

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 Committee on Governmental Oversight and Accountability

BILL: SB 1392

INTRODUCER: Senator Simpson

SUBJECT: Florida Retirement System

DATE: March 12, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Pre-meeting
2.			CA	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1392 makes the following changes to the Florida Retirement System (FRS), **for members initially enrolled in the FRS on or after January 1, 2014:**

- Changes the vesting period in the pension plan from 8 to 10 years;
- Mandates that Elected Officers' Class and Senior Management Service Class members may only join the investment plan;
- Changes the default for members who do not affirmatively choose a plan from the pension plan to the investment plan;
- Closes the Senior Management Service Optional Annuity Program to new members; and
- Changes the out of service disability retirement vesting period from 8 to 10 years.

The bill also lowers the employee's contribution rate from 3% to 2% for all members of the investment plan.

The overall actuarial impact of this legislation on the Florida Retirement System has not been determined at this time.

This bill substantially amends sections 121.021, 121.051, 121.052, 121.055, 121.091, 121.4501, 121.591, 121.71, 121.35, 238.072, 413.051, and 1012.875 of the Florida Statutes.

II. Present Situation:

The 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 The FRS is a contributory system, with all members contributing 3 percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2012, the FRS had 623,011 active members, 334,682 retired members and beneficiaries, and 40,556 active members of the Deferred Retirement Option Program (DROP).³ The FRS consists of 1,000 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities, and also includes the 185 cities and 251 special districts that have elected to join the system.⁴

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

- Regular Class⁵ consists of 535,467 active members, plus 7,675 in renewed membership;
- Special Risk Class⁶ includes 70,005 active members;
- Special Risk Administrative Support Class⁷ has 59 active members;
- Elected Officers' Class⁸ has 2,005 active members, plus 201 in renewed membership; and
- Senior Management Service Class⁹ has 7,295 members, plus 251 in renewed membership.¹⁰

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

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

¹ The Florida Retirement System Annual Report, July 1, 2011 – June 30, 2012, at 38. Available online at: https://www.rol.frs.state.fl.us/forms/2011-12_Annual_Report.pdf

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011.

³ Florida Retirement System 2011-2012 Annual Report, at 54, 62, and 66.

⁴ *Id.*, at 38.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as: law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System 2011-2012 Annual Report, at 55.

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

According to information supplied by the State Board of Administration, approximately 50,000 new hires are processed each year for a retirement plan choice. Historically, about 25% have actively elected the Investment Plan, 21% have actively elected the Pension Plan and 54% have defaulted into the Pension Plan. The following table shows the election statistics for the last 4.5 years:

	Default to Pension Plan	Pension Plan	Investment Plan
FY 08-09	25,923 (56%)	10,672 (22%)	11,116 (23%)
FY 09-10	21,501 (56%)	8,158 (21%)	9,071 (23%)
FY 10-11	21,049 (53%)	9,042 (23%)	9,960 (25%)
FY 11-12	20,064 (53%)	6,976 (18%)	10,937 (29%)
FY 12-13*	<u>13,861 (57%)</u>	<u>3,985 (16%)</u>	<u>6,400 (24%)</u>
TOTAL	96,125 (54%)	37,020 (21%)	44,145 (25%)

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

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

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member’s account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member’s account to the SBA’s suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an inline-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.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 retirement occurs at the earliest 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 earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Optional Retirement Programs

Eligible employees may choose to participate in one of three 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;²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program,²⁶ and

retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ Section 4, Art. IV, Fla. Const.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

²⁶ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the

- Members of a Florida college may elect to enroll in the State Community College System
- Optional Retirement Program.²⁷

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 Trust Fund. 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.²⁸ 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.

The following are the current employer contribution rates for each class:²⁹

Membership Class	Effective July 1, 2012	
	Normal Cost	UAL Rate
Regular Class	3.55%	0.49%
Special Risk Class	11.01%	2.75%
Special Risk Administrative Support Class	3.94%	0.83%
Elected Officer’s Class		
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.51%	0.88%
• Justices and Judges	10.02%	0.77%
• County Officers	8.36%	0.73%
Senior Management Service Class	4.84%	0.32%
Deferred Retirement Option Program (DROP)	4.33%	0.0%

For all membership classes, except the DROP, employees contribute 3 percent of their compensation towards retirement.³⁰

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.³¹

decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

²⁷ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

²⁸ Section 121.70(1), F.S.

²⁹ Section 121.71(4), F.S.

³⁰ Section 121.71(3), F.S.

³¹ See sections 121.4503 and 121.72(1), F.S.

III. Effect of Proposed Changes:

Ten Year Vesting for New Members

Section 1 amends the definition of “vested” or “vesting” in Chapter 121, F.S., to require that members initially enrolled in the FRS on or after January 1, 2014, vest in the pension plan after 10 years of creditable service.

Investment Plan Compulsory for Elected Officer’s Class and Senior Management Service Class

Section 2 amends s. 121.051, F.S., to provide that employees initially enrolled on or after January 1, 2014, in positions covered by the Elected Officers’ Class or the Senior Management Service Class are compulsory members of the investment plan,³² are not permitted to become members of the pension plan, and are not eligible to use the 2nd election opportunity specified in s. 121.4501(4), F.S.³³ Investment plan membership continues if there is subsequent employment in a position covered by another membership class.

Notwithstanding the above, any former member of the pension plan who terminated covered employment in the FRS before the availability to join the investment plan during the initial rollout, or the provisions of 121.4501(4)(a)1, F.S., and who subsequently returns to covered employment under the FRS on or after January 1, 2014, must be reenrolled in the pension plan effective on their date of employment and may use the second election opportunity specified in s. 121.4501(4), F.S., to transfer to the investment plan.

Section 6 amends provisions in s. 121.4501(4), F.S., relating to the FRS Investment Plan, to provide that employees initially enrolled on or after January 1, 2014, in positions covered by the Elected Officers’ Class or the Senior Management Service Class are compulsory members of the investment plan.

The bill also amends the existing member plan choice education component, to provide that new Elected Officers’ Class and Senior Management Service Class members need not be provided that education, since they will be mandatory members of the investment plan.

Prohibits New Elected Officers’ Class Members from Joining the Senior Management Service Class or the Senior Management Service Optional Annuity Program

Section 3 amends s. 121.052, F.S., to prohibit new Elected Officers’ Class members from joining the Senior Management Service Class.

³² Unless the member chooses to withdraw entirely from the FRS pursuant to s. 121.052(3)(d) or s. 121.055(1)(b)2., F.S.

³³ Employees eligible to participate for optional retirement programs under s. 121.051(2)(c) or s. 121.35, F.S., may choose to participate in the optional retirement program or the investment plan. Eligible employees required to participate pursuant to s. 121.051(1)(a), F.S., in the optional retirement program as provided under s. 121.35, F.S., must participate in the investment plan when employed in a position not eligible for the optional retirement program.

Section 4 amends s. 121.055, F.S., to provide that on or after January 1, 2014, elected officers eligible for membership in the Elected Officer's Class may not be enrolled in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program, which is closed to all new members. Current members of the optional annuity program may retain their membership in the program.

Default to Investment Plan

Section 6 amends s. 121.4501, F.S., to provide that an employee eligible to participate in the Investment Plan is initially enrolled in the pension plan, and has five months to make an irrevocable election to participate in either the pension plan or the investment plan. If the employee fails to make an election, the employee is deemed to have elected the investment plan.

Out of Service Disability Retirement Benefit Vesting Period Increased

Sections 5 and 7 amends ss. 121.091, F.S., and 121.591, F.S., respectively, to provide that a member of the pension plan initially enrolled on or after January 1, 2014, who becomes totally and permanently disabled after completing 10 years of creditable service is entitled to a monthly disability benefit.

Regardless of amount of service, a member who becomes totally and permanently disabled *in the line of duty* is entitled to a monthly disability benefit.

Lowered Contribution Rate for Investment Plan Members

Section 8 amends s. 121.71, F.S., to lower the required employee contribution rate for all investment plan members from 3% to 2%, which will require higher employer contributions.

Cross References

Sections 9 through 11 amend ss. 121.35, 238.072, and 413.051, F.S., respectively, to change cross references consistent with the changes in this bill.

Employer Contribution Rates

Section 13 sets up the changes to the contribution rates which will be necessary to fund the benefit changes in the bill. The amounts are currently unknown until an actuarial study is requested and completed.

Important State Interest

Section 14 makes a finding that the bill fulfills an important state interest.

Effective Date

The effective date of the bill is January 1, 2014.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

To the extent this bill requires cities and counties to spend money or take action that requires the expenditure of money, the mandates provision of Art. VII, s. 18, of the State Constitution may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 14 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

This bill contains a statement indicating that the bill fulfills an important state interest and the bill applies to similarly situated persons (all employers who participate in the FRS) so it appears that this exception would apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:*Actuarial Requirements*

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act).

The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It 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.

Contractual Obligations

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.³⁴ This “preservation of rights” provision³⁵ was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.³⁶ The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member’s retirement vest.³⁷

The Florida Supreme Court further held that the “preservation of rights” provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.³⁸ More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.³⁹

This bill does not change any benefits that a member earned prior to January 1, 2014.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁴ Section 121.011(3)(d), F.S.

³⁵ The “preservation of rights” provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So.2d 1033, 1037 (Fla. 1981).

³⁶ *Id.* at 1035.

³⁷ *Id.* at 1036.

³⁸ *Id.* at 1037.

³⁹ *Rick Scott, et al. v. George Williams, et al.*, 2013 WL 173955 (Fla. 2013).

B. Private Sector Impact:

None.

C. Government Sector Impact:

A number of the provisions of the bill will require actuarial studies to determine the fiscal impact on the Florida Retirement System. This legislation impacts the Florida Retirement System in the following ways:

- Shifts new members of the FRS to the investment plan if the member does not take an action to select participation in the pension plan of the FRS;
- Restricts new members initially enrolling in the Senior Management Class or the Elected Officers' Class from participating in the pension plan of the FRS;
- Increases the service credit needed to vest in the pension plan of the FRS from 8 years to 10 years;
- Reduces the employee contributions required for participation in the investment plan, resulting in increased employer contributions on behalf of those same participants.

The Department of Management Services has commissioned an actuarial study to determine the overall fiscal impacts of the policy modifications included in this legislation; the study has not been completed. In lieu of the overall study, the fiscal impacts of the component parts of the legislation are noted below. It should be noted that the fiscal impacts of the components should not be aggregated as a final estimate.

Investment Plan as the default plan

Milliman, Inc., is expected to complete an actuarial study, by March 14, 2013, to determine the actuarial impact on the Florida Retirement System of setting the investment plan as the default plan of participation when the newly enrolled member otherwise fails to make a plan participation election.

Restricting Participation in the pension plan

Milliman, Inc., completed an actuarial study, dated March 1, 2013, to determine the actuarial impact of mandating members initially enrolling in the Florida Retirement on or after January 1, 2014, to be compulsory members of the investment plan. While the Milliman study was broader than the provisions of this legislation (which only mandate members initially enrolling in the FRS on or after January 1, 2014 as members of the Senior Management Class or the Elected Officers' Class to participate in the investment plan), the portion of the study limited to these two affected classes may be illustrative of the actuarial impacts of this legislation.

Based on the March 1 actuarial study, this policy modification has an insignificant actuarial impact on the FRS.

Ten year vesting in the pension plan

In 2012, Milliman, Inc., completed a special study to determine the actuarial impact of increasing the vesting period for the pension plan from 8 years to 10 years for members

initially enrolling on or after July 1, 2012. While this study should not be relied upon for budgeting purposes related to this legislation for the current year, it is illustrative of the magnitude of the potential impact of this policy modification.

Based on this special study, dated January 13, 2012, the savings associated with extending the vesting period in the FRS pension plan is shown in the table below. The savings reflect the potential reductions in employer contributions to be paid into the Florida Retirement System.

Employer	Annualized Impact	Estimated General Revenue Costs	Estimated Trust Fund Costs
State agencies	(\$2.2 m)	(\$1.2 m)	(\$1.0 m)
School Boards	(\$5.9 m)	(\$5.9 m)	0
Universities	(\$0.2 m)	(\$0.2 m)	0
Colleges	(\$0.4 m)	(\$0.4 m)	0
Local Governments	(\$4.4 m)	0	0
Total	(\$13.1 m)	(\$7.7 m)	(\$1.0 m)

Reducing employee contributions for investment plan members

This legislation reduces the retirement contribution paid by employees participating in the investment plan from 3 percent of salary to 2 percent of salary; however, the amounts deposited into the investment plan member accounts are not reduced. This results in an offsetting increase in the employer-paid contribution on behalf of the investment plan members. Based on data from the Department of Management Services, the aggregate employee contributions paid during calendar year 2012 were roughly \$135.1 million. The table below shows the shift in costs from members to the applicable employers. These costs reflect the estimated increases in employer contributions to be paid into the Florida Retirement System.

Employer	2012 Employee Contributions	2012 Payroll	1% member contribution	Estimated General Revenue Cost	Estimated Trust Fund Cost
State agencies	\$26,168,300	\$872,276,682	\$8,722,766	\$4.8 m	\$3.9 m
School Boards	\$51,490,241	\$1,716,341,380	\$17,163,413	\$17.2 m	0
Universities	\$7,244,173	\$241,472,457	\$2,414,724	\$2.4 m	0
Colleges	\$6,588,547	\$219,618,263	\$2,196,182	\$2.2 m	0
Local Governments	\$43,648,599	\$1,454,953,301	\$14,549,533	0	0
Total	\$135,139,862	\$4,504,662,083	\$45,046,620	\$26.6 m	\$3.9 m

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.)

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.
