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: PCS/SB 1114 (776102)

INTRODUCER: Government Oversight and Accountability Committee

SUBJECT: Florida Retirement System

DATE: April 9, 2014 REVISED: 04/09/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	White	Yeatman		**CA SPB 7046 as introduced**
1.	McVaney	McVaney	GO	**Pre-meeting**
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1114 makes the following changes to the Florida Retirement System (FRS), **for members initially enrolled in the FRS on or after July 1, 2015**:

- 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 vesting period in the pension plan from 8 to 10 years;
- 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. However, the overall amount transferred into the investment plan member's account remains the same – with an increase in the employer contribution being substituted for the decrease in employee contribution.

The overall actuarial impact of this legislation on the Florida Retirement System is expected to be insignificant in FY 2014-15 and $48.8 million in FY 2015-16.The actuarial impacts for later periods will be determined in the subsequent annual valuations.

II. Present Situation:

The Florida Retirement System

The FRS is the fourth largest public retirement system in the United States. It is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S., and administered by the Department of Management Services (DMS).[1] The 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.[2]

The FRS consists of 1,008 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 259 special districts that have elected to join the system.[3] Members of the FRS are required to make employee contributions of 3 percent of their salary.[4] As of June 30, 2012, the FRS had 621,774 active members, 347,962 retired members and beneficiaries, and 38,724 active members of the Deferred Retirement Option Program (DROP).[5]

The membership of the FRS is divided into five membership classes:
- Regular Class[6] consists of 536,506 active members, plus 6,461 in renewed membership;
- Special Risk Class[7] includes 68,800 active members;
- Special Risk Administrative Support Class[8] has 58 active members;
- Elected Officers' Class[9] has 2094 active members, plus 152 in renewed membership; and
- Senior Management Service Class[10] has 7,450 members, plus 210 in renewed membership.[11]

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

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[1] Section 121.021(5), F.S.
[2] The Florida Retirement System Annual Report, July 1, 2012 – June 30, 2013, at 16, available at https://www.rol.frs.state.fl.us/forms/2012-13_Annual_Report.pdf (last visited April 5, 2014).
[3] *Id.*, at 17.
[4] 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.
[5] Florida Retirement System 2012-2013 Annual Report, at 17.
[6] The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.
[7] 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.
[8] 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.
[9] 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.
[10] 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.
[11] All figures from Florida Retirement System 2012-2013 Annual Report, at 47.

Members of the FRS have two primary 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.

According to information provided by the SBA, approximately 45,000 new hires are processed each year for a retirement plan choice.[12] Historically, almost 26 percent have actively elected the Investment Plan, roughly 19 percent have actively elected the Pension Plan and over 55 percent have defaulted into the Pension Plan.

	Active Election to Investment Plan	**Active Election to Pension Plan**	**Default to Pension Plan**
FY 2009-10	9,071 (23.42%)	8,158 (21.06%)	21,501 (55.52%)
FY 2010-11	9,960 (24.87%)	9,042 (22.58%)	21,049 (52.56%)
FY 2011-12	10,937 (28.79%)	6,976 (18.37%)	20,064 (52.83%)
FY 2012-13	11,895 (26.23%)	7,345 (16.20%)	26,105(57.57%)
FY 2013-14*	8,771 (25.35%)	5,709 (16.50%)	20,114 (58.14%)
TOTAL	50,634 (25.74%)	37,230 (18.93%)	108,833 (55.33%)

*Note: The counts and percentages for this fiscal year represent only those elections and defaults that occurred between July 1, 2013, and March 28, 2014.

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.[13] With respect to the employer contributions, a member vests after completing one work year with an FRS employer.[14] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[15] The Investment Plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.[16] An FRS member who qualifies for disability while enrolled in the Investment Plan must apply

[12] It is uncertain how many of these new hires stay for their full career.
[13] Section 121.4501(6)(a), F.S.
[14] 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.
[15] Section 121.591, F.S.
[16] See s. 121.4501(16), F.S.

for benefits as if the employee was a member of the Pension Plan. If approved for retirement disability benefits, the member is transferred to the Pension Plan.[17]

The SBA is primarily responsible for administering the Investment Plan.[18] The trustees of the SBA are the Governor as chair, the Chief Financial Officer, and the Attorney General.[19] The SBA selects and contracts with a third-party administrator to provide administrative services.[20]

The contributions paid into the individual investment accounts and into the disability account on behalf of investment plan members is noted below. Note that the amount paid into the retirement account as a percentage of salary includes the employee contribution of 3 percent.

Membership Class	**Retirement Account**	**Disability Account**	**Total Rate**
Regular Class	6.30%	0.25%	6.55%
Special Risk Class	14.00%	1.33%	15.33%
Special Risk Administrative Support Class	7.95%	0.45%	8.40%
Elected Officer's Class			
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	9.38%	0.41%	9.79%
• Justices and Judges	13.23%	0.73%	13.95%
• County Officers	11.34%	0.41%	11.75%
Senior Management Service Class	7.67%	0.26%	7.93%

Pension Plan

The Pension Plan is administered by the secretary of the DMS through the Division of Retirement.[21] Investment management of plan assets is handled by the SBA. As of July 1, 2013, the actuarial funding level of the plan was at 85.9 percent.[22]

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.[23] For members enrolled on or after July 1, 2011, the member vests in the Pension Plan after eight years of creditable service.[24] Benefits payable under the Pension Plan are calculated based on years of service multiplied by

[17] 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 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.
[18] Section 121.4501(8), F.S.
[19] Section 4, Art. IV, Fla. Const.
[20] The third-party administrator may not be a provider or be affiliated with a provider. Section 121.4501(8)(a), F.S.
[21] Section 121.025, F.S.
[22] Florida Retirement System Actuarial Valuation as of July 1, 2013, at I-6. .
[23] Section 121.021(45)(a), F.S.
[24] Section 121.021(45)(b), F.S.

the annual accrual rate multiplied by the member's average final compensation.[25] For most members of the Pension Plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.[26] 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.[27] 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.[28]

Benefits payable to a pension plan retiree are calculated using formulas that include the average final compensation. "Average final compensation" means the average of the five or eight highest fiscal years of compensation for creditable service prior to retirement, termination, or death. If you enrolled in FRS prior to July 1, 2011, your average final compensation will be five years. If you enrolled in FRS on or after July 1, 2011, your average final compensation will be eight years. The average final compensation includes accumulated annual leave payments, not to exceed 500 hours, and all payments defined as compensation in s. 121.021(22). The average final compensation does not include compensation paid to professional persons for special or particular services; payments for accumulated sick leave made due to retirement or termination; payments for accumulated annual leave in excess of 500 hours; bonuses as defined in s. 121.021(47); third party payments made on or after July 1, 1990; or fringe benefits such as automobile or housing allowances.[29]

"Compensation" means the monthly salary paid to a member by his or her employer for work performed arising from that employment. Compensation includes overtime payments paid from a salary fund; accumulated annual leave payments; payments in addition to the employee's base rate of pay if specified conditions apply; amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.[30]

Blended Employer Contribution Rates for the FRS for FY 2013-14

FRS employers are responsible for contributing a percentage of the member's monthly compensation based on membership class 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.[31] In order to address unfunded actuarial liabilities (UAL) of the system, an employer contribution rate is set in statute. The rates are determined annually based on an actuarial study obtained by the DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

[25] Section 121.091, F.S.
[26] Section 121.021(29)(a)1., F.S.
[27] Section 121.021(29)(b)1., F.S.
[28] Sections 121.021(29)(a)2. and (b)2., F.S.
[29] Section 121.021(24), F.S.
[30] Section 121.021(22), F.S.
[31] Section 121.70(1), F.S.

Current Blended Employer Contribution Rates for Each Class:[32]

Membership Class	Normal Cost Rate	UAL Rate	Total Rate
Regular Class	3.53%	2.19%	5.72%
Special Risk Class	11.00%	6.83%	17.83%
Special Risk Administrative Support Class	4.17%	30.56%	34.73%
Elected Officer's Class			
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52%	24.85%	31.37%
• Justices and Judges	10.05%	17.00%	27.05%
• County Officers	8.44%	23.36%	31.80%
Senior Management Service Class	4.81%	12.27%	17.08%
Deferred Retirement Option Program (DROP)	4.63%	7.01%	11.64%

For all membership classes, except DROP, employees contribute 3 percent of their compensation towards retirement.[33]

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.[34]

2013 FRS Valuation

Annually, the Department of Management Services contracts with the state actuary to complete an actuarial valuation of the FRS pension plan. The table below summarizes the market assets, actuarial assets, actuarial liabilities, the unfunded actuarial liabilities, and the funded status of the pension plan.[35] While the market value of the plan assets have fluctuated significantly upward and downward during the period shown, the actuarial assets have gradually grown, mostly due to the smoothing methodologies applied for the pension plan.

Summary of Valuation Results

	Valuation ending June 30, 2011	**Valuation ending June 30, 2012**	**Valuation ending June 30, 2013**
Market Assets	**$129.1 B**	**$122.9 B**	**$133.0 B**
Actuarial Assets	**$126.1 B**	**$127.9 B**	**$131.7 B**
Actuarial Liabilities	**$144.1 B**	**$147.2 B**	**$153.3 B**
Unfunded Actuarial Liabilities	**($18.0 B)**	**($19.3 B)**	**($21.6 B)**
Funded Status	**87.9%**	**86.9%**	**85.9%**

[32] Section 121.71(4)-(5), F.S.
[33] Section 121.71(3), F.S.
[34] *See* sections 121.4503 and 121.72(1), F.S.
[35] Florida Retirement System Actuarial Valuation as of July 1, 2011, at I-3; Florida Retirement System Actuarial Valuation as of July 1, 2012, at I-3; and Florida Retirement System Actuarial Valuation as of July 1, 2013, at I-6.

State University System Optional Retirement Program

On July 1, 1984, the State University Optional Retirement Program (SUSORP) was established as an optional program under the FRS for eligible State University faculty and administrators. The program was later expanded in 1988 to include the State University System Executive Service and in 1999 to include all administrative and professional personnel exempt from career service. As of June 30, 2013, there were 17,780 participants in the SUSORP.

Eligible employees are compulsory participants in SUSORP during their first 90 days of employment. If an eligible member fails to enroll in SUSORP and execute an investment contract with a provider company during this period, the member is deemed to have elected to participate in the FRS. During the next 90 days, the member may choose to participate in the Investment Plan of the FRS. If the member fails to make an election within the first six months of employment, the member is defaulted into the Pension Plan of the FRS.

The SUSORP is a defined contribution plan qualified under the provisions of section 403(b) of the Internal Revenue Code that provides retirement and death benefits through contracts with designated investment providers[36]. The program was established to aid the university system in recruiting employees by offering more portability to employees who don't expect to remain in the State University System long enough to vest in the FRS Pension Plan (ten-year vesting when the SUSORP was created). It provides for full and immediate vesting of all contributions submitted to the participating companies on behalf of the participant upon signing an investment contract within 90 days of employment in an eligible position. Contributions, which are invested as directed by the participant, accumulate in individual participant accounts, together with investment earnings. At retirement, the accumulated benefits are payable to the participant or to his or her beneficiaries or estate.

The employer and employee contribute the percentage of the member's salary designated by law on the member's behalf. The member selects from among the investment products offered by the provider companies in which the employer contribution is invested; a total of 0.01 percent of the salary is retained in the SUSORP Trust Fund for administrative expenses. Effective July 1, 2012, the employer contribution rate is 5.14 percent. Also effective July 1, 2011, there is a mandatory employee contribution of 3 percent. The member may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account. The FRS has an unfunded actuarial liability so the employer also pays a 2.19 percent unfunded actuarial liability contribution to the FRS Trust Fund beginning July 1, 2013. The unfunded actuarial contribution rate is set in section 121.71(5), F.S.

State Community College System Optional Retirement Program

In 1995, the Florida Legislature enacted provisions[37] allowing faculty and certain administrators with a state community college *in the FRS Regular Class* to opt out of the FRS and enroll in an optional retirement program known as the State Community College System Optional Retirement Program (SCCORP). The board of trustees of the employing agency as authorized

[36] The five approved participating companies currently available under SUSORP are: ING, TIAA-CREF, Variable Annuity Life Insurance Company, Jefferson National Life Insurance Company, and MetLife Investors USA Insurance Company.

[37] See chapter 95-392, Laws of Florida.

under section 1001.64, Florida Statutes, must implement this program either individually or in consortia with other community colleges. Effective July 1, 2012, the employer contribution rate is 5.15 percent. Also effective July 1, 2011, there is a mandatory employee contribution of 3 percent. The member is immediately vested upon signing an investment agreement with a provider company and may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account. The FRS has an unfunded actuarial liability so the employer also pays a 2.19 percent unfunded actuarial liability contribution to the FRS Trust Fund beginning July 1, 2013. The unfunded actuarial contribution rate is set in section 121.71(5), F.S.

In 2003, legislation[38] was enacted to give SCCORP participants an open-ended opportunity to transfer back to the FRS. If the employee elects to transfer to the Investment Plan, the employee's SCCORP account is retained and he/she starts anew under the Investment Plan. To transfer to the Pension Plan, the employee pays a specified amount[39] to receive service credit equal to his/her years of service under the SCCORP. No similar transfer opportunity is available for management-level (non-Regular Class) community college employees.

Senior Management Service Optional Annuity Program

In 1986, the Florida Legislature enacted provisions[40] creating the Senior Management Service Class under the FRS and also a non-integrated optional defined contribution plan under the FRS called the Senior Management Service Optional Annuity Program (SMSOAP). The SMSOAP allows certain state senior managers within 90-days of appointment to an eligible position to opt out of the FRS and enroll in the SMSOAP which provides immediate vesting. These certain state senior managers include members in the Senior Management Service with the State of Florida, senior-level management positions with the Florida Legislature, senior-level management positions with the State Board of Administration, senior managers in the Judicial Branch, county health department administrators and directors within the Department of Health and judges and deputy chiefs judges of compensation claims in the Division of Administrative Hearings, as well as Elected Officials who opt to participate in the Senior Management Service Class in lieu of the Elected Officers' Class of the FRS.

SMSOAP was created to aid state government in recruiting senior managers by offering more portability of retirement benefits to those who do not expect to remain in public service long enough to vest in the FRS Pension Plan (seven-year vesting for the Senior Management Service Class at the time the class was created). As of June 30, 2013, there were 31 participants in the SMSOAP.

Under the SMSOAP, retirement and death benefits are provided through contracts with designated investment providers. The state contributes on behalf of the participant a percentage of the participant's salary as required by law. Effective July 1, 2012, the employer contribution rate is 6.27 percent. Also effective July 1, 2011, there is a mandatory employee contribution of 3 percent. The member may voluntarily contribute, by salary reduction, an amount not to exceed

[38] See section 121.051(2)(c)3., Florida Statutes, enacted by chapter 2003-260, Laws of Florida.
[39] The cost for the transfer is a sum representing the present value of the member's accumulated benefit obligation for the affected period of service.
[40] See chapter 86-149, Laws of Florida.

the percentage contributed by the employer to the member's account. The FRS has an unfunded actuarial liability so the employer also pays a 12.27 percent unfunded actuarial liability contribution to the FRS Trust Fund beginning July 1, 2013. The unfunded actuarial liability contribution rate is set in section 121.71(5), F.S.

The SMSOAP is also available to state elected officials who are members of the Elected Officers' Class and who choose membership in the Senior Management Service Class rather than the Elected Officers' Class. The Senior Management Service Class election must be made within six months of assuming office. Elected state officers who transfer to the Senior Management Service Class may, within 90 days of becoming a member of the class, elect membership in the SMSOAP.[41]

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 July 1, 2015, 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 July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan, 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. Investment plan membership continues if there is subsequent employment in a position covered by another membership class.

Section 7 amends provisions in s. 121.4501(4), F.S., relating to the FRS Investment Plan, to provide that employees initially enrolled on or after July, 2015, 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.

Section 4 amends s. 121.055, F.S., to provide that on or after July 1, 2015, elected officers eligible for membership in the Elected Officer's Class may not be enrolled in the Senior

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[41] Assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant capital collateral regional counsels, and assistant attorneys general are not eligible to elect participation in the SMSOAP in lieu of the SMSC.

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. 121.35, F.S., to provide that if a member that is eligible to participate in the State University System Optional Retirement Program fails to execute a program contract after July 1, 2015, within 90 days after the date of eligibility, the member is deemed to have elected membership in the FRS investment plan retroactive to the date of eligibility.

Section 7 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 eight 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 8 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 July 1, 2015, 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 9 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, beginning July 1, 2015.

Cross References

Sections 10 through 12 amend ss. 238.072, 413.051, and s. 1012.875, F.S., respectively, to change cross references consistent with the changes in this bill.

Important State Interest

Section 13 makes a finding that the bill fulfills an important state interest.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because the FRS is a multi-employer pension plan, the effects of this bill extend to all member FRS government employers. 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 13 of the bill), and one of the following relevant exceptions must be met:

- 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.[42] This "preservation of rights" provision[43] 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.[44] 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.[45]

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.[46] 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.[47]

This bill does not change any benefits that a member earned prior to July 1, 2015.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill will pass along to all employer members of the FRS an adjustment to their statutory payroll costs in order to fund the proposed benefit changes. The amount of this change will not be known until the actuarial studies are completed.

B. Private Sector Impact:

None.

[42] Section 121.011(3)(d), F.S.
[43] 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).
[44] *Id*. at 1035.
[45] *Id*. at 1036.
[46] *Id*. at 1037.
[47] *Rick Scott, et al. v. George Williams, et al*., 107 So. 3d 379 (Fla. 2013).

C. Government Sector Impact:

A number of the provisions of the bill will result in fiscal impacts on the FRS. This legislation impacts the FRS in the following ways:

- Requires new members of the FRS to make an active election to participate in the Pension Plan of the FRS; if no active election is made, the member is enrolled in the Investment Plan of the FRS.
- Requires members of the Senior Management Class or the Elected Officers' Class initially enrolling on or after July 1, 2015, to participate in the Investment Plan of the FRS.
- Increases the service credit needed to vest in the Pension Plan of the FRS from 8 years to 10 years for all members initially enrolling in the Pension Plan on or after July 1, 2015.

Based on a special study completed April 22, 2013, the impact on the FRS is insignificant for FY 2014-15 and approximately $48.8 million for FY 2015-16. These costs will be borne by the employers participating in the FRS.

Most of these new costs are based on shifts in contributions from members of the investment plan to the employers participating in the FRS. This is a result of the reduction in the employee contributions required for participation in the Investment Plan from 3 percent to 2 percent of salary. Based on total payroll reported for FY 2012-13, the shift from employee contributions to employer contributions would be roughly $43.4 million annually.

VI. Technical Deficiencies:

The language included on lines 524 through 544 of the PCS may create an ambiguity as to whether employees eligible to participate in the SUSORP may elect to participate in the Pension Plan of the FRS after the first 90 days of eligibility.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 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.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS (776102) by Governmental Oversight and Accountability:
PCS/SB 1114 makes the following changes to the Florida Retirement System (FRS), for members initially enrolled in the FRS on or after July 1, 2015:

- 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 vesting period in the pension plan from 8 to 10 years;
- 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, beginning July 1, 2015. However, the overall amount transferred into the investment plan member's account remains the same – with an increase in the employer contribution being substituted for the decrease in employee contribution.

B. Amendments:

None.