



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill allows members of the Florida Retirement System to purchase service credit for periods of participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program.

### B. EFFECT OF PROPOSED CHANGES:

#### BACKGROUND

##### FLORIDA RETIREMENT SYSTEM

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>1</sup>

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 164 cities and 209 independent special districts that have elected to join the system.<sup>2</sup>

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over 680,000 active members, 264,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program participants.<sup>3</sup> Members of the FRS belong to one of five membership classes:

1. Regular Class <sup>4</sup>	588,204 members	86.46% of membership
2. Special Risk Class <sup>5</sup>	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class <sup>6</sup>	74 members	0.01% of membership
4. Elected Officers' Class <sup>7</sup>	2,078 members	0.31% of membership
5. Senior Management Service Class <sup>8</sup>	7,562 members	1.11% of membership <sup>9</sup>

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.<sup>10</sup>

Section 121.051, F.S., provides that participation in the FRS generally is compulsory for all officers and employees, except in certain instances.<sup>11</sup> Employees who meet specified eligibility criteria are

---

<sup>1</sup> Section 121.025, F.S.

<sup>2</sup> Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs).

<sup>3</sup> Department of Management Services HB 551 (2008) Substantive Bill Analysis (rev. April 4, 2008) at 2 [hereafter referred to as DMS Analysis] (on file with the Government Efficiency & Accountability Council).

<sup>4</sup> Section 121.021(12), F.S.

<sup>5</sup> Section 121.0515, F.S.

<sup>6</sup> Section 121.0515(7), F.S.

<sup>7</sup> Section 121.052, F.S.

<sup>8</sup> Section 121.055, F.S.

<sup>9</sup> FRS Annual Report at 43.

<sup>10</sup> See, e.g., s. 121.055(3)(a)1., F.S.

<sup>11</sup> Section 121.051(1)(a), F.S., excludes faculty employed at a university medical center through a faculty practice plan; s. 121.051(1)(d), F.S., excludes certain employees of a not-for-profit corporation or association by the Board of County

authorized to participate in various optional retirement programs. If an employee so elects, accrual of benefits under the FRS ceases and is replaced by the applicable alternative program. The State Community College System Optional Retirement Program and the State University System Optional Retirement Program are two alternative programs.

#### STATE COMMUNITY COLLEGE SYSTEM OPTIONAL RETIREMENT PROGRAM

Public community colleges or charter technical career center employees who are members of the Regular Class of the FRS may elect to participate in the State Community College System Optional Retirement Program (CCSORP), provided they meet certain criteria.<sup>12</sup> The CCSORP is a defined contribution program as classified in section 403(b) of the Internal Revenue Code, and may only be implemented and administered by an individual community college or by a consortium of community colleges.<sup>13</sup> It provides retirement and death benefits through contracts with designated insurance carriers.<sup>14</sup> Each community college contributes on behalf of each participant the current employer contribution rate of 10.43 percent of the participant's gross monthly compensation.<sup>15</sup>

#### STATE UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM

The State University System Optional Retirement Program (SUSORP) is available to State University System employees who are otherwise eligible for membership or renewed membership in the FRS, and who are employed in one of the following State University System positions:

- Instructional and research faculty positions exempt from the career service.
- Administrative and professional positions exempt from the career service.
- The Chancellor and the university presidents.<sup>16</sup>

Employees who are eligible to participate on or after January 1, 1993, are compulsory participants of the SUSORP unless the employee elects membership in the FRS.<sup>17</sup>

The SUSORP is a defined contribution program as classified in section 403(b) of the Internal Revenue Code.<sup>18</sup> It provides retirement and death benefits through contracts with designated insurance carriers.<sup>19</sup> Each employing university contributes on behalf of each participant the current employer contribution rate of 10.43 percent of the participant's gross monthly compensation.<sup>20</sup>

#### **PROPOSED CHANGES**

The bill allows FRS members to purchase service credit for periods of participation in the CCSORP or the SUSORP. The cost for such credit is the actuarial accrued liability for the affected period of CCSORP or SUSORP participation. It is 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 CCSORP or the SUSORP. The actuarial accrued liability of any service already maintained under the FRS defined benefit plan must be applied as a credit to the total cost resulting from the calculation.

---

Commissioners of Palm Beach County, and consultants or independent contractors.

<sup>12</sup> Section 121.051(2)(c), F.S.

<sup>13</sup> Section 1012.875, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 1012.875(4), F.S.

<sup>16</sup> Section 121.35(2)(a), F.S.

<sup>17</sup> Section 121.35(3)(c), F.S.

<sup>18</sup> Section 121.35(1), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 121.35(4)(a), F.S.

The employee must transfer from the CCSORP or the SUSORP account and from other employee moneys, as necessary, a sum representing the actuarial accrued liability cost. The Division of Retirement (Division) must ensure the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

The service credit must be purchased between January 1, 2009 and December 31, 2009. Members, however, may not receive service credit for any period of mandatory participation in the SUSORP or for any period in which a distribution was received.

The bill also prohibits participation in the FRS to persons in a faculty position, including clinical faculty, at a college within a state university that has a faculty practice plan authorized by the Board of Governors. Instead, such persons must participate in the SUSORP.

The bill defines "faculty position" to mean a position assigned the principal responsibility of teaching, research, or public service activities or administrative responsibility directly related to the academic mission of the college. It also defines "clinical faculty" to mean a faculty position appointment in conjunction with a professional position in a hospital or other clinical environment at a college. A "faculty practice plan" includes professional services to patients, institutions, or other parties, which are rendered by the clinical faculty employed by a college with a faculty practice plan at a state university authorized by the Board of Governors.

The bill redefines the term "participant's gross monthly compensation," for purposes of the SUSORP, to include salary payments made to eligible clinical faculty from a state university using funds provided by a faculty practice plan if:

- No employer contribution from the state university is made to any other retirement program with respect to such salary payments; and
- The employer contribution is made using funds provided by the faculty practice plan.

#### C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to revise the definition of "compensation."

Section 2 amends s. 121.059, F.S., to revise provisions related to participation in the SUSORP and the FRS.

Section 3 amends s. 121.135, F.S., to define the term "participant's gross monthly compensation" for purposes of the SUSORP.

Section 3 creates s. 121.355, F.S., to authorize certain FRS participants to purchase service credit for periods of service in the CCSORP or the SUSORP.

Section 2 provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Department of Management Services stated the Operating Trust Fund in the Division of Retirement would incur the following nonrecurring expenditures over the next two fiscal years due to the cost associated with the estimated additional overtime workload on Division staff (see FISCAL COMMENTS section for further details):<sup>21</sup>

- FY 08/09: \$56,400
- FY 09/10: \$37,600

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Department of Management Services initially indicated that the bill would *not* have a fiscal impact;<sup>22</sup> however, a revised bill analysis indicates the bill will have a fiscal impact due to workload.<sup>23</sup> The Department indicates that the fiscal impact is attributed to:

[T]he estimated overtime cost for 2,250 hours at \$24.52 per hour and 750 hours at \$19.23 based on current salary costs plus an additional 35% benefit rate. These costs will increase if pay increases are granted. The Division would require additional salary dollars to cover the additional workload with existing staff.<sup>24</sup>

In addition, if it were assumed that all eligible members opt to take advantage of this benefit, the Division of Retirement would have to work an estimated 1,500 requests to determine the cost to purchase the service credit authorized by the bill. According to the Department, “[t]hese accounts would have to be worked 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 so current employees could work overtime to absorb the additional workload.”<sup>25</sup>

### III. COMMENTS

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to: require counties and municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; and reduce the authority that municipalities have to raise revenue.

---

<sup>21</sup> Department of Management Services HB 551 (2008) Substantive Bill Analysis (March 3, 2008) at 5 (on file with the Government Efficiency & Accountability Council).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 4.

2. Other:

Article X, s. 14 of the State Constitution requires that any changes made to a publicly funded retirement or pension system resulting in an increase in member or beneficiary benefits must also include provision for the funding of the increase in benefits on a sound actuarial basis.

There appears to be no fiscal impact from authorizing FRS members to transfer from their CCSORP or SUSORP accounts to the FRS a sum representing the present value of the accumulated benefit obligation for the corresponding service credit, as determined by a certified enrolled actuary. As such, this bill does not appear to require an actuarial special study and, therefore, appears to satisfy the requirements of Article X, s. 14 of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Management Services offered the following bill drafting recommendations:

- Line 44 refers to payment “immediately following the time of such movement” when there is no membership transfer authorized by the bill. As such, the Department recommends that the words “the time of such movement” be replaced with “notification by the Division.”
- On line 21, the Department recommends adding language to clarify that the bill pertains only to members of the Florida Retirement System defined benefit plan.<sup>26</sup>

The Department further suggested restricting members from receiving service credit for any period of mandatory participation in the SUSORP or for a period for which a distribution was received from the CCSORP or SUSORP.<sup>27</sup>

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 9, 2008, the Government Efficiency & Accountability Council reported HB 551 favorable as a Council Substitute to incorporate a strike-all amendment.

The strike-all amendment prohibits members from receiving service credit for any period of mandatory participation in the SUSORP or for any period in which a distribution was received. It also prohibits persons appointed to a faculty position, including clinical faculty, in a college at a state university that has a faculty practice plan authorized by the Board of Governors from participating in the Florida Retirement System. Instead, such persons must participate in the SUSORP.

Finally, the strike-all amendment defines the terms “faculty position,” “clinical faculty,” and “faculty practice plan.” It redefines the term “participant’s gross monthly compensation.”

---

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.*