

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1500

INTRODUCER: Senator Mayfield

SUBJECT: Retirement of Instructional Personnel and School Administrators

DATE: March 31, 2017

REVISED: 4/2/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	<u></u>	<u></u>	<u>ED</u>	<u></u>
3.	<u></u>	<u></u>	<u>AED</u>	<u></u>
4.	<u></u>	<u></u>	<u>AP</u>	<u></u>

I. Summary:

SB 1500 directs the State Board of Education to adopt rules prohibiting instructional personnel and school administrators from selecting a retirement date that occurs during the regular school year, except for retirement due to disability or illness.

The bill provides an effective date of July 1, 2017.

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 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.¹ The FRS is a contributory system, with most members contributing three 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, 2016, the FRS had 630,350 active members, 394,907 annuitants, 16,248 disabled retirees, and 29,602 active participants of the Deferred Retirement

¹ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2015-16_CAFR.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.

Option Program (DROP).³ As of June 30, 2016, the FRS consisted of 1,029 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 193 cities and 270 special districts that have elected to join the system.⁴

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

- The Regular Class⁵ consists of 545,680 active members, plus 3,709 in renewed membership;
- The Special Risk Class⁶ includes 70,695 active members;
- The Special Risk Administrative Support Class⁷ has 76 active members;
- The Elected Officers' Class⁸ has 2,026 active members, plus 115 in renewed membership; and
- The Senior Management Service Class⁹ has 7,876 members, plus 143 in renewed membership.¹⁰

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

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

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

Investment Plan

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

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

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of

³ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at 120.

⁴ *Id.*, at 154.

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 Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at 123.

¹¹ Section 121.4501(6)(a), F.S.

employment 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 in-line-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.¹⁸ 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.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 the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.²² Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65.²³ Members may retire before attaining the minimum years of service or age, but will receive an early retirement benefit which is reduced by five-twelfths of one percent per month (or five percent per year) that the member retires early.²⁴

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 in-line-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 FLA CONST. art. IV, s. 4.

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

²⁴ See Sections 121.021 (30), F.S., and 121.091(3), F.S.

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.²⁷

The Deferred Retirement Option Program (DROP)

The Deferred Retirement Option Program (DROP) is a program available to eligible members of the FRS pension plan. 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.²⁸ However, certain instructional personnel may participate in DROP for up to an additional 36 months.²⁹

While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.³⁰ Upon termination of employment, the member receives the total DROP accumulations and the previously determined normal retirement benefits.³¹

For most members, the election to participate in DROP must be made no later than twelve months after reaching normal retirement.³² For K-12 instructional personnel, as defined in s. 1012.01(2), F.S., the election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement.³³

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

²⁶ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the 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 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment up to eight years under certain circumstances.

²⁹ Section 121.091(13)(b)1., F.S.

³⁰ 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.

³¹ Section 121.091(13), F.S.

³² Section 121.091(13)(a)2., F.S.

³³ Section 121.091(13)(a)6., F.S.

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.³⁴

Disability Retirement Benefits for Members of the FRS

There are two types of disability retirement available under the FRS: in the line of duty disability retirement and regular disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work. An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.³⁵ To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.³⁶

Under the FRS pension plan, the minimum benefit under regular disability retirement is 25 percent of the employee's average final compensation.³⁷ The in the line of duty disability benefit is available to members on their first day of employment and is 42 percent of the employee's monthly compensation.³⁸ There is no vesting period for in the line of duty disability benefits.³⁹

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).⁴⁰ Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.⁴¹

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.⁴² Termination is void if any FRS-participating employer reemploys a member during a specified period of time.⁴³

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.⁴⁴

³⁴ See s. 121.4501(2)(k) and (4)(f), F.S.

³⁵ Florida Retirement System Employer Handbook, Disability Retirement, Ch. 10-3, available at https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf (last visited Jan. 19, 2017).

³⁶ Sections 121.091(4)(a) and 121.591(2)(b), F.S.

³⁷ Section 121.091(4)(f), F.S.

³⁸ *Id.*

³⁹ Section 121.091(4)(a)1.b., F.S.

⁴⁰ Section 121.591(2), F.S.

⁴¹ Section 121.591(2)(g), F.S.

⁴² Section 121.091(39)(a), F.S.

⁴³ *Id.*

⁴⁴ Section 121.091(9)(a), F.S.

Before July 1, 2010,⁴⁵ an FRS retiree was allowed to be reemployed by an FRS employer provided certain requirements were met. A member was allowed to be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree was reemployed during months two through 12 after retiring or terminating DROP, the retiree was not authorized to receive her or his pension benefit until month 13. However, a retiree was authorized to be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.⁴⁶

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 his pension benefit until month 13.⁴⁷ The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire and are reemployed 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.⁴⁸

Currently, retirees initially reemployed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and do not earn creditable service toward a subsequent retirement benefit.⁴⁹ 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.

State Board of Education

In accordance with s. 2, Art. IX of the State Constitution, the State Board of Education is a body corporate and must supervise the system of free public education as is provided by law. Its members are appointed by the Governor and confirmed by the Senate.⁵⁰ The State Board of Education is the head of the Department of Education (DOE).⁵¹ It is also the chief implementing and coordinating body of public education in Florida except for the State University System, and its focus is on high-level policy decisions.⁵² The State Board of Education has authority to adopt

⁴⁵ Ch. 2009-209, Laws of Fla.

⁴⁶ Section 121.091(9)(b), F.S.

⁴⁷ Section 121.091(9)(c), F.S.

⁴⁸ Section 121.122(1), F.S.

⁴⁹ Section 121.122(2), F.S.

⁵⁰ Section 1001.01(1), F.S.

⁵¹ Section 20.15(1), F.S.

⁵² Section 1001.02(1), F.S.

rules to implement the provisions of law conferring duties upon it for the improvement of the state system of K-20 public education.⁵³

Regular School Year

Each district school board in Florida is responsible for setting the dates for the opening and closing of schools.⁵⁴ School districts are required to file an official copy of the annual calendar adopted by each school board with the DOE.⁵⁵ Beginning with the 2015-2016 academic school year, schools governed by a district school board may not have an opening date earlier than August 10 each year.⁵⁶ For the 2016-2017 school year, school district calendars began the traditional school year with students reporting for classes between August 10 and August 22.⁵⁷ Dates for the close of the school year were between May 19 and June 8.⁵⁸ Generally, the teachers' school year began seven to ten days before students report and will end seven to ten day after classes end.⁵⁹

Instructional Personnel and School Administrators

Instructional personnel include classroom teachers,⁶⁰ staff who provide student personnel services,⁶¹ librarians and media specialists, other instructional staff,⁶² and education paraprofessionals under the direct supervision of instructional personnel in K-12 schools.⁶³ School administrators include school principals, school or career center directors, and assistant principals in K-12 schools.⁶⁴

Contracts for Instructional Personnel

Three types of contracts are used to employ instructional personnel in Florida— continuing contracts, professional service contracts, and annual contracts. Holding a continuing contract or professional service contract is often referred to as having tenured status.⁶⁵

⁵³ *Id.*

⁵⁴ Section 1001.42(4)(f), F.S.

⁵⁵ Rule 6A-10.019(3), F.A.C.

⁵⁶ Section 1001.42(4)(f), F.S., *as amended by* ch. 2015-6, Laws of Fla.

⁵⁷ Florida Department of Education, *2016-2017 School District Calendars*, <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml> (last visited March 28, 2017).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See* Section 1012.012(2)(s), F.S. Classroom teaches include substitute teachers.

⁶¹ Includes guidance counselors, social workers, career specialists, and school psychologists.

⁶² Includes learning resource specialists.

⁶³ Section 1012(2), F.S.

⁶⁴ Section 1012(3)(c), F.S.

⁶⁵ *See* s. 1012.33(3)(d), F.S. (2010). Tenure is an employment policy which limits a public school district's ability to terminate the employment of instructional personnel. *See* 67B Am. Jur. 2d Schools s. 195; *see also* s. 1012.33(3), F.S. Tenure usually takes the form of a continuous or automatically renewing employment contract. Tenured instructional personnel may only be dismissed for specified reasons after statutorily required hearings. *See Board of Regents v. Roth*, 408 U.S. 564 (1972); 67B Am. Jur. 2d Schools s.211.

Instructional personnel hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁶⁶ A continuing contract entitles the employee to continue employment without the necessity of annual renewal until discontinuation of the position, resignation, dismissal, or removal from continuing contract status.⁶⁷

Instructional personnel hired on or after July 1, 1984, and up to July 1, 2011, were awarded professional service contracts after three years of probationary service on annual contracts if certified, recommended for a professional service contract by the superintendent, and reappointed by the school board.⁶⁸ Professional service contracts automatically renew each year, unless the employee is charged with unsatisfactory performance based upon his or her annual performance evaluation or the employee's performance evaluations indicate chronically ineffective performance.⁶⁹

As of July 1, 2011, instructional personnel under an annual contract and personnel hired thereafter may only be employed on an annual contract basis. An annual contract is an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause.⁷⁰

Contracts for School Administrators

School administrators hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁷¹ After completing three years of probationary service on annual contracts, an administrator was eligible for a continuing contract if her or she was fully certified, recommended for a continuing contract by the superintendent, and reappointed by the school board.⁷²

School administrators hired on or after July 1, 1984, must receive a written contract. Such contract may be for an initial period not to exceed three years and is subject to annual review and renewal.⁷³

⁶⁶ Section 15, ch. 82-242, Laws of Fla. Legislation enacted in 1982 discontinued the award of new continuing contracts effective July 1, 1984.

⁶⁷ Section 231.36(3)(e), F.S. (1981). A continuing contract employee may be dismissed or returned to annual contract status for a period of three years based upon the recommendation of the district school superintendent, school principal, or a majority of the school board. Section 1012.33(4)(b), F.S.; *see also* s. 231.36(4), F.S. (1981).

⁶⁸ Section 1012.33(3)(a)1.-3., F.S. (2010). Probationary employment must be completed in the same school district during a period not to exceed five successive years, except for leave duly authorized and granted. *Id.* Probationary employment may be extended to four years if agreed upon in writing by the district school board and the employee. Section 1012.33(3)(c), F.S. (2010).

⁶⁹ Sections 1012.33(3) and 1012.34(4), F.S. A professional service contract is not required to be renewed if the employee has two consecutive annual performance evaluation ratings of unsatisfactory, two annual ratings of unsatisfactory within a three-year period, or three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. Section 1012.33(3)(b), F.S.

⁷⁰ Section 1012.335(1)(a), F.S.

⁷¹ See *supra* note 64.

⁷² Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

⁷³ Section 1012.34(1)(b), F.S.

Effect of Proposed Changes:

Section 1 directs the State Board of Education to adopt rules prohibiting instructional personnel and school administrators from selecting a retirement date that occurs during the regular school year, except for retirement due to disability or illness.

Section 2 provides an effective date of July 1, 2017.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Instructional personnel and school administrators could be forced to retire earlier or later than their normal retirement date, and therefore may have reduced benefits due to retiring early, may lose out on potential benefits earned by completing DROP, or may earn additional interest on their deferred benefits as a result of the extended time spent in DROP.

C. Government Sector Impact:

Indeterminate.

V. Technical Deficiencies:

School start and end dates, as well as the terms and conditions of employment in instructional personnel and school administrator contracts are negotiated and agreed to by the local school districts. Therefore, the Board of Education may not be the appropriate body to regulate retirement terms.

VI. Related Issues:

District school boards negotiate with the certified bargaining agent (union) that represents the district's instructional personnel to determine the provisions of a collective bargaining agreement, including wages, hours, and terms and conditions of employment.⁷⁴ It is currently unclear, if through terms of employment negotiated during collective bargaining process, instructional personnel and school administrators are being allowed to retire without completing the terms of their contracts, or if contracts for instructional personnel and school administrators are being allowed to end on dates that occur during the school year.

VII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

VIII. 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁷⁴ Sections 447.203(2) and 447.309(1), F.S.