

FINAL BILL ANALYSIS

BILL #: SB 2100

FINAL HOUSE FLOOR ACTION:

80 Y's 39 N's

SPONSOR: Budget (Rep. Workman)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/HB 1405

SUMMARY ANALYSIS

SB 2100 passed the House on May 6, 2011. The bill was approved by the Governor on May 26, 2011, chapter 2011-68, Laws of Florida. Sections 1-40 and 43 of the bill are effective July 1, 2011. Sections 41 and 44 of the bill are effective upon becoming law.

This bill makes several changes to the Florida Retirement System (FRS); however, changes impacting member benefits do not apply to those persons who have already retired from FRS employment. Benefits already earned are not affected by the changes in this bill.

The bill changes the name of the FRS defined benefit program to the Florida Retirement System Pension Plan (pension plan), and changes the name of the defined contribution program from the Public Employee Optional Retirement Program to the Florida Retirement System Investment Plan (investment plan).

Effective July 1, 2011, the bill:

- Requires a 3 percent employee contribution for members of all classes of the FRS pension plan and investment plan.
- Increases the years of service required for vesting from six to eight years of creditable service for employees initially enrolled in the pension plan on or after July 1, 2011.
- Revises the definition of "average final compensation" for members who initially enroll in the pension plan on or after July 1, 2011, to mean the average of the eight highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculating retirement benefits.
- Reduces the interest accrual rate from 6.5 percent to 1.3 percent for members who enter the Deferred Retirement Option Program on or after July 1, 2011.
- Eliminates the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011; however, subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the reinstatement of the COLA, effective June 30, 2016, the current 3 percent cost-of-living adjustment will be reinstated.
- Increases the retirement age and years of service for members of the FRS who initially enroll on or after July 1, 2011.

For fiscal year 2011-12, the bill funds the Division of Retirement in the Department of Management Services with four positions, and \$207,070 in recurring funds and \$31,184 in non-recurring funds. As a result of changes made by the bill, the total FRS cost savings is \$1,910.8 million, with the state saving \$1,181.8 million, counties saving \$615.0 million, and other FRS employers saving \$114.0 million.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ Prior to 1975, members of the FRS were required to make employee contributions. Regular Class members contributed 4 percent of their salary while Special Risk Class members contributed 6 percent.

Today, the Florida Retirement System Act² governs the FRS, which is a multi-employer, non-contributory plan that provides retirement income benefits to 655,367 active members,³ 304,337 retired members and beneficiaries,⁴ and 33,577 members of the Deferred Retirement Option Program.⁵ It 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 182 cities and 231 independent special districts that have elected to join the system.⁶

The membership of the FRS is divided into five membership classes:

- Regular Class⁷ consists of 570,198 members (87.00 percent of the membership);
- Special Risk Class⁸ includes 75,066 members (11.46 percent);
- Special Risk Administrative Support Class⁹ has 71 members (0.01 percent);
- Elected Officers' Class¹⁰ has 2,284 members (0.35 percent); and
- Senior Management Service Class¹¹ has 7,748 members (1.18 percent).¹²

¹ The Florida Retirement System Annual Report, July 1, 2009 – June 30, 2010, at 60.

² Chapter 121, F.S.

³ As of June 30, 2010, the FRS defined benefit plan, also known as the pension plan, had 557,585 members, and the defined contribution plan, also known as the investment plan, had 97,782 members. The Florida Retirement System Annual Report, July 1, 2009 – June 30, 2010, at 1 and 43.

⁴ Id. at 52.

⁵ Id. at 1.

⁶ Id. at 92.

⁷ Regular Class members are those members who do not qualify for membership in the other classes within the FRS. See s. 121.021(12), F.S.

⁸ Members include law enforcement officers, firefighters, correctional officers, correctional probation officers, paramedics, emergency medical technicians, certain professional health care workers within the Department of Corrections and the Department of Children and Family Services, and certain forensic employees. See s. 121.0515, F.S.

⁹ Members are former members of the special risk class who are transferred or reassigned to an administrative support position in certain circumstances. See s. 121.0515(7), F.S.

¹⁰ Membership is comprised of those participants who hold specified elective offices in either state or local government. See s. 121.052, F.S.

¹¹ Members generally are high level executive and legal staff or as specifically provided in law. See s. 121.055, F.S.

¹² Substantive analysis of HB 1405, Department of Management Services, March 15, 2011, at 3 (on file with the Government Operations Subcommittee).

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two plan options available for participation:

- The defined benefit plan, also known as the pension plan; and
- The defined contribution plan, also known as the investment plan.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan),¹³ a defined contribution plan offered to eligible employees as an alternative to the FRS pension plan. The earliest that any member could participate in the investment plan was July 1, 2002.

Benefits under the investment plan accrue in individual member accounts funded entirely by employer contributions and earnings.¹⁴ Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests in the investment plan after completing one work year with an FRS employer.¹⁵ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution. In addition to normal benefits and death benefits, the investment plan also provides disability coverage.¹⁶

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁷ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁸

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁹ Investment management is handled by the State Board of Administration.

A member vests in the pension plan after completing six years of service with an FRS employer.²⁰ Benefits payable under the pension plan are calculated based on years of service X accrual rate X average final compensation.²¹ For most members of the pension plan, normal

¹³ Part II, chapter 121, F.S.

¹⁴ Section 121.4501(7), F.S.

¹⁵ Section 121.4501(6)(a), F.S.

¹⁶ See s. 121.4501, F.S.

¹⁷ See s. 121.4501(8), F.S.

¹⁸ Established by Article IV, s. 4(e) of the State Constitution.

¹⁹ Section 121.025, F.S.

²⁰ Section 121.021(45), F.S.

²¹ Section 121.021(23), F.S., defines “average final compensation to mean:

[T]he average of the 5 highest fiscal years of compensation for creditable service prior to retirement, termination, or death. For in-line-of-duty disability benefits, if less than 5 years of creditable service have been completed, the term “average final compensation” means the average annual compensation of the total number of years of creditable service. Each year used in the calculation of average final compensation shall commence on July 1.

(a) The average final compensation shall include:

1. Accumulated annual leave payments, not to exceed 500 hours; and
2. All payments defined as compensation in subsection (22).

(b) The average final compensation shall not include:

1. Compensation paid to professional persons for special or particular services;

retirement occurs at the earlier attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earlier attainment of 25 years of service or age 55.²³

Optional Retirement Programs

Eligible employees may choose to participate in one of three optional retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program.²⁴
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program.²⁵
- Members of a Florida college may elect to enroll in the State Community College System Optional Retirement Program.²⁶

Normal Retirement Date

Pursuant to current law, members of the Special Risk Class and Special Risk Administrative Support Class reach normal retirement date when they attain six or more years of creditable service and 55 years of age, or complete 25 years of creditable service. Members of all other classes reach normal retirement date when they attain six or more years of creditable service and 62 years of age, or 30 years of creditable service.²⁷

Service Accrual Rate

Members earn retirement credit for each year of covered service at different rates depending on their membership class at the time of such service. The FRS service accrual rates are as follows:²⁸

Membership Class	Service Accrual Rate
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%, 1.63%, 1.65%, or 1.68%
Elected Officers' Class	
• Justices and Judges	3.33%
• All others	3.00%
Senior Management Service Class	2.00%
Regular Class	1.60%, 1.63%, 1.65%, or 1.68%

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing

2. Payments for accumulated sick leave made due to retirement or termination;
3. Payments for accumulated annual leave in excess of 500 hours;
4. Bonuses as defined in subsection (47);
5. Third party payments made on and after July 1, 1990; or
6. Fringe benefits (for example, automobile allowances or housing allowances).

²² Section 121.021(29)(a), F.S.

²³ Section 121.021(29)(b), F.S.

²⁴ Section 121.055(6), F.S.

²⁵ Section 121.35, F.S.

²⁶ Section 1012.875, F.S.

²⁷ Section 121.021(29), F.S.

²⁸ Section 121.091, F.S.

Trust Fund.²⁹ The employer contribution rate is a “blended contribution rate” set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan. The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.³⁰

The following are the current employer contribution rates for each class:³¹

Membership Class	Effective July 1, 2010
Regular Class	9.63%
Special Risk Class	22.11%
Special Risk Administrative Support Class	12.10%
Elected Officers’ Class <ul style="list-style-type: none"> • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • County Officers 	15.20%
Senior Management Service Class	20.65%
	17.50%
	13.43%

After employer contributions are placed into the FRS Contributions Clearing Trust Fund, benefits under the investment plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas benefits under the pension plan are placed into the FRS Trust Fund.³²

Deferred Retirement Option Program

The Deferred Retirement Option Program (DROP) allows a member of the pension plan to retire while continuing employment for up to 60 months. Certain instructional personnel may participate in DROP up to an additional 36 months. While in DROP, the member’s retirement benefits accumulate in the FRS Trust Fund, increased by a cost of living adjustment each July, and earn a monthly interest equivalent to an annual rate of 6.50 percent. Upon termination, the member receives a lump sum DROP payment as a direct payment, a rollover, or a combination partial lump sum payment and rollover.³³

Cost of Living Adjustment

Current law provides that the benefit received by a retiree or beneficiary is increased by a 3 percent cost of living adjustment (COLA) each July based on the June benefit amount. For a retiree who has been retired for less than 12 months on July 1, the first COLA increase is prorated. The COLA applies to all continuing monthly retirement benefits paid under the pension plan.³⁴

Retiree Health Insurance Subsidy

Current law provides a retiree health insurance subsidy to assist retirees of all state-administered pension plan systems in paying health insurance costs. An eligible retiree

²⁹ Section 121.78, F.S.

³⁰ See ss. 121.031 and 121.71, F.S.

³¹ Section 121.71(3), F.S.

³² See ss. 121.4503 and 121.72, F.S.

³³ See s. 121.091(13), F.S.

³⁴ See s. 121.101, F.S.

currently receives an extra \$5 per month for each year of creditable service completed at retirement, with a minimum monthly payment of \$30 and a maximum monthly payment of \$150. A retiree must satisfy the vesting requirements for his or her membership class, unless that person retired due to an in-line-of-duty disability, in order to receive the health insurance subsidy. Also, the retiree must have proof of coverage for eligibility to receive such subsidy.³⁵

Effect of Proposed Changes

The bill makes several changes to the FRS; however, changes impacting member benefits do not apply to those persons who have already retired from FRS employment. Benefits already earned are not impacted by the changes in the bill.

Overview

The bill changes the name of the FRS defined benefit program to the Florida Retirement System Pension Plan (pension plan), and changes the name of the defined contribution program from the Public Employee Optional Retirement Program to the Florida Retirement System Investment Plan (investment plan).

Effective July 1, 2011, the bill:

- Requires a 3 percent employee contribution for members of all classes of the FRS pension plan and investment plan.
- Increases the years of service required for vesting from six to eight years of creditable service for employees initially enrolled in the pension plan on or after July 1, 2011.
- Revises the definition of "average final compensation" for members who initially enroll in the pension plan on or after July 1, 2011, to mean the average of the eight highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculating retirement benefits.
- Reduces the interest accrual rate from 6.5 percent to 1.3 percent for members who enter DROP on or after July 1, 2011.
- Eliminates the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011; however, subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the reinstatement of the COLA, effective June 30, 2016, the current 3 percent cost-of-living adjustment will be reinstated.
- Increases the retirement age and years of service for members of the FRS who initially enroll on or after July 1, 2011.

Contributions

The bill defines the terms "participant contributions," "member contributions," and/or "employee contributions." These contributions are defined as the sum of all amounts deducted from the salary of a member and credited to the member's individual investment accounts by the employer in accordance with s. 121.71(2), F.S. The contributions also include any earnings on these amounts and any other contributions as specified.

Employee Contributions

The bill requires each member of the FRS to contribute 3 percent of his or her gross compensation to the FRS. The contribution is treated as an employer-paid employee contribution. The member must consent to the deduction as a condition of employment. A

³⁵ See s. 112.363, F.S.

member is fully and immediately vested in all employee contributions paid to the investment plan or pension plan, plus interest and earnings thereon.

The bill specifies that if a member terminates employment for three consecutive months for any reason, other than retirement, the member is eligible for a refund in the amount of his or her accumulated contributions as of the date of termination. If a member elects to receive a refund, he or she is considered to have waived all rights under the FRS and to the health insurance subsidy; however, the member does retain the right to purchase his or her prior service credit in accordance with chapter 121, F.S. The refund may not include any interest that the contributions earned, and employer contributions made on behalf of the member are not refundable. A partial refund is prohibited, and a member may not receive a refund if there is a pending or approved qualified domestic relations order filed against the member's account.

The bill amends s. 121.4501, F.S., to provide that a member of the pension plan who chooses to take a refund of employee contributions on or after July 1, 2011, retains his or her prior plan choice upon returning to employment with an FRS employer.

If a member chooses to switch from the pension plan to the investment plan, then a refund is not permitted for any employee contributions or additional payments which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan. The same applies for a member who chooses to switch from the investment plan to the pension plan.

If a member chooses to switch retirement plans and contribution adjustments are required due to employer errors or corrections, the member is entitled to the additional contributions. However, the member is responsible for returning any excess contributions resulting from the correction. This return must be made within the period allowed by the United States Internal Revenue Service. The present value of the member's accumulated benefit remains the same.

The bill also provides a procedure for the repayment of an invalid refund. If a member receives an invalid refund, the member must repay the amount of the invalid refund plus 6.5 percent interest compounded annually on June 30 from the date of the refund until the invalid refund is fully satisfied. The invalid refund must be repaid before the member retires or transfers to the investment plan.

Employer Contributions

The bill also establishes employer contribution rates as follows:

Membership Class	Effective July 1, 2011	Effective July 1, 2012
Regular Class	3.28%	3.28%
Special Risk Class	10.21%	10.21%
Special Risk Administrative Support Class	4.07%	4.07%
Elected Officer's Class		
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	7.02%	7.02%
• Justices and Judges	9.78%	9.78%
• County Officers	9.27%	9.27%
Senior Management Service Class	4.81%	4.81%

Membership Class	Effective July 1, 2011	Effective July 1, 2012
Deferred Retirement Option Program (DROP)	3.31%	3.31%

Unfunded Actuarial Liability

The bill also establishes additional employer contribution rates for the purpose of funding the unfunded actuarial liabilities. Those contributions are as follows:

Membership Class	Effective July 1, 2011	Effective July 1, 2012
Regular Class	0.49%	2.16%
Special Risk Class	2.75%	8.21%
Special Risk Administrative Support Class	0.83%	21.40%
Elected Officer's Class	0.88%	21.76%
<ul style="list-style-type: none"> • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders 	0.77%	12.86%
<ul style="list-style-type: none"> • Justices and Judges 	0.73%	22.05%
<ul style="list-style-type: none"> • County Officers 		
Senior Management Service Class	0.32%	10.51%
Deferred Retirement Option Program (DROP)	0.00%	6.36%

Normal Retirement Date

The bill revises the normal retirement date for any member initially enrolled in the FRS on or after July 1, 2011. Effective July 1, 2011, the bill increases the retirement age and years of service for new members of the Special Risk Class and the Special Risk Administrative Support Class as follows:

- Increases the age from 55 to 60 years of age; and
- Increases the years of creditable service from 25 to 30 years.

It also increases the retirement age and years of service for new members in all other classes as follows:

- Increases the age from 62 to 65 years of age; and
- Increases the years of creditable service from 30 to 33 years.

A member only needs to obtain one of the requirements, either the retirement age or the years of creditable service. The change in normal retirement date does not apply to members enrolled in the FRS prior to July 1, 2011.

Special Risk Class

The bill relocates the membership requirements for qualification in the Special Risk Class from the definition section to the section of law relating to special risk class membership.

Incorrect Membership Classification

The bill amends section 121.71(6), F.S., to provide that if a member is reported to FRS under an incorrect membership by the employer and the contribution is less than the requirement, the employer must pay the difference, plus a delinquent fee of 1 percent for each calendar month,

or part thereof, that the contribution should have been made. If the contribution is more than the required contribution, the employer shall receive a credit toward future contributions.

Average Final Compensation

For members initially enrolled in the FRS on or after July 1, 2011, the definition of "average final compensation" means the average of the eight highest fiscal years of compensation for creditable service prior to retirement for purposes of calculating retirement benefits. For members initially enrolled prior to July 1, 2011, the definition of "average final compensation" continues to be the average of the five highest fiscal years of compensation.

Vesting Requirements

The bill provides that members initially enrolled in the pension plan on or after July 1, 2011, will vest in 100 percent of employer contributions upon completion of eight years of creditable service. For existing members, vesting will remain at six years of creditable service.

Deferred Retirement Option Program

Effective July 1, 2011, members entering DROP will earn interest at a reduced accrual rate of 1.3 percent. The previous accrual rate was 6.5 percent. This change only affects members who enter DROP on or after July 1, 2011. Current DROP participants will maintain the 6.5 percent accrual rate.

Cost-of-Living Adjustment

The bill eliminates the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011. However, subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the reinstatement of the COLA, the new COLA formula will expire effective June 30, 2016, and the current 3 percent cost-of-living adjustment will be reinstated.

Payment of Benefits

Under the investment plan, Senior Management Service Optional Annuity Program, State University System Optional Retirement Program, and State Community College System Optional Retirement Program, the bill prohibits the payment of benefits before termination of employment in certain instances. Benefits may not be payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason prior to termination from all employment relationships with participating employers.

Miscellaneous Provisions

The bill provides a statement of important state interest. It also directs the State Board of Administration and the Department of Management Services to request a private letter ruling and determination letter from the Federal Internal Revenue Service (IRS) upon the bill becoming a law. If the IRS refuses to act on the private letter ruling request, a legal opinion from a tax attorney can be substituted. It also provides that if any portion of the bill would cause the FRS to be disqualified for tax purposes under the Internal Revenue Code, then that portion of the bill would not apply. The State Board of Administration and the Department of Management Services must notify the Legislature if any portion of the bill cannot be implemented.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

D. FISCAL COMMENTS:

For fiscal year 2011-2012, the bill appropriates \$207,070 of recurring funds and \$31,184 of non-recurring funds from the Florida Retirement System Operating Trust Fund to the Division of Retirement within the Department of Management Services for the purpose of implementing this act. It also authorizes four full-time equivalent positions for the Division to implement this act.

Actuarial studies have been performed to determine the cost savings associated with the changes made to the Florida Retirement System. The cost savings are as follows:

Entities Funded by the State	General Revenue	Trust Fund
State	\$191.3 million	\$173.6 million
County School Boards	\$859.1 million	
State Universities	\$71.4 million	
State Colleges	\$60.2 million	
<i>Total</i>	<i>\$1.2 billion</i>	<i>\$173.6 million</i>
Other Entities Not Funded by the State		
Counties	\$615.8 million	
Municipalities / Other	\$111.6million	
<i>Grand Total</i>	<i>\$2.1 billion</i>	<i>\$173.6 million</i>