

Requires a retired member returning to a job eligible for the State University Optional Retirement Program or the State Community College Optional Retirement Program to become a renewed member of those programs.

This bill amends the following sections of the Florida Statutes: 121.012, 121.021, 121.0515, 121.053, 121.055, 121.071, 121.091, 121.122, 121.35, 121.4501, 121.591, and 1012.875.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to the 572,000 active and 319,000 retired members and beneficiaries of its more than 900 state and local government public employers. Originally established in 1970 as the successor to the Teachers' Retirement System and the State and County Officers' and Employees' Retirement System, the FRS is today a combination of five previously separate pension plans. Benefit payments are administered by the Department of Management Services through its Division of Retirement while investment management is undertaken by the Board of Administration. Established as a Section 401(a) government plan under the Internal Revenue Code, its benefits are exempt from federal taxation until received by the employee.

As a defined benefit plan, the FRS "Pension Plan" provides retirement income expressed as a percent of final pay. Members accrue retirement credits based upon their eligibility in one of several membership classes. Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus specified annual leave, yield a monthly annuity benefit at normal retirement. The accrual rates range from 1.60 percent for the Regular Class to 3.33 percent for Justices and Judges. Members seeking early retirement dates receive a five percent reduction in the benefit for each year below their normal age threshold.

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DROP) under which a participant may extend employment for an additional five years - eight years for instructional personnel in district school boards - and receive a lump sum benefit at a fixed rate of interest for that additional service. Enrollment in DROP requires the participant to serve the employer with a deferred resignation from employment at the end of the period.

Reenrollment in the FRS is prohibited for retirees who are initially reemployed on or after July 1, 2010.

Management employees and instructional employees in higher educational units are also permitted to enroll in one of three other separate optional retirement programs that exist outside of FRS authority.

Optional Retirement Programs

Eligible employees may elect to participate in one of three optional retirement programs in lieu of participation in the FRS.

Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program.¹ Employees in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program.² Eligible employees of a community college may elect to enroll in the Community College Optional Retirement Program.³

Changes to the FRS in 2011

The 2011 Legislature enacted⁴ sweeping changes to the FRS, by providing for the following:

- Effective July 1, 2011, required 3 percent employee contribution for all FRS members. DROP participants are not required to pay employee contributions.
- For employees initially enrolled on or after July 1, 2011, the definition of "average final compensation" means the average of the 8 highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculation of retirement benefits. For employees initially enrolled prior to July 1, 2011, the definition of "average final compensation" continues to be the average of the 5 highest fiscal years of compensation.
- For employees initially enrolled in the pension plan on or after July 1, 2011, such members will vest in 100 percent of employer contributions upon completion of 8 years of creditable service. For existing employees, vesting will remain at 6 years of creditable service.
- For employees, initially enrolled on or after July 1, 2011, increased the normal retirement age and years of service requirements, as follows:
 - For Special Risk Class: Increased the age from 55 to 60 years of age; and increased the years of creditable service from 25 to 30.
 - For all other classes: Increased the age from 62 to 65 years of age; and increased the years of creditable service from 30 to 33 years.
- Maintained DROP; however, employees entering DROP on or after July 1, 2011 will earn interest at a reduced accrual rate of 1.3 percent. For employees currently in DROP or entering before July 1, 2011, the interest rate remains 6.5 percent.
- Eliminated the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011. 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.
- To implement the bill for the 2011-12 fiscal year, funded the Division of Retirement with four positions and \$207,070 in recurring funds and \$31,184 in non-recurring funds.

III. Effect of Proposed Changes:

Section 1 creates s. 121.012, F.S., to clarify that the General Provisions (Part I) of Chapter 121, F.S., apply also to the parts of the chapter relating to the Public Employee Optional Retirement Program (Part II) and the FRS contribution rates (Part III).

¹ Section 121.055(6), F.S.

² Section 121.35, F.S.

³ Section 1012.875, F.S.

⁴ Chapter 2011-68, L.O.F.; Senate Bill 2100.

Section 2 amends s. 121.021, F.S., to provide that for investment plan members, normal retirement age is the date a member attains the normal date or is vested in the investment plan pursuant to s. 121.4501(6), F.S., whichever is later.

The bill changes the normal retirement date for Special Risk Class members initially enrolled after July 1, 2012 to:

- Age 55;
- Age 48 and 25 years of service; or
- Age 52 and 25 years of service, including up to 4 years of military service credit.

The bill also increases the amount of time needed to vest in the pension plan from 8 to 10 years, for those initially enrolled in the FRS on or after July 1, 2012.

Section 3 corrects a reference in s. 121.0515(3)(k), F.S., to the appropriate section describing employees eligible for membership in the Special Risk Class. Without this change, the cross-reference in s. 121.0515(3)(k), F.S., incorrectly refers to inclusion of certain forensic employees in s. 121.0515(2)(f), F.S., instead of the correct cross-reference for continued Special Risk Class membership by members who suffer a specified in-line-of-duty injury and can no longer perform Special Risk Class duties, but who remain employed by the same employer at the time of injury in s. 121.0515(2)(i), F.S.

Section 4 amends s. 121.053, F.S., to provide that a retiree from the FRS who is elected for the first time to an office of an FRS employer may not reenroll in the FRS except as provided in s. 121.122, F.S.

Section 5 amends s. 121.055, F.S., to clarify that loans and hardship withdrawals are prohibited in the Senior Management Service Optional Annuity program.

The bill also provides that effective July 1, 2012, a retiree member of the Senior Management Service Optional Annuity Program who returns to covered employment becomes a member of the investment plan.

Section 6 amends s. 121.071, F.S., to clarify that that loans and hardship withdrawals are prohibited in the FRS.

Section 7 amends s. 121.091, F.S., to adjust the DROP deferral ages for members enrolled after July 1, 2011, for those entering DROP based on years of service instead of normal retirement age. This change makes the DROP deferral age 5 years before normal retirement age - age 55 for Special Risk Class members and age 60 for all other members, which will line up the DROP deferral age with the normal retirement ages.

Section 8 amends s. 121.122, F.S., to clarify that a retiree of the pension plan who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

A retiree who is a member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who is employed after July 1, 2012, is a renewed member of the Regular Class of the investment plan. However, if reemployed in a position eligible for participation in the State University System Optional Retirement Program, or the State Community College Optional Retirement Program, the member becomes a renewed member in one of those programs.

Section 9 amends s. 121.35, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State University System Optional Retirement Program. The bill also provides a definition of the term “benefit,” to clarify when distributions received by a member prohibit enrollment as a renewed member in a state-administered retirement system.

Section 10 amends s. 121.4501, F.S., to add that a retired member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who is employed after July 1, 2012, is an “eligible employee” for purposes of the investment plan.

A retiree of the investment plan employed on or after July 1, 2012, shall be a renewed member in the regular class of the investment plan.

Section 11 amends s. 121.591, F.S., clarify that that loans and hardship withdrawals are prohibited in the FRS Investment Plan.

Section 12 amends s. 1012.875, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State Community College System Optional Retirement Program.

The bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provision may apply because this bill potentially requires cities and/or counties to spend money or take action that requires the expenditure of money; however, an exception would apply if the Legislature determines that this bill satisfies an important state interest, and if similarly-situated persons are all required to comply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Actuarial studies would be needed to determine the fiscal impact of some provisions in the bill.

D. Other Constitutional Issues:

The Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.⁵ The “Florida Protection of Public Employee Retirement Benefits Act” prohibits “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 the current taxpayers.”⁶

Provisions in the bill that create additional benefits may require an actuarial study.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Special Risk Class years of service language in section 7 of the bill will need to be adjusted to reflect the changed Special Risk Class language in section 2 of the bill.

The bill may require the expenditure of funds by local governments; if so, the Legislature should consider adding language determining that the bill satisfies an important state interest.

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 Governmental Oversight and Accountability on January 26, 2012:

The committee substitute:

⁵ Section 14, Art. X, Florida Constitution.

⁶ Section 112.61, F.S.

- Adds a definition of “normal retirement age” for investment plan members.
- Changes normal retirement age for Special Risk Class members to age 55, or age 48 with 25 years of service, or age 52 with 25 years of service, including 4 years of military service.
- Adjusts the calculation for early retirement and DROP election dates for Special Risk members, consistent with the changed normal retirement dates.
- Changes vesting in the pension plan from 8 to 10 years.
- Places all new employees eligible for the investment plan into the investment plan, with one year only to elect participation in the pension plan. After the first year, there is no further option to switch.
- Allows a retired member of the investment plan or specified optional annuity programs who returns to state employment to become a renewed member in the Regular Class of the investment plan.
- Requires a retired member returning to a job eligible for the State University Optional Retirement Program or the State Community College Optional Retirement Program to become a renewed member of those programs.

B. Amendments:

None.