

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 428

INTRODUCER: Senator Brandes

SUBJECT: Local Government Participation in the Florida Retirement System

DATE: March 3, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Favorable</b>
2.			GO	
3.			AP	

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**I. Summary:**

SB 428 removes the option of enrollment in the Florida Retirement System pension plan for employees of a governing body of any municipality, metropolitan planning organization, or special district that submits an application to participate in the Florida Retirement System on or after January 1, 2017. Employees of a municipality, metropolitan planning organization, or special district who submitted an application on or after January 1, 2017, must be enrolled in the defined contribution program.

Employees of a governing body participating, or that has applied to participate, in the Florida Retirement Systems before January 1, 2017, may continue or choose enrollment in the pension plan.

This act applies retroactively to January 1, 2017.

**II. Present Situation:**

**The Florida Retirement System (FRS)**

The FRS is the fourth largest state retirement system in the United States.<sup>1</sup> 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).<sup>2</sup> 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. In 2007, the Institute of

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<sup>1</sup> The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at p. 6, available online at: [https://www.rol.frs.state.fl.us/forms/2015-16\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2015-16_CAFR.pdf). (last visited Feb. 27, 2017).

<sup>2</sup> Section 121.021(5), F.S.

Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.<sup>3</sup>

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 Option Program (DROP).<sup>4</sup> 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.<sup>5</sup> Members of the FRS are required to make employee contributions of 3 percent of their salary.<sup>6</sup>

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

- The Regular Class<sup>7</sup> consists of 545,680 active members, plus 3,709 in renewed membership;
- The Special Risk Class<sup>8</sup> includes 70,695 active members;
- The Special Risk Administrative Support Class<sup>9</sup> has 76 active members;
- The Elected Officers' Class<sup>10</sup> has 2,026 active members, plus 115 in renewed membership; and
- The Senior Management Service Class<sup>11</sup> has 7,876 members, plus 143 in renewed membership.<sup>12</sup>

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.

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<sup>3</sup> The Florida Retirement System Annual Financial Report, July 1, 2015 – June 30, 2016, at 29.

<sup>4</sup> *Id.*, at 120.

<sup>5</sup> *Id.*, at 154.

<sup>6</sup> 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.

<sup>7</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>8</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>9</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 Florida Retirement System. Section 121.0515(8), F.S.

<sup>10</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>11</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.

<sup>12</sup> All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2016, at 123.

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.

A member vests immediately in all employee contributions paid to the investment plan.<sup>13</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>14</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>15</sup> The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.<sup>16</sup> 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.<sup>17</sup>

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>18</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>19</sup>

### ***Pension Plan***

The pension plan is administered by the Secretary of the Department of Management Services through the Division of Retirement.<sup>20</sup> Investment management of the pension plan assets 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 6 years of service with an FRS employer.<sup>21</sup> For members enrolled on or after July 1, 2011, the member vests in the pension plan after 8 years of creditable service.<sup>22</sup> 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.<sup>23</sup> For most members of the pension plan, normal retirement occurs at 30 years of service or

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<sup>13</sup> Section 121.4501(6)(a), F.S.

<sup>14</sup> 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 5 years. If the member is not reemployed as an eligible employee within 5 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.)

<sup>15</sup> Section 121.591, F.S.

<sup>16</sup> Section 121.4501(16), F.S.

<sup>17</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the 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.

<sup>18</sup> Section 121.4501(8), F.S.

<sup>19</sup> FLA.CONST. art. IV, s. 4.

<sup>20</sup> Section 121.025, F.S.

<sup>21</sup> Section 121.021(45)(a), F.S.

<sup>22</sup> Section 121.021(45)(b), F.S.

<sup>23</sup> Section 121.091, F.S.

age 62.<sup>24</sup> For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement occurs at 25 years of service or age 55.<sup>25</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members 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.<sup>26</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>27</sup>
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;<sup>28</sup> and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.<sup>29</sup>

### **Local Government Retirement Systems**

#### ***Optional Participation in the System***

Section 121.051(2)(b)1., F.S., authorizes the governing body of any municipality, metropolitan planning organization, or special district in Florida to elect to participate in the FRS upon proper application to the administrator. Before being approved for participation in the system, the governing body of the municipality, metropolitan planning organization or special district that has a local retirement system must submit to the administrator a certified financial statement showing the condition of the local retirement system within 3 months before the proposed effective date of membership in the FRS. The statement must be certified by a recognized accounting firm that is independent of the local retirement system.

A municipality, metropolitan planning organization, or special district that has an existing retirement system covering the local employees in the units that are to be brought under the FRS may participate only after holding a referendum in which all employees in the affected units have

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<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> 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>28</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>29</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.

the right to participate.<sup>30</sup> Only those employees voting affirmatively in the referendum for coverage under the FRS are eligible.<sup>31</sup> Those employees not participating or electing not to be covered by the FRS shall remain in their present systems and are not eligible for coverage under the FRS.<sup>32</sup> After the referendum, all future employees are compulsory members of the FRS.<sup>33</sup>

At the time of joining the FRS, the governing body of a municipality, planning organization, or special district, may elect to provide, or not provide, benefits based on past service of officers and employees.<sup>34</sup> However, if the employer elects to provide past service benefits, those benefits must be provided for all officers and employees of its covered group.<sup>35</sup>

After a municipality, planning organization, or special district elects to join the FRS and approves it via referendum, the local government may not revoke it, and all present officers and employees electing coverage and all future officers and employees are compulsory members of the FRS.<sup>36</sup> However, there is an exception for the governing body of a hospital licensed under ch. 395, F.S., in certain circumstances.<sup>37</sup>

### ***Annual Report***

The Department of Management Services completes an annual report, which details division activities, findings, and recommendations concerning all government retirement systems.<sup>38</sup> Within DMS, the Division of Retirement's Bureau of Local Retirement Systems issues this annual report. In 2015, DMS published its 35<sup>th</sup> annual report since it started reviewing the local government retirement in 1981, pursuant to s. 112.63, F.S., to ensure that local government retirement plans are funded on an actuarially sound basis. The number of defined benefit local government retirement plans has increased from 355 in 1981 to 490 in 2015.<sup>39</sup> Out of the 490 municipal and special district retirement plans and school boards' early retirement programs, 91 are closed to new members or have frozen benefit accruals.<sup>40</sup>

In aggregate, these plans provide retirement, death, and/or disability benefits to 91,647 retirees, beneficiaries, Deferred Retirement Option Plan (DROP) participants and vested terminated participants.<sup>41</sup> Active plan membership for only the municipalities and special districts retirement plans is 95,522, while school board early retirement program active plan membership is 587.<sup>42</sup> Total plan assets were valued at approximately \$34.99 billion for the municipalities and special districts and \$68.7 million for the school boards' early retirement programs, as of

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<sup>30</sup> Section 121.051(2)(b)2., F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Section 121.051(2)(b)3., F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 121.051(2)(b)4., F.S.

<sup>37</sup> Section 121.051(2)(b)6. and 7., F.S.

<sup>38</sup> Section 112.665(1)(d), F.S.

<sup>39</sup> Local Government Retirement Systems, 2015 Annual Report, p. 1, available at [https://www.rol.frs.state.fl.us/forms/2015\\_Local\\_Report.pdf](https://www.rol.frs.state.fl.us/forms/2015_Local_Report.pdf) (last visited Feb. 27, 2017).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

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

September 30, 2015.<sup>43</sup>

Florida's local government retirement plans experienced mixed results in 2015. There were 484 defined benefit retirement plans as of September 30, 2015.<sup>44</sup> Specifically, there were 200 municipalities and 47 special districts with such plans.<sup>45</sup> Many local governments sponsor defined benefit retirement plans for more than one employee group.<sup>46</sup> The number of active employees in municipal and special district defined benefit plans changed by -2.21 percent, but the number of retirees, beneficiaries, DROP participants and vested terminees changed by +3.34 percent.<sup>47</sup> Covered employees' payroll changed by -0.19 percent, and contributions made to those retirement plans changed by +0.58 percent. The average annual retiree pension for municipal and special district retirement plans is now \$26,728.<sup>48</sup> Asset values for local government retirement plans changed by +14.76 percent to \$34.99 billion.<sup>49</sup>

The measurements for Florida's school boards early retirement programs also had mixed results in 2015.<sup>50</sup> There were only six reporting programs. Active employee membership changed by -86.97 percent, while school board early retirement plans' retirees and vested terminees changed by -2.61 percent.<sup>51</sup> The average annual retiree supplemental pension is now \$5,248. Asset values for school board plans changed by +5.95 percent.<sup>52</sup>

A total of 316 municipal and special district pension plans offer participants a DROP plan.<sup>53</sup>

### III. Effect of Proposed Changes:

**Section 1** closes enrollment in the pension plan to employees of a governing body of any municipality, metropolitan planning organization, or special district that submits an application to the administrator to participate in the Florida Retirement System on or after January 1, 2017. On or after January 1, 2017, such employees must be enrolled in the defined contribution program established pursuant to s. 121.4501, F.S.<sup>54</sup>

Employees of a governing body participating, or that has applied to participate, in the Florida Retirement System before January 1, 2017, may continue or choose enrollment in the pension plan.

**Section 2** provides that the act applies retroactively to January 1, 2017.

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> The Florida Supreme Court held that the Legislature is free under the Florida Constitution to alter retirement benefits prospectively. However, the Legislature may not retroactively alter the benefits to which a member of its retirement system is entitled. *Scott v. Williams* No. SC12-520 (Fla. 2013).

**Section 3** provides that this act is effective upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

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:

Employees of a governing body of a municipality, metropolitan planning organization, or special district that did not submit an application to the administrator to participate in the Florida Retirement System by January 1, 2017, will be enrolled in the defined contribution program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 121.051 of the Florida Statutes.

**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.

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

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