

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 Community Affairs Committee

BILL: SB 1214
INTRODUCER: Senators Fasano and Dockery
SUBJECT: State Retirement/Elected Officers' Class
DATE: March 16, 2009 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Molloy | Yeatman | CA | Pre-meeting |
| 2. | _____ | _____ | EE | _____ |
| 3. | _____ | _____ | GO | _____ |
| 4. | _____ | _____ | WPSC | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill provides that effective July 1, 2009, retired members of the Florida Retirement System serving in, elected to, or appointed to an elected office covered by the Elective Officers' Class of the FRS are prohibited from receiving retirement benefits as well as compensation for service for as long as the member remains in an office covered by the class. The bill provides that for specified persons appointed to, elected to, or holding elective office, retirement benefits will be suspended during the term of office. The suspended retirement benefits must be recalculated to include additional service and compensation earned in the elected office, and are reinstated upon the second retirement of the member. The prohibition applies to successive terminations and resumptions of employment, regardless of class of employment.

This bill substantially amends sections 121.053 and 121.091 of the Florida Statutes.

II. Present Situation:

*Profile of the FRS*¹— The FRS was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, judges, and Highway Patrol Officers. Today, the FRS is the fourth largest public retirement system in the United States, covering over 683,811 active employees, over 274,842 annuitants (retirees and their surviving beneficiaries), and more than 31,000 participants of the Deferred Retirement Option Program (DROP).

¹ Information in the "Present Situation" section of this bill analysis is from an analysis of the bill provided by the Department of Management Services, Division of Retirement, dated March 10, 2009.

All state and county employees in regularly established positions are compulsory members of the FRS, and cities and special districts can choose to participate. As of June 30, 2008, about 175 Florida cities were covering firefighters, police, and/or general employees,² and 223 independent special districts had members in the FRS.³

The active membership of the FRS is divided into five membership classes which are separately funded based upon the costs attributable to the members of that class:

- The Regular Class which consists of 598,556 members (87.53%).
- The Special Risk Class which consists of 74,939 members (10.96%).
- The Special Risk Administrative Support Class which has 75 members (0.01%).
- The Elected Officers' Class which consists of 2,273 members (0.33%).
- The Senior Management Service Class which consists of 7,483 members (1.15%).

Elected Officers' Class— The Elected Officers' Class consists of elected officers in state and local government:

- State governments officers include the Governor, Lt. Governor, Chief Financial Officer, the Commissioner of Agriculture, Attorney General, all legislators, the Florida Supreme Court, district courts of appeal judges, circuit judges, county court judges, state attorneys, and public defenders.
- County governments officers include the sheriff, tax collector, property appraiser, supervisor of elections, school board members, school superintendent, clerk of the circuit court, the county commissioners, and other elected county officials with countywide authority.
- City or special district officers include the elected officials in cities and special districts who have elected to participate in the Elected Officers' Class rather than the Regular Member Class.

For fiscal year 2008-2009, the employer contribution rates for members of the Elected Officers' Class are:

- Judicial officers – 18.40 percent
- Legislators/Cabinet/State Attorney/Public Defender – 13.32 percent
- Counties/Cities/Special Districts – 15.37 percent

On July 1, 2009, the employer contribution rates for members of the Elected Officers' Class change to:

- Judicial officers – 20.37 percent
- Legislators/Cabinet/State Attorney/Public Defender – 14.56 percent
- Counties/Cities/Special Districts – 17.06 percent

² On January 1, 1996, many cities and special districts were authorized by law to “opt out” of the FRS for new employees. Many chose to do so, and since that time, some have elected to rejoin the FRS. As of June 30, 2008, among the 175 cities participating in the FRS, there are 26 cities that have chosen to withdraw from the system and do not cover new members under the FRS.

³ This number includes 13 independent special districts closed to new FRS members since January 1996.

Benefits are payable to members of the Elected Officers' Class based on 3 percent of the average final compensation calculated on the five highest years of salary, except that benefits for judicial officers are paid at 3.33 percent of the average final compensation.

Reemployment restrictions for retirees participating in the Elected Officers' Class— Section 121.053, F.S., provides that any FRS retiree who is serving in, is elected to, or is appointed to an elective office covered by the Elected Officers' Class must be enrolled in the appropriate subclass and a retired member covered by the class must be paid into the FRS. The retired member is eligible to receive retirement benefits and compensation for the elected officer service for as long as the member remains in office. If the member remains in office for the required period of time to vest under the Elected Officers' Class, the member receives an additional retirement benefit for that service. These "renewed" members are not eligible to participate in the Deferred Option Retirement Program (DROP) or the Special Risk Class of membership, and may not receive disability benefits, but spouses and dependent children may qualify for survivor benefits.

State Retirement Systems Benefit Changes— Pursuant to s. 14, Art. X, State Constitution, a governmental unit responsible for any retirement or pension system funded in whole or in part by public funds may not provide for an increase in benefits unless providing for the increase on a sound actuarial basis. This constitutional requirement is implemented by s. 112.61, F.S., which expresses the Legislature's intent that "retirement systems or plans be managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits," and to "prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by current taxpayers. Actuarial experience may be used to fund future benefits, provided that the present value of such benefits does not exceed the net actuarial experience accumulated from all sources of gains and losses."

III. Effect of Proposed Changes:

Section 1. Amends s. 121.053, F.S., to prohibit the payment of retirement benefits and compensation to a retired FRS member serving in, elected to, or appointed to an elective office covered by the Elected Officers' Class of the FRS. Retirement contributions for such a member may not be required of the elected officer employer, and no additional retirement credit may be earned under the FRS.

An FRS retiree currently serving as an elected officer may not be a renewed member in FRS system and may not vest for purposes of receiving an additional retirement benefit as a member of the Elected Officers' Class. Until termination of service in the Elected Officers' Class, the member may not receive pension payments, DROP lump sum payments, or any other state payment except for salary, travel, and per diem expenses authorized by statute.

Section 2. Amends s. 121.091(9)(b), 1. thru 6., F.S., to make clarifying revisions. Subparagraph 7. is revised to provide that effective July 1, 2009, contributions for elected officers in the renewed membership class shall be made as provided in s. 121.122, F.S.

Subparagraph 8. is revised to provide that retirement benefits for the following persons must be suspended while such persons hold an elective office:

- Persons retired from a nonelective position who now hold an elective public office eligible for participation in the Elected Officers' Class.
- Persons retired from a position eligible for the Elected Officers' Class who now hold an elective public office eligible for participation in the Elected Officers' Class or who now hold an elective public office eligible for participation in the Regular Class.
- Persons retired from a position eligible for the Elected Officers' Class who are now employed in a nonelective position.

This restriction applies to successive terminations and resumptions of employment, regardless of retirement class.

Subparagraph 9. is repealed, removing the ability of a person who is holding an elective public office covered under the FRS and who is concurrently employed in nonelected covered employment, to retire from the nonelected position and continue employment in the elective public office. Such person may no longer receive retirement benefits and compensation.

Section 3. Provides that the act will take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Division of Retirement has determined that a special actuarial study is required to determine the fiscal impact of this bill on the FRS. Because local governments employ members of the FRS, it is possible that cities and counties may be required to expend revenues. Therefore, the bill may be subject to the mandate provisions contained in s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill does not comply with the provisions of Art. X, s. 14, State Constitution, because an actuarial special study is required to determine the fiscal impact. The bill expands reemployment limitations, allows for the recalculation of retirement benefits, and amends provisions of renewed membership for the Elected Officers' Class, all of which impact retirement trends and accrued benefits.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill requires an actuarial special study to determine the fiscal impact to the FRS.

VI. Technical Deficiencies:

Although the intent of the revision in subparagraph 7. is to conform provisions relating to contributions for elected officers in the renewed membership class to the changes proposed in s. 121.053, F.S., the bill inadvertently removes provisions governing contributions for all renewed members in the Regular Class of the FRS, and provides that contributions for members of the Elected Officers' Class shall continue to be made as authorized under s. 121.122, F.S. Section 121.122, F.S., provides for contributions of renewed members in the Senior Management Class, the Regular Class, and the Special Risk Class but does not provide for contributions for renewed members in the Elected Officers' Class.

The bill unintentionally provides that persons who retired from an Elected Officers' Class position who are now employed in a nonelective position shall be entered into the Elected Officers' Class.

The intent of the repeal of subparagraph 9. is to provide that members who are dually employed in an Elected Officers' Class position and a nonelective position covered by the FRS may not retire early from the nonelective position and receive retirement benefits and a salary. However, under current law, the ability for a member to retire under this provision is permissive and the repeal of the provision does not prohibit a member from being dually employed and receiving two salaries and accruing two retirement benefits.

On lines 78-81, the bill provides that retirement contributions are not required by the employer of the elected officer and additional retirement credit may not be earned under the FRS. This provision is specific to renewed members holding positions in the Elected Officers' Class but does not apply to renewed members holding elective office in the Regular Class. In addition, this provision is in conflict with the provisions on lines 329-339, which provide that retirement benefits will be recalculated to include additional service and compensation earned.

On line 197 of the bill, the cross-reference correction to subparagraph 9. is incorrect and the original reference should be reinstated.

VII. Related Issues:

The intent of this bill is to prohibit renewed members serving in an elected office from receiving retirement benefits and a salary, and to restrict such members from vesting in the elected class of the FRS with a second retirement benefit. The bill does not address renewed members serving in an elected class who are in the regular class of the FRS (elected officials in cities and special districts.)

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
