university faculty and administrators. The program was later expanded in 1988 to include the State University System Executive Service and in 1999 to include all administrative and professional personnel exempt from career service. Eligible employees are compulsory participants in SUSORP during their first 90 days of employment. If they fail to enroll in SUSORP and choose a provider company during this period, they become members of the FRS Pension Plan. As of June 30, 2007, there were 16,937 participants in the SUSORP.

The SUSORP is a tax-qualified defined contribution plan authorized under the provisions of section 403(b) of the Internal Revenue Code that provides retirement and death benefits through contracts with designated insurance carriers[2]. The program was established to aid the university system in recruiting employees by offering more portability to employees who do not expect to remain in the State University System long enough to vest in the FRS Pension Plan. It provides for full and immediate vesting of all contributions submitted to the participating companies on behalf of the participant. Contributions, which are invested as directed by the participant, accumulate in individual participant accounts, together with investment earnings. At retirement, the accumulated benefits are payable to the participant or to his or her beneficiaries or estate.

The employing university contributes on behalf of each SUSORP participant a percentage of the participant’s salary as required by law. As of July 1, 2007, this contribution rate remains 10.43 percent of the participant’s salary. An amount equivalent to 0.01 percent is retained for program administrative costs. The remaining 10.42 percent is deposited in the participant account and invested in investment products offered by the company or companies selected by the participant. SUSORP participants may contribute by salary reduction an amount not to exceed the percentage contributed by the university to their program accounts.

Community College Optional Retirement Program

In 1995, the Florida Legislature enacted provisions[3] allowing employees of the State Community College System in the FRS Regular Class to opt out of the FRS and enroll in a lifetime monthly

[1] s. 121.021(3), F.S.

[2] The five approved participating companies currently available under SUSORP are: AIG VALIC, ING, Jefferson National Life Insurance Company, MetLife Investors USA Insurance Company, and TIAA-CREF.

[3] ch. 95-392, L.O.F.

annuity program known as the State Community College System Optional Retirement Program (CCORP). To implement a CCORP, each community college or a consortium of community colleges must select and contract with no more than four companies from which annuity contracts may be purchased under the optional retirement program. Participants are fully and immediately vested in the program upon issuance of a contract. The CCORP is a tax-qualified defined contributions program under the provisions of section 403(b) of the Internal Revenue Code that provides retirement and death benefits through contracts with designated insurance carriers. Each community college contributes on behalf of each CCORP participant a percentage of the participant's salary as required by law. As of July, 1, 2007, this contribution rate remains 10.43 percent, which includes a portion representing the Health Insurance Subsidy program provided to FRS Retirees. An administrative fee, if any, is deducted from the total contributions.

If an eligible employee wishes to participate in the CCORP in lieu of the FRS, the decision must be made within 90 days of becoming eligible for participation in the CCORP. Any employee who fails to make an election to participate in the CCORP within the required 90 days, has elected to retain membership in the FRS. If the eligible employee is enrolled in a state-administered retirement plan for the first time and did not elect to participate in the CCORP, the employee has the balance of the 5-month period after his or her first payroll to elect membership in either the FRS Pension Plan or FRS Investment Plan. If no ballot is filed making an election, the member defaults to the FRS Pension Plan. As of June 30, 2007, there were 1,138 participants in the CCORP.

The 2003 Legislature provided CCORP participants an open-ended opportunity to transfer back to the FRS. If the employee transfers to the Investment Plan, the employee's CCORP account is retained and he or she starts anew under the Investment Plan. To transfer to the Pension Plan, the employee pays a specified amount[4] to receive service credit equal to his or her years of service under the CCORP. No similar transfer opportunity is available for management-level (non-Regular Class) community college employees. The law also allows CCORP participants to transfer to their CCORP account the present value of any FRS service they may have between their date of first CCORP eligibility and their actual date of transfer during their enrollment period.

Faculty Practice Plans

The first faculty practice plan in Florida was established for the medical complex at the J. Hillis Miller Health Science Center[5] at the University of Florida. According to excerpts from Internal Operating Memorandum No. 04-10, September 11, 2004,[6] authority is provided for such colleges to band together and develop and maintain faculty practice plans for the benefit of members. In addition to the J. Hillis Miller Center at the University of Florida, the University of South Florida currently has such a plan and Florida State University has proposed to establish such a plan. New medical schools at the University of Central Florida and the Florida International University

[4] The cost for the transfer is a sum representing the present value of the member's accumulated benefit obligation for the affected period of service.

[5] The J. Hillis Miller Center encompasses the colleges of Dentistry, Health-Related Professions, Medicine, Pharmacy, and Veterinary Medicine. The center also houses two teaching hospitals, Shands Hospital and the Veterinary Medical Teaching Hospital for animals.

[6] This memorandum was published online at: http://www.trustees.ufl.edu/policies/04_10.pdf.

could also establish faculty practice plans. Under s. 121.051(1)(a), F.S., such participants are barred from membership in the FRS.

Background on faculty practice plans and the FRS

In April 1989, the Secretary of the Department of Administration wrote to the Chancellor for the Board of Regents, expressing the Division of Retirement's concerns about the practice of paying medical staff in a faculty practice plan from more than one source of funds—both public and private—in a manner that led to payment of windfall benefits and undermined the funding for such members' FRS pension benefits. For faculty practice plan participants, compensation paid from state funds was reported for retirement, while compensation paid from privately-generated funds raised through the Academic Enrichment Fund (AEF) was not reported for retirement. For most of the member's career, compensation funded through AEF greatly exceeded the publicly funded compensation (keeping retirement contributions low). However, late in the member's career, the funding relationship was commonly reversed, and the bulk of the member's salary was paid through state funds. By switching the funding source just before retirement, the member's average final compensation would be increased and his or her monthly retirement benefit could be tripled or quadrupled. However, since contributions reported over the employee's career had not been sufficient to support the inflated benefit, these retirees were receiving windfall benefits subsidized by the FRS Trust Fund.[7]

In June of that year, the Chancellor responded, stating that he concurred with the agency's assessment, and informing the Secretary that legislation had been introduced that would require faculty members in faculty practice plans to participate in the SUSORP. Furthermore, he noted that the rules for the Board of Regents had been amended to require approval by the university president and the Chancellor before faculty members could receive a significant increase in the portion of their salaries subject to retirement contributions, and stated that the State University System would compensate the FRS Trust Fund in an amount determined by the actuary as necessary to address any past underfunding of the FRS. Effective June 28, 1989, ch. 89-207, L.O.F., was enacted requiring SUSORP participation for new faculty at medical schools with faculty practice plans. And, sometime thereafter, the amount of $7,225,928 was paid to the FRS Trust Fund to reimburse the system for the past underfunding of benefits for 35 members of the medical faculty at the University of Florida.

The 2007 Legislature created a 1-year window for active SUSORP participants to transfer to the FRS. Mandatory SUSORP positions, such as faculty at colleges of medicine at universities that have faculty practice plans are not eligible to transfer. Universities requested clarification of terminology from the Division of Retirement in the Department of Management Services. The Division of Retirement requested lists of mandatory SUSORP positions from participating universities. The University of South Florida (USF) requested the Division's assistance in defining "mandatory SUSORP participant." Officials from the Division, USF, and the University of Florida (UF) worked together to develop guidelines for defining mandatory SUSORP participants and discussed how to clarify the details about those participants, faculty, and faculty practice plans within the Florida Statutes.

[7] Department of Management Services bill analysis for SB 2170, April 11, 2008.

III. Effect of Proposed Changes:

Under the provisions of the bill, SUSORP would be the exclusive pension choice for university clinical faculty participating in a practice plan. The terms of participation would be governed by the contractual provisions between the faculty members and the provider company.

The bill amends the definition of compensation in s. 121.021(22)(b), F.S., to clarify that salary payments made from a faculty practice plan do not qualify as compensation for members of the FRS pension plan or the investment plan. Salary payments made from a faculty practice plan are considered compensation under SUSORP, effective July 1, 2008.

Section 121.051(1)(a), F.S., currently states that faculty positions in a college at J. Hillis Miller Health Center at the University of Florida and the Medical Center at the University of South Florida are not eligible to participate in the FRS. The bill adds that any appointed faculty member at a college at a state university that has a faculty practice plan could not participate in the FRS, effective July 1, 2008. The bill defines the faculty and faculty practice plan subject to the restrictions.

The bill would allow an FRS Pension Plan member to purchase service credit for periods of participation in CCORP or SUSORP. The cost for such service credit would be the actuarial accrued liability for the affected period of CCORP or SUSORP participation. The cost would be calculated using the discount rate and other relevant actuarial assumptions from the most recent FRS defined benefit plan actuarial valuation. The calculation includes any service already accrued under the FRS defined benefit plan in addition to the years of service under the CCORP or the SUSORP. The actuarial accrued liability of any service already maintained under the FRS defined benefit plan would be applied as a credit to the total cost resulting from the calculation.

The employee must transfer from his or her CCORP or SUSORP account and from other employee moneys as necessary, a sum representing the AAL cost, or other funds as necessary. The Division of Retirement shall ensure the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. This service must be purchased between January 1, 2009 and December 31, 2009.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Eligible individuals seeking to make the change from CCORP or SUSORP participation to the FRS 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.

C. Government Sector Impact:

According to the Department of Management Services, allowing an FRS defined benefit plan member to purchase service credit equal to his or her years of service under the CCORP or the SUSORP and add those years to their FRS defined benefit plan service would have no fiscal impact on the FRS because the member must pay the actuarial accrued liability to receive FRS defined benefit plan service credit equal to his or her years of service under the CCORP or SUSORP. The member must transfer from his or her CCORP or SUSORP account and other employee moneys as necessary, a sum representing the actuarial accrued liability. No additional rate increase in FRS employer contribution rates is specifically required to fund the impact of this proposed change.

This bill would require the Division of Retirement in the Department of Management Services to review an estimated 1,500 requests to determine the cost to purchase retirement credit for members who have SUSORP or CCORP service which they would like to add to their existing FRS service. These accounts would have to be reviewed by fully trained specialists and since there is a one-year window, additional staffing would not be feasible. This would require the Division to have funds available for overtime to absorb the additional workload.

The department estimates a cost of $56,400 in 2008-2009 FY and a cost of $37,600 in 2009-2010 FY. This cost is based on an estimate of 2,250 hours of overtime at $24.52 per hour and 750 hours at $19.23 based on current salary costs plus an additional .35 percent benefit rate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Higher Education, April 15, 2008:

The CS for SB 2170:
- Applies to all state university faculty practice plans not just those in colleges of medicine;
- Eliminates the disclaimer for liability purposes; and
- Provides certain former members of either the Community College or State University System Optional Retirement Program a one-time opportunity, during 2009, to transfer their assets from the optional retirement plans to purchase service credit in the Florida Retirement System.

B. Amendments:

None.