

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7107 PCB SAC 16-03 Public Employees

**SPONSOR(S):** Appropriations Committee; State Affairs Committee, Caldwell and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE                            | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|---------|--|
| Orig. Comm.: State Affairs Committee | 10 Y, 8 N           | Moore   | Camechis                                 |
| 1) Appropriations Committee          | 16 Y, 9 N, As<br>CS | Delaney | Leznoff                                  |

### SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits to 622,089 active members, 363,034 retired members and beneficiaries, and 38,058 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 189 cities and 273 independent hospitals and special districts that have elected to join the system.

Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan. In addition to the two primary plans, some eligible members have the choice of participating in optional retirement plans, which include the Senior Management Service Optional Annuity Program (SMSOAP), the State Community College System Optional Retirement Program (SCCSORP), and the State University System Optional Retirement Program (SUSORP).

Effective July 1, 2016, the bill authorizes renewed membership in the investment plan for retirees of the investment plan, the SMSOAP, the SUSORP, or the SCCSORP. Such renewed member will be a renewed member of the appropriate membership class in 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 applicable optional retirement program.

Effective July 1, 2016, the bill establishes new survivor benefits for members of the investment plan who are killed in the line of duty. It provides the same survivor benefits to the spouse and children of such member as those currently provided for pension plan members who are killed in the line of duty. The bill also provides the survivor benefits for any member of the investment plan who has been killed in the line of duty since 2002, when members were first allowed to participate in the investment plan. It also provides a process for calculating the retroactive benefit.

Effective July 1, 2017, the bill changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan. The bill also extends the plan election period to the last business day of the eighth month after the month of hire.

The bill provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner. It also provides allocations for the survivor benefits authorized by the act and provides for adjustments to employer contribution rates in order to fund the proposed changes.

For the 2016-17 fiscal year (FY), the bill appropriates a recurring sum of \$4.2 million from the General Revenue Fund and a recurring sum of \$900 thousand from trust funds to Administered Funds in order to fund the increased employer contribution rates to be paid by state agencies, state universities, state colleges, and school districts. For FY 2016-17, the bill has a projected \$3.6 million fiscal impact on counties and municipalities. See Fiscal Comments section for further discussion.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, 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.<sup>1</sup>

The FRS is a multiple-employer, contributory plan<sup>2</sup> governed by the Florida Retirement System Act.<sup>3</sup> As of June 30, 2014, the FRS provides retirement income benefits to 622,089 active members,<sup>4</sup> 363,034 retired members and beneficiaries, and 38,058 members of the Deferred Retirement Option Program (DROP).<sup>5</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 189 cities and 273 independent hospitals and special districts that have elected to join the system.<sup>6</sup>

The membership of the FRS is divided into five membership classes:<sup>7</sup>

- Regular Class<sup>8</sup> consists of 543,434 members (87.35 percent of the membership);
- Special Risk Class<sup>9</sup> includes 68,593 members (11.02 percent);
- Special Risk Administrative Support Class<sup>10</sup> has 84 members (.01 percent);
- Elected Officers' Class<sup>11</sup> has 2,187 members (0.35 percent); and
- Senior Management Service Class<sup>12</sup> has 7,791 members (1.25 percent).

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:

- The pension plan, which is a defined benefit plan; and
- The investment plan, which is a defined contribution plan.

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<sup>1</sup> *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014*, at 29. A copy of the report can be found online at:

[http://www.dms.myflorida.com/workforce\\_operations/retirement/publications/annual\\_reports](http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports) (last visited February 6, 2016) [hereinafter *Annual Report*].

<sup>2</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011.

<sup>3</sup> Chapter 121, F.S.

<sup>4</sup> As of June 30, 2014, the FRS Pension Plan, which is a defined benefit plan, had 512,364 members, and the investment plan, which is a defined contribution plan, had 109,725 members. *Annual Report*, *supra* note 1, at 112.

<sup>5</sup> *Id.*

<sup>6</sup> Florida Retirement System Participating Employers for Plan Year 2015-16, prepared by the Department of Management Services, Division of Retirement, Revised November 2015, at 8. A copy of the document can be found online at:

<https://www.rol.frs.state.fl.us/forms/part-emp.pdf> (last visited February 6, 2016).

<sup>7</sup> Email from staff of the Division of Retirement dated February 12, 2015 (on file with the State Affairs Committee).

<sup>8</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>9</sup> 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.

<sup>10</sup> 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 FRS. Section 121.0515(8), F.S.

<sup>11</sup> 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.

<sup>12</sup> 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.

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

#### FRS 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 pension plan. The earliest that any member could participate in the investment plan was July 1, 2002.

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>13</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>14</sup>

A member vests immediately in all employee contributions paid to the investment plan.<sup>15</sup> With respect to the employer contributions, a member vests after completing one work year with an FRS employer.<sup>16</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>17</sup>

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers. The amount of money contributed to each member's account varies by class as follows:

| <b>Membership Class</b>                   | <b>Percentage of Gross Compensation</b> |
|---|---|
| Regular Class                             | 6.30%                                   |
| Special Risk Class                        | 14.00%                                  |
| Special Risk Administrative Support Class | 7.95%                                   |
| Elected Officers' Class                   |   |
| • Justices and Judges                     | 13.23%                                  |
| • County Elected Officers                 | 11.34%                                  |
| • Others                                  | 9.38%                                   |
| Senior Management Service Class           | 7.67%                                   |

#### FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (division).<sup>18</sup> Investment management is handled by the SBA.

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.<sup>19</sup> For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>20</sup> A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.<sup>21</sup> The accrual rate varies by class as follows:

<sup>13</sup> Section 121.4501(8), F.S.

<sup>14</sup> Section 4(e), Art. IV, Fla. Const.

<sup>15</sup> Section 121.4501(6)(a), F.S.

<sup>16</sup> If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the State Board of Administration (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, 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.

<sup>17</sup> Section 121.591, F.S.

<sup>18</sup> Section 121.025, F.S.

<sup>19</sup> Section 121.021(45)(a), F.S.

<sup>20</sup> Section 121.021(45)(b), F.S.

<sup>21</sup> Section 121.091, F.S.

| <b>Membership Class</b>                   | <b>Accrual Rate</b>                      |
|---|--|
| Regular Class                             | 1.60%, 1.63%, 1.65%, 1.68% <sup>22</sup> |
| Special Risk Class                        | 3.00%                                    |
| Special Risk Administrative Support Class | 1.60%, 1.63%, 1.65%, 1.68% <sup>23</sup> |
| Elected Officers' Class                   |  |
| • Justices and Judges                     | 3.33%                                    |
| • Others                                  | 3.00%                                    |
| Senior Management Service Class           | 2.00%                                    |

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.<sup>24</sup> For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.<sup>25</sup> Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.<sup>26</sup>

#### Default and Second Election

A new member has until the last business day of the fifth month following the member's month of hire to make a plan selection. If the member fails to make a selection, the member defaults to participation in the pension plan.<sup>27</sup>

After the initial election or default election to participate in either the pension plan or investment plan, a member has one opportunity, at the member's discretion and prior to termination or retirement, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.<sup>28</sup>

#### Disability Benefits

Disability retirement benefits are provided for both in-line-of-duty disability and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,<sup>29</sup> compensate a member who is disabled in the line of duty 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 a 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. A member who qualifies for disability while enrolled in the investment plan may 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.<sup>30</sup>

#### Death or Survivor Benefits

If the member is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.<sup>31</sup> Under the pension plan, if the member has vested at the time of his or her death, the member's joint annuitant<sup>32</sup> is entitled to receive

<sup>22</sup> Section 121.091(1)(a)1., F.S.

<sup>23</sup> Section 121.0515(8)(a), F.S.

<sup>24</sup> Section 121.021(29)(a)1., F.S.

<sup>25</sup> Section 121.021(29)(b)1., F.S.

<sup>26</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>27</sup> Section 121.4501(4), F.S.

<sup>28</sup> Section 121.4501(4)(g), F.S.

<sup>29</sup> See s. 121.4501(16), F.S.

<sup>30</sup> Section 121.091(4)(f), F.S.

<sup>31</sup> For purposes of disbursement of benefits, a member is considered retired as of the date of the death.

<sup>32</sup> A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.

the optional form<sup>33</sup> of payment for the annuitant's lifetime.<sup>34</sup> If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.<sup>35</sup> If the member dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime.<sup>36</sup> Members in the investment plan are not entitled to these death benefits; instead, the member's beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.<sup>37</sup>

### DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.<sup>38</sup> While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.<sup>39</sup>

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.<sup>40</sup>

### Employment after Retirement

Section 121.091, F.S., governs the payment of benefits under the FRS. It requires a member of the FRS to terminate employment to begin receiving benefits, or begin participation in DROP to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with her or his FRS employer.<sup>41</sup> Termination is void if any FRS-participating employer reemploys a member during a specified period of time.<sup>42</sup>

Subsection 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and authorizes those retirees to continue receiving retirement benefits.<sup>43</sup>

An FRS retiree may be reemployed by an FRS employer provided certain requirements are met. A member who retired before July 1, 2010, may be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree is reemployed during months two through 12 after retiring or terminating DROP, the retiree may not receive her or his pension benefit until month 13. However, a retiree who retired before July 1, 2010, may be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.<sup>44</sup>

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12 after retiring or terminating DROP, the retiree may not receive her or

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<sup>33</sup> Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.

<sup>34</sup> Section 121.091(7)(b)1., F.S.

<sup>35</sup> Section 121.091(7)(b)2., F.S.

<sup>36</sup> Section 121.091(7)(d)1., F.S. If the surviving spouse dies, or if the member is not married, the monthly payment that would have otherwise gone to the surviving spouse must be paid for the use and benefit of the member's child or children that are under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Section 121.091(7)(d)2. and 3., F.S.

<sup>37</sup> See s. 121.591(3)(b), F.S.

<sup>38</sup> Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

<sup>39</sup> If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP is 1.3 percent.

<sup>40</sup> See s. 121.4501(2)(k) and (4)(f), F.S.

<sup>41</sup> Section 121.021(39)(a), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Section 121.091(9)(a), F.S.

<sup>44</sup> Section 121.091(9)(b), F.S.

his pension benefit until month 13.<sup>45</sup> The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire on or after July 1, 2010.

### 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 (the member could choose to participate in either the pension plan or the investment plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. 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 child of a renewed member may qualify for survivor benefits.<sup>46</sup>

Currently, retirees initially reemployed 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.<sup>47</sup> This restriction from renewed membership includes retirees of the FRS Pension Plan and the FRS Investment Plan, as well as members of an optional retirement program.

### Health Insurance Subsidy

Upon the conclusion of DROP, or upon service retirement or disability retirement, a retiree is eligible to receive the Health Insurance Subsidy (HIS), which assists retired members in paying for the costs of health insurance.<sup>48</sup> Eligible retirees receive \$5 per month for each year of creditable service used to calculate the retirement benefit. The HIS payment must be at least \$30, but not more than \$150 per month.<sup>49</sup>

### 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,<sup>50</sup>
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program,<sup>51</sup> and
- Members of a Florida College System institution may elect to enroll in the State Community College System Optional Retirement Program.<sup>52</sup>

### Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the division 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.<sup>53</sup> The rate is determined annually based on an actuarial study by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

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<sup>45</sup> Section 121.091(9)(c), .F.S.

<sup>46</sup> Section 121.122(1), F.S.

<sup>47</sup> Section 121.122(2), F.S.

<sup>48</sup> Sections 112.363(1) and (2), F.S.

<sup>49</sup> Section 112.363(3)(e), F.S.

<sup>50</sup> 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.

<sup>51</sup> 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 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.

<sup>52</sup> 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.

<sup>53</sup> Section 121.70(1), F.S.

The following are the current employer contribution rates for each class:<sup>54</sup>

| <b>Membership Class</b>  | <b>Effective July 1, 2015</b> |
|--|-------------------------------|
| Regular Class  | 2.91%                         |
| Special Risk Class   | 11.35%                        |
| Special Risk Administrative Support Class  | 3.71%                         |
| Elected Officers' Class  |                               |
| • Legislators, Governor, Lt. Governor,<br>Cabinet Officers, State Attorneys,<br>Public Defenders | 6.48%                         |
| • Justices and Judges  | 11.39%                        |
| • County Officers  | 8.48%                         |
| Senior Management Service Class  | 4.32%                         |

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.<sup>55</sup>

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.<sup>56</sup>

### **Effect of the Bill**

#### Renewed Membership

Effective July 1, 2016, the bill allows for renewed membership for certain former participants of the investment plan, the Senior Management Service Optional Annuity Program, the State University System Optional Retirement Program (SUSORP), or the State Community College System Optional Retirement Program (SCCSORP). Such renewed member will be a renewed member of the appropriate membership class in 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 SUSORP or the SCCSORP, as applicable. To be eligible for renewed membership, the member must have retired from one of the four specified plans and must be employed in a regularly established position with a covered employer on or after July 1, 2016.

Such renewed member may not qualify for disability retirement benefits and must satisfy the vesting requirements of the specific plan. The bill prohibits certain funds from being paid into the renewed member's account for any employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2016. A renewed member who is not receiving the maximum health insurance subsidy is entitled to earn additional credit toward the subsidy.

#### Line-of-Duty Death Benefits

The bill establishes line-of-duty death benefits for the investment plan. It provides survivor benefits to the spouse and children of members in the investment plan who are killed in the line of duty. The survivor benefits are the same as those currently provided for pension plan members who are killed in the line of duty, which is a monthly payment equal to one-half of the member's salary at the time of death. To receive the benefit, the spouse and children must elect to transfer the balance of the member's investment plan account to the survivor benefit account of the FRS Trust Fund. The line-of-duty death benefits supersede any other distribution that may have been provided by the member's designation of beneficiary.

The bill also provides survivor benefits for any member of the investment plan who has been killed in the line of duty since 2002, when members were first allowed to participate in the investment plan. For

<sup>54</sup> Section 121.71(4), F.S.

<sup>55</sup> Section 121.71(3), F.S.

<sup>56</sup> See ss. 121.4503 and 121.72(1), F.S.

a member killed in the line of duty on or after July 1, 2002, but before July 1, 2016, the initial monthly benefit payable on or after July 1, 2016, will be equal to one-half the member's salary at the time of death, except that it will be:

- Actuarially reduced by the amount of the investment plan payout, if a payout was issued; and
- After the actuarial reduction, increased by the applicable cost-of-living adjustment that would have been payable if the survivor benefit payment had begun the month following the member's death. On each July 1 after the initial payment, the benefit will be increased by the applicable cost-of-living adjustment.

For Fiscal Year 2016-2017, upon notification from DMS that sufficient funds are not available to pay the survivor benefits, the bill directs the SBA to transfer funds from the Administrative Trust Fund to the survivor benefits account to ensure the timely payment of the benefits.

#### Default

For members initially enrolled in the FRS on or after July 1, 2017, the bill extends the plan election period from the last business day of the fifth month after the month of hire to the last business day of the eighth month after the month of hire to choose between participation in the investment plan or pension plan. If the member does not make a selection, the member will default to the investment plan instead of the pension plan. The bill maintains the member's second election option.

#### Important State Interest

The bill provides a statement of important state interest. It provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

#### B. SECTION DIRECTORY:

Section 1 amends s. 121.053, F.S., relating to participation in the Elected Officers' Class for retired members.

Section 2 amends s. 121.055, F.S., relating to the Senior Management Service Class.

Section 3 amends s. 121.091, F.S., relating to benefits payable under the FRS.

Section 4 amends s. 121.122, F.S., relating to renewed membership in the FRS.

Section 5 amends s. 121.4501, F.S., relating to the FRS Investment Plan.

Section 6 amends s. 121.571, F.S., relating to contributions.

Section 7 amends s. 121.591, F.S., relating to payment of benefits.

Section 8 creates s. 121.5912, F.S., relating to the survivor benefit retirement program.

Section 9 amends s. 121.71, F.S., relating to uniform rates.

Section 10 creates s. 121.735, F.S., relating to allocations for member line-of-duty death benefits.

Section 11 amends s. 121.74, F.S., relating to administrative and educational expenses.

Section 12 amends s. 121.75, F.S., relating to allocation for the pension plan.

Section 13 provides a mechanism to fund the survivor benefits account for Fiscal Year 2016-2017.

Section 14 requires employer contribution rates to be adjusted to fund changes made by the act.

Section 15 provides that the act fulfills an important state interest.



Section 16 provides an appropriation.

Section 17 provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

For the 2016-17 fiscal year (FY), the bill appropriates a recurring sum of \$4.2 million from the General Revenue Fund and a recurring sum of \$900 thousand from trust funds to Administered Funds in order to fund the increased employer contribution rates to be paid by state agencies, state universities, state colleges, and school districts. See Fiscal Comments for further discussion.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

Death Benefits and Renewed Membership

The following table provides the projected (costs)/savings for FY 2016-17 (in millions):

| Employers Funded by State | Death Benefits <sup>57</sup> |              | Renewed Membership |              | Total        |              |
|---------------------------|------------------------------|--------------|--------------------|--------------|--------------|--------------|
|                           | GR                           | TF           | GR                 | TF           | GR           | TF           |
| State                     | (0.5)                        | (0.6)        | (0.3)              | (0.3)        | (0.8)        | (0.9)        |
| School Boards             | (1.1)                        |              | (1.6)              |              | (2.7)        |              |
| Universities              | (0.1)                        |              | (.3)               |              | (0.4)        |              |
| State Colleges            | (0.1)                        |              | (.2)               |              | (0.3)        |              |
| <b>Total</b>              | <b>(1.8)</b>                 | <b>(0.6)</b> | <b>(2.4)</b>       | <b>(0.3)</b> | <b>(4.2)</b> | <b>(0.9)</b> |

| Employers Not Funded by State | Death Benefits |  | Renewed Membership |  | Total        |  |
|-------------------------------|----------------|--|--------------------|--|--------------|--|
| Counties                      | (2.5)          |  | (0.6)              |  | (3.1)        |  |
| Cities/Other                  | (.3)           |  | (0.2)              |  | (0.5)        |  |
| <b>Grand Total</b>            | <b>(2.8)</b>   |  | <b>(0.8)</b>       |  | <b>(3.6)</b> |  |

<sup>57</sup> The Milliman actuarial and consulting firm conducted an actuarial study to determine the cost of providing the line-of-duty death benefits created by the bill. The study was completed on January 19, 2016. A copy of the study is on file with the State Affairs Committee.

### Change in Default

The fiscal impact associated with changing the default from the pension plan to the investment plan is as follows:

- FY 2016-17 - No fiscal impact to the state or local governments
- FY 2017-18 - \$50,000 impact to the General Revenue Fund, and \$25,000 impact to local governments
- FY 2018-19 - \$3,900,000 impact to the General Revenue Fund, and \$1,500,000 impact to local governments<sup>58</sup>

Fiscal impacts for years, subsequent to FY 2016-17, will be imbedded in the recommended actuarial employer contribution rates determined in subsequent valuations and considered for funding by future legislatures.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The mandates provision of Art. VII, s. 18, of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exception applies as the Legislature has determined that this bill satisfies an important state interest. In addition, similarly situated persons are all required to comply.

#### **2. Other:**

##### 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.<sup>59</sup> This "preservation of rights" provision<sup>60</sup> was established by the Florida Legislature with an effective date of July 1, 1974.

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<sup>58</sup> The Milliman actuarial and consulting firm conducted an actuarial study to determine the cost associated with changing the default from the pension plan to the investment plan. The study was completed on March 6, 2015. A copy of the study is on file with the State Affairs Committee.

<sup>59</sup> Section 121.011(3)(d), F.S.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.<sup>61</sup> 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.<sup>62</sup>

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.<sup>63</sup> 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.<sup>64</sup>

This bill does not change any benefits that a member earned prior to July 1, 2016.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the SBA and DMS to adopt any rules necessary to maintain the qualified status of the survivor benefit retirement program in the event that the Internal Revenue Service notifies them that the program will cause the FRS to be disqualified for tax purposes under the Internal Revenue Code.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 16, 2016, the Appropriations Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment adjusted the trust fund appropriation in the bill to \$900,000.

This analysis is drafted to the committee substitute as passed by the Appropriations Committee.

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<sup>60</sup> 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).

<sup>61</sup> *Id.* at 1035.

<sup>62</sup> *Id.* at 1036.

<sup>63</sup> *Id.* at 1037.

<sup>64</sup> *Rick Scott, et al. v. George Williams, et al.*, 107 So. 3d 379 (Fla. 2013).