

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: SPB 7108

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Florida Retirement System

DATE: March 18, 2014 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McKay</u>	<u>McVaney</u>	_____	Pre-meeting

I. Summary:

SPB 7108 creates a limited exception to the prohibition on renewed membership in the Florida Retirement System. Retirees who retired from the investment plan, the Senior Management Service Optional Annuity Program (SMSOAP), the State University System Optional Retirement Program (SUSORP) or the State Community College System Optional Retirement Program (SCCSOAP) before July 1, 2010, and are employed in a regularly established position with a covered employer on or after January 1, 2015, will be a renewed member in the FRS as follows:

- Investment Plan (all classes) → Investment Plan (all classes)
- SMSOAP → Investment Plan
- SUSORP → SUSORP
- SCCSORP → SCCSORP

Renewed members will have to meet the vesting requirements of the plans in which they become renewed members. Creditable service does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014, nor may employer or employee contributions be paid into a renewed member's investment plan account for employment with a covered employer during this time period.

The bill's exception to the prohibition on renewed membership does not extend to retirees of the pension plan.

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 most 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, 2013, the FRS had 621,774 active members, 347,962 retired members and beneficiaries, 16,018 disabled retirees, and 38,724 active participants 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, Florida College institutions, and state 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 536,506 active members, plus 6,461 in renewed membership;
- Special Risk Class⁶ includes 68,800 active members;
- Special Risk Administrative Support Class⁷ has 58 active members;
- Elected Officers' Class⁸ has 2,094 active members, plus 152 in renewed membership; and
- Senior Management Service Class⁹ has 7,450 members, plus 210 in renewed membership.¹⁰

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.

¹ The Florida Retirement System Annual Report, July 1, 2012 – June 30, 2013, at 16. Available online at: https://www.rol.frs.state.fl.us/forms/2012-13_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. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System 2012-2013 Annual Report, at 10.

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 2012-2013 Annual Report, at 47.

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

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 (division).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

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 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.

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 (SMSOAP);²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program (SUSORP);²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program (SCCSORP).²⁷

Reemployment Restrictions

For the purposes of the pension plan, a “retiree” means a former member of the FRS or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member.²⁸ For the purposes of the investment plan, a “retiree” means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided the Internal Revenue Code.²⁹

After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting their FRS benefits.

However, there are certain termination requirements and reemployment limitations that affect retirement benefits **if a retiree is employed with an FRS-participating employer** during the first 12 calendar months after the effective retirement date without DROP participation or after the DROP termination date. If a retiree returns to work during the **first six calendar months** of retirement or after their DROP termination date, then their retirement application is voided and all retirement benefits, including any funds accumulated during DROP participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. A retiree cannot become a newly hired employee until after meeting the definition of termination by remaining unemployed for six calendar months.

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

²⁵ The 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 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 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 121.021(60), F.S.

²⁹ Section 121.4501(2)(k), F.S.

A retiree may not receive both a salary and a retirement benefit in the same month during the **seventh through twelfth calendar months** of retirement or after the DROP termination date. There are no exceptions to this reemployment limitation during this period. This restriction applies even if the particular position held is not covered by the FRS. A retiree must inform the division if they work for an FRS employer during the reemployment limitation period.

Suspended retirement benefits for the months a reemployed retiree are employed by an FRS employer during the reemployment limitation period will never be received by the retiree. The reemployed retiree and their employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS employer after a retiree has been retired for 12 calendar months.

If a retiree is re-employed with an FRS participating employer, they will be required to sign a statement that their reemployment does not violate these provisions.³⁰

Before July 1, 2010, there were various exceptions to employment with FRS-covered employers during the reemployment limitation period. All reemployment limitation exceptions that were not specific to educational institutions were closed by operation of HB 479, which also extended from one month to 12 months the exclusionary period immediately after retirement in which a retiree may not be reemployed with any FRS employer.³¹

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (Pension Plan or Investment Plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members who retire again, including former DROP participants, are once more subject to reemployment limitations.

Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent children of a renewed member may qualify for survivor benefits.

Prior to July 1, 2010, retirees of a state-administered retirement system reemployed by an FRS-participating employer were eligible for renewed membership in the FRS. Currently, retirees initially re-employed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and will not earn creditable service toward a subsequent retirement benefit. This restriction from renewed membership includes retirees of the FRS Pension Plan, the

³⁰ The information in this section of the bill analysis comes from the FRS Pension Plan member Handbook, 2013 edition, p. 56, located at: https://www.rol.frs.state.fl.us/forms/member_handbook.pdf. See also ss. 121.091(9), 121.122, and 1012.01(2), F.S.

³¹ Chapter 2009-209, L.O.F.

FRS Investment Plan, the SUSORP, the SMSOAP, and the SCCSORP.³²

Reemployed Retirees without Renewed Membership

Information provided by the DMS indicates that as of December of 2013, there were 5,703 employees who retired by June 30, 2010, and subsequently returned to FRS-covered employment, but are not permitted to be renewed members of the FRS. Of that number, 2,918 were retirees of the pension plan, and 2,616 were retirees of the investment plan. Anecdotal evidence suggests that some of these “retirees” were employees who took distributions from investment plan accounts prior to July 1, 2010, and rolled them into IRAs upon their termination from FRS-covered employment. The enactment on the bar to renewed membership means that anyone who took such a distribution is deemed retired, and cannot become a renewed member of the FRS.

III. Effect of Proposed Changes:

The bill creates a limited exception to the prohibition on renewed membership in the FRS.

Section 1 amends s. 121.053, F.S., to make conforming changes consistent with section 3 of the bill.

Section 2 amends s. 121.055, F.S., to make conforming changes consistent with section 3 of the bill.

Section 3 amends s. 121.122, F.S., to provide that a retiree of:

- the investment plan,
- the State University System Optional Retirement Program,
- the Senior Management Service Optional Annuity Program, or
- the State Community College System Optional Retirement Program,

who retired before July 1, 2010, and is employed in a regularly established position with a covered employer on or after January 1, 2015, will be a renewed member of the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSOPRP or SCCSORP. The renewed member must satisfy the vesting requirements the plan (one year for the investment plan).

Creditable service (including credit toward the retiree health insurance subsidy) does not accrue for a retiree’s employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014. Nor may employer or employee contributions be paid into a renewed member’s investment plan account for employment with a covered employer during this time period.

The bill does not explicitly reference Special Risk Class members, but Special Risk Class members who retired from the investment plan before July 1, 2010, and are employed in a regularly established position with a covered employer on or after January 1, 2015, will be a renewed member Special Risk Class of the investment plan.

³² *Id.*, at 57. See also ss. 121.053, 121.091(9), 121.122, and 238.181, F.S.

Section 4 amends s. 121.4501, F.S., to make conforming changes consistent with section 3 of the bill.

Section 5 makes the finding that the changes made by the bill fulfill an important state interest.

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated . . .”.

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, community colleges, counties, and municipalities.

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:

Employers participating in the FRS that hire employees eligible for renewed membership will incur greater personnel costs associated with contributing to the FRS. Likewise, the public sector employees will also contribute 3% of their salaries to the FRS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Renewed members who are in positions eligible to participate in the Special Risk Class will be treated differently based on the date the member becomes a renewed member. If renewed membership occurs before July 1, 2010, the member is limited to membership in the Regular Class. If the renewed membership occurs on or after January 1, 2015, the member is eligible to participate in the Special Risk Class.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.053, 121.055, 121.122, and 121.4501.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.