

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 7016

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Florida Retirement System Investment Plan

DATE: February 5, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Ponder	McVaney		GO Submitted as Comm. Bill/Fav

I. Summary:

SPB 7016 amends s. 121.091, F.S., to provide that the State Board Administration (State Board) may not pay benefits to a member of the Florida Retirement System (FRS) who has committed certain criminal offenses prior to retirement. Currently, the criminal forfeiture statute only provides that the Division of Retirement (Division) within the Department of Management Services may not pay benefits when the forfeiture provisions are triggered. Thus, the bill clarifies that the criminal forfeiture provisions in s. 121.091, F.S., apply equally to employees whether a member of the investment plan or a member of the pension plan.

The bill amends s. 121.4501(8), F.S., to provide that the State Board may develop one or more investment products to be offered in the investment plan, consistent with its fiduciary responsibilities. The bill also amends s. 121.4501(20), F.S., to require that the spouse of a member who does not designate his spouse as a primary beneficiary, be notified and acknowledge any such designation. Should the spouse fail to affirmatively acknowledge the designation or if the spouse cannot be found, the member may request the acknowledgement requirement be waived by the State Board through an affidavit.

The bill is expected to have an insignificant fiscal impact on the State Board Administration based on increased workload.

The bill takes effect July 1, 2021.

II. Present Situation:

The Florida Retirement System

The FRS was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the Pension Plan, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement

Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with active members contributing three percent of their salaries.

The FRS is the fourth largest public retirement system in the United States. It is a multi-employer, contributory plan, governed by the Florida Retirement System Act (the Act) in ch. 121, F.S. As of June 30, 2020, the FRS had 644,338 active members, 432,258 annuitants, 15,512 disabled retirees, and 33,593 active participants of the Deferred Retirement Option Program (DROP).² As of June 30, 2020, the FRS consisted of 980 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 177 cities and 149 special districts that have elected to join the system.³

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

- The Regular Class⁴ consists of 550,053 active members and 7,691 in renewed membership;
- The Special Risk Class⁵ includes 75,161 active members and 1,182 in renewed membership;
- The Special Risk Administrative Support Class⁶ has 107 active members and 1 in renewed membership;
- The Elected Officers' Class⁷ has 2,040 active members and 113 in renewed membership; and
- The Senior Management Service Class⁸ has 7,771 active members and 209 in renewed membership.⁹

The FRS contains two basic plans:

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

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division.¹⁰

¹ The Florida Retirement System, Comprehensive Annual Report, July 1, 2019 – June 30, 2020, p. 35, available at https://frs.fl.gov/forms/2019-20_CAFR.pdf (last visited January 22, 2021).

² *Id.* at 160.

³ *Id.* at 195.

⁴ Section 121.021(12), F.S., provides that “Regular Class” consists of all members who are not in the Special Risk Class, Special Risk Administrative Support Class, Elected Officers’ Class, or Senior Management Class.

⁵ Section 121.0515, F.S., establishes the “Special Risk Class” to recognize members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others.

⁶ Section 121.0515(8), F.S., provides that 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.

⁷ Section 121.052, F.S., establishes the “Elected Officers’ Class” 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.

⁸ Section 121.055, F.S. provides that 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.

⁹ Comprehensive Annual Report, July 1, 2019 – June 30, 2020, *supra* note 1 at 163.

¹⁰ Section 121.025, F.S.

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.¹¹ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.¹² 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.¹³ For most current 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 62.¹⁴ 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 55.¹⁵ 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, and members in the Special Risk classes must complete 30 years of service or attain age 60.¹⁶

Designation of Beneficiary(ies) & Spousal Acknowledgement Under the Pension Plan

Section 121.091(8)(a), F.S., governs the designation of beneficiaries under the pension plan and provides that each member, on a form provided for that purpose, may:

designate a choice of one or more persons... as his or her beneficiary who shall receive the benefits, if any, which may be payable in the event of the member's death pursuant to the provisions of this chapter. If no beneficiary is named ... the beneficiary shall be the spouse of the deceased, if living.¹⁷

Rule 60S-4.011, Florida Administrative Code, requires a designation of beneficiary be made on a specified Division form¹⁸ and be filed with the Division.¹⁹ When making the beneficiary designation, a member must attest to his marital status. The most recent designation of beneficiary filed with the Division replaces any previous designation whether made before or after the member's retirement.²⁰

Spousal notification and acknowledgement is required where a married member selects one of the following methods of payment of benefits²¹:

- The maximum retirement benefit payable to the member during his lifetime; or

¹¹ Section 121.021(45)(a), F.S.

¹² Section 121.021(45)(b), F.S.

¹³ Section 121.091, F.S.

¹⁴ Section 121.021(29)(a)1., F.S.

¹⁵ Section 121.021(29)(b)1., F.S.

¹⁶ Sections 121.021(29)(a)2. and (b)2., F.S.

¹⁷ Section 121.091(8)(a), F.S.; see also *Eaves v. Div. of Ret.*, 704 So. 2d 140,141 (Fla. 1st DCA 1997) (noting where a member does not attempt to name a beneficiary, the surviving spouse is entitled to certain death benefits).

¹⁸ Form BEN-001, effective 07/16

¹⁹ Rule 60S-4.011(4)(c), Florida Administrative Code.

²⁰ Rule 60S-4.011(1), Florida Administrative Code.

²¹ See Rule 60S-4.010(1), Florida Administrative Code (requiring members to select one of four optional forms of payment of benefits).

- A retirement benefit payable during his or her lifetime and, in the event of his death within a period of 10 years after his retirement, the same monthly amount to be payable to his beneficiary for the balance of such 10-year period.

If a married member selects either of the above options, that member must have his spouse complete the spousal acknowledgment section of the Division's form.²² If a spousal acknowledgement is not received, the Division provides written notification to the member that his benefits will not commence until:

- Such completed spousal acknowledgment is received by the Division; or
- It is established in writing to the satisfaction of the Division that the spouse cannot be located; or
- In the case of refusal by the spouse to sign the spousal acknowledgment, the Division shall notify the spouse in writing of the option selection, and such notification shall constitute acknowledgment by the spouse.²³

Investment Plan

In 2000, the Public Employee Optional Retirement Program – the Investment Plan – was created within the FRS as a defined contribution plan offered to eligible employees as an alternative to the Pension Plan.²⁴

The State Board is primarily responsible for administering the investment plan.²⁵ The Board of Trustees of the State Board is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.²⁶

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.²⁷ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.²⁸ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.²⁹ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.³⁰ An FRS member who qualifies for disability while enrolled in the investment plan

²² Rule 60S-4.011(9), Florida Administrative Code; *see* Form SA-1, Florida Retirement System Spousal Acknowledgment Form.

²³ Rule 60S-4.011(9)(b), Florida Administrative Code

²⁴ Chapter 200-169, L.O.F.

²⁵ Section 121.4501(8), F.S.

²⁶ FLA CONST. art. IV, s. 4.

²⁷ Section 121.4501(6)(a), F.S.

²⁸ 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.

²⁹ Section 121.591, F.S.

³⁰ *See* s. 121.4501(16), F.S.

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.³¹

Investment Products Offered by the State Board

Multiple providers hired by the State Board furnish the investment options and investment products for Investment Plan members.³² The Investment Plan uses a multi-manager structure for most of the investment funds. Some of the providers are unbundled institutional investment managers, which manage assets in a particular asset class and in a particular style, and which are responsible solely for money management.³³ Other providers provide mutual funds or investment options in collective trusts which are their own funds or funds contracted for or from another money management group.³⁴ Each investment manager:

- Has authority and discretion, delegated by each manager's contract, to invest employee payroll contributions;
- Transmits product values and performance data to the custodian hired by SBA pursuant to Section 212.4501(8), F.S.; and
- Is monitored by manager monitoring guidelines incorporated in each of their contract.

A few examples of investment managers and investment products utilized by the State Board include:

- BlackRock (Short Term Bond EBT, U.S. TIPS Fund F, Russell 3000 Index Fund F);
- Prudential (Core Conservative Bond, Core Plus – Total Return Strategy, High Yield Fund);
- T Rowe Price (T Rowe Price Small Cap Stock Institutional Fund); and
- Principal (Diversified Real assets Fund).

Designation of a Beneficiary(ies) & Spousal Acknowledgment Under the Investment Plan

An Investment Plan member may designate a beneficiary to receive benefits which may be payable in the event of the member's death. If the member does not designate a beneficiary(ies), or if no designated beneficiary survives the member, then the member's beneficiary(ies) will be those specified by s. 121.4501(20), F.S., which are: the deceased member's spouse; or if there is no surviving spouse, then the deceased member's children, or their legal guardian, on their behalf if under 18 years of age; or if no children survive, the deceased member's father or mother, if living; otherwise the deceased member's estate. Section 121.4501(20)(b), F.S., provides that if a member designates a primary beneficiary other than the member's spouse, the member's spouse must sign the beneficiary designation form to acknowledge the designation. This requirement does not apply to the designation of one or more contingent beneficiaries to receive benefits remaining upon the death of the primary beneficiary or beneficiaries.

³¹ 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.

³² Rule 19-13.004(3), Florida Administrative Code

³³ *Id.*

³⁴ *Id.*

Rule 19-11.002, Florida Administrative Code, regulates the designation of beneficiary under Part II of the Act. It requires a beneficiary designation on a form³⁵ adopted by the State Board and that such designation is effective once received by the State Board. The most recent beneficiary designation filed with the State Board shall replace any previous designation whether made before or after the member's termination of employment or retirement. After submitting the designation, the member is responsible for confirming whether the designation has been received.³⁶

If a member is married and designates the spouse as the primary beneficiary, regardless of whether the percentage allocated to the spouse is less than 100%, the member is not required to notify the spouse.³⁷ If a member is married and names a primary beneficiary(ies) other than the member's spouse, the member must notify the spouse and the spouse must acknowledge such designation by signing the beneficiary designation form.³⁸ If the member fails to obtain the spouse's acknowledgement, the beneficiary designation on file at the time of the member's death will be honored only if the spouse's rights as a beneficiary are not compromised under Florida law.³⁹

Forfeiture of State Retirement Benefits

The State Constitution provides that a public office is a public trust, and the people have the right to secure and sustain that trust against abuse.⁴⁰ To guarantee this right, any public officer or employee who is convicted of a felony involving a breach of public trust will be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.⁴¹ Sections 112.3173 and 121.091(5)(f), F.S., implement this constitutional mandate.

Section 112.3173, F.S., provides:

Forfeiture.—Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

Notice must be given to the Commission on Ethics when a defendant is a public officer or employee and that the defendant is alleged to have committed one of the following offenses⁴²:

³⁵ Form IPBEN-1, FRS Investment Plan Beneficiary Designation, rev. 04-16, <http://www.flrules.org/Gateway/reference.asp?No=Ref-07364>.

³⁶ Rule 19-11.002(3), Florida Administrative Code.

³⁷ Rule 19-11.002(5)(a), Florida Administrative Code.

³⁸ Rule 19-11.002(5)(b), Florida Administrative Code.

³⁹ Rule 19-11.002(5)(d), Florida Administrative Code.

⁴⁰ FLA. CONST., art. II, s. 8(d).

⁴¹ *Id.*

⁴² Section 112.3173(4), F.S.

- The committing, aiding, or abetting of an embezzlement of public funds;
- The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
- Bribery in connection with the employment of a public officer or employee;
- Any felony specified in ch. 838, F.S., except ss. 838.15, F.S., and 838.16, F.S.;
- The committing of an impeachable offense;
- The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
- The committing on or after October 1, 2008, of any felony defined in s. 800.04, F.S., against a victim younger than 16 years of age, or any felony defined in ch. 794, F.S. against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.⁴³

The Secretary of the Senate must furnish to the Commission on Ethics notice of any proceeding of impeachment being conducted by the Senate. The Commission on Ethics must forward any notice or document received pursuant to s. 112.3173, F.S., to the governing body – the State Board or Division – of which the public officer or employee is a member.⁴⁴

Whenever the Division or the State Board receives notice or has reason to believe that the rights and privileges of any person under such system are required to be forfeited, the Division or the State Board is required to give notice and hold a hearing in accordance with ch. 120, F.S.

Section 121.091(5)(f), F.S., provides that any member who has been found guilty by a verdict of a jury, or by the court trying a case without a jury, of committing, aiding, or abetting any embezzlement or theft from his or her employer, bribery in connection with the employment, or other felony specified in provisions of the Florida Criminal Code relating to bribery and misuse of public office, except those provisions relating to commercial bribe receiving and commercial bribery, committed prior to retirement, or who has entered a plea of guilty or of nolo contendere to such crime, or any member whose employment is terminated by reason of his or her admitted commitment, aiding, or abetting of such crimes, forfeits all rights and benefits under the Act, except the return of his or her accumulated contributions as of the date of termination.⁴⁵

Any elected official who is convicted by the Senate of an impeachable offense⁴⁶ and any member who, prior to retirement, is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees, or who has been found guilty by such court of

⁴³ Section 112.3173(2)(e), F.S.

⁴⁴ Section 112.3173(4)(d), F.S.

⁴⁵ Section 121.091(5)(f), F.S., referring to s. 838.014 to s. 838.23, F.S., except ss. 838.15, 838.16, F.S.

⁴⁶ Section 121.091(5)(g), F.S.

violating any state law prohibiting strikes by public employees,⁴⁷ shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of the conviction.

The Division may not pay benefits to any member convicted of a felony committed on or after October 1, 2008, defined by the statute as prohibiting lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age against a victim younger than 16 years of age, or defined by the statutes prohibiting sexual battery against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.⁴⁸ However, the Division must return the member's accumulated contributions, if any, that he or she accumulated as of the date of conviction.⁴⁹

Any beneficiary who, by a verdict of a jury or by the court trying the case without a jury, is found guilty, or who has entered a plea of guilty or nolo contendere, of unlawfully and intentionally killing or procuring the death of a member forfeits all rights to the deceased member's benefits under the Act, and the benefits will be paid as if such beneficiary had predeceased the decedent.⁵⁰

Benefits will not be paid by the Division pending final resolution of such charges against a member or beneficiary if the resolution of such charges could require the forfeiture of benefits as provided above.⁵¹

The Investment Plan Trust Fund Forfeiture Account, established by s. 121.4502(3), F.S., is funded by the forfeiture of benefits paid by participants. In accordance with a private letter ruling from the Internal Revenue Service, the forfeiture account may be used for two purposes: (1) payment of Investment Plan Administrative expenses; and (2) reduction of future employer contributions to the Investment Plan.⁵²

For purposes of the pension plan, s. 121.30, F.S., provides that forfeitures shall not be applied to increase the benefits any employee would otherwise receive under the Act.

III. Effect of Proposed Changes:

Section 1 amends s. 121.091(5)(i), F.S., provides authorization to the State Board to withhold the payment of benefits to any member convicted of a specified felonies committed on or after October 1, 2008. The felonies covered in the criminal forfeiture statute include lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age against a victim younger than 16 years of age, or those defined by the statutes prohibiting sexual battery against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office

⁴⁷ Section 121.091(5)(h), F.S.

⁴⁸ Section 121.091(5)(i), F.S.

⁴⁹ *Id.*

⁵⁰ Section 121.091(5)(j), F.S.

⁵¹ Section 121.091(5)(k), F.S.

⁵² Section 121.4502, F.S.; Rule 19-11.008, Florida Administrative Code.

or employment position. It requires the State Board to return the member's accumulated contributions, if any, that the member accumulated as of the date of conviction.

It also requires that benefits not be paid by the State Board pending final resolution of such charges against a member or beneficiary in those circumstances that the charges could require a forfeiture of benefits due to the criminal offenses specified in s. 121.091(5), F.S., and in ch. 112, F.S. (specifically, 112.3173, F.S., as discussed above).

Section 2 amends s. 121.4501(8)(h), F.S., to provide that the State Board, consistent with its fiduciary responsibilities, may develop one or more investment products to be offered in the investment plan.

It also amends s. 121.4501(20), F.S., to provide that if a member is married but does not designate the member's spouse as a primary beneficiary, the spouse must be notified and acknowledge any such designation. The section further provides that if the spouse cannot be located or fails to affirmatively acknowledge such designation, the member may request that the acknowledgement requirement be waived by the State Board through an affidavit setting forth the particular facts and circumstances.

Section 3 provides that the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The State Board may experience additional workload in complying with the spousal notice and acknowledgment requirement, as well as the waiver process. Additionally, it may experience additional workload to the extent it elects to develop investment products for the investment plan.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 934.50 and 330.41.

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.