

**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 Governmental Oversight and Accountability

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BILL: SB 84

INTRODUCER: Senator Rodrigues

SUBJECT: Retirement

DATE: February 3, 2021

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

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

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**I. Summary:**

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits to 644,348 active members, 432,258 retired members and beneficiaries, and 33,593 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, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 177 cities and 151 independent hospitals and special districts that have elected to join the system.

Under current law, members of the FRS have two plan options available for participation: the defined benefit plan, also known as the pension plan, and the defined contribution plan, also known as the investment 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), State Community College System Optional Retirement Program (SCCSORP), and the State University System Optional Retirement Program (SUSORP).

This bill closes the pension plan (defined benefit) to new enrollees, and requires all new enrollees to participate in the investment plan (defined contribution), effective July 1, 2022. The bill does not impact the rights of any current FRS enrollee to select participation in the pension plan or the investment plan. Changes included in the bill only pertain to FRS members initially enrolled in the system on or after July 1, 2022.

Beginning July 1, 2022, members of the SUSORP who fail to timely execute a contract with an SUSORP provider will be deemed to have elected to participate in the FRS investment plan, and members of the SCCSORP will not be permitted to transfer to the FRS after June 30, 2022.

Beginning July 1, 2022, the bill increases the employer paid assessment for administrative and educational services by one basis point. This assessment is expected to generate roughly

\$3.4 million annually for the State Board of Administration to offset additional costs associated with the increase in the number of members participating in the investment plan and an increase in the workload relating to educational services offered to FRS members.

The fiscal impact relating to compulsory membership in the investment plan for members initially enrolling in the FRS on or after July 1, 2022, is unknown at this time. The special actuarial study on such impacts is currently underway. Any impacts will be borne by the employers participating in the FRS.

The bill takes effect July 1, 2021; however, most changes are applicable to public employees on or after July 1, 2022.

## II. Present Situation:

### The Florida Retirement System (FRS)

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 contributory system, with active members contributing three percent of their salaries.<sup>2</sup>

The FRS is a multi-employer, contributory plan, governed by Chapter 121, F.S., the Florida Retirement System Act. As of June 30, 2020, the FRS had 644,348 active members, 432,258 annuitants, 15,512 disabled retirees, and 33,593 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> 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.<sup>4</sup>

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

- The Regular Class<sup>5</sup> has 550,053 active members and 7,691 in renewed membership;
- The Special Risk Class<sup>6</sup> has 75,161 active members and 1,182 in renewed membership;

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<sup>1</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, at p. 35. Available online at: [https://www.rol.frs.state.fl.us/forms/2019-20\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2019-20_CAFR.pdf). (Last visited January 24, 2021.)

<sup>2</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. Members in the Deferred Retirement Option Program do not contribute to the system.

<sup>3</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2020, at p. 160.

<sup>4</sup> *Id.* at 195.

<sup>5</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>6</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.

- The Special Risk Administrative Support Class<sup>7</sup> has 107 active members and one in renewed membership;
- The Elected Officers' Class<sup>8</sup> has 2,040 active members and 113 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,771 active members and 209 in renewed membership.<sup>10</sup>

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

### *Plan Choice*

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.

Typically, when an employee is initially hired in a FRS-covered position, the member has eight months after the month of hire to choose to participate in either the pension plan or the investment plan. If the employee does not choose within that period, a member in the Special Risk Class is deemed to have chosen to participate in the pension plan and all other members are deemed to have chosen to participate in the investment plan. After a member has made an active election to participate in a plan or the member's choice window has expired, the member will have one additional opportunity to choose to switch between plans (this is referred to as the second election).

A member of the FRS who has not completed a choice window is given the opportunity to choose between the pension plan and the investment plan when the member is reemployed in a covered position. Even though the member, other than a member of the Special Risk Class, may have significant service in the pension plan, if the member fails to make an active election to remain in the pension plan, the member will be defaulted into the investment plan upon the expiration of the choice window.

**Table 1** below shows the membership and payroll of the FRS, split between the pension plan and the investment plan.

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<sup>7</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>8</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>9</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>10</sup> All figures are from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2020, at p. 163.

**Table 1. Membership and payroll of the FRS by retirement plan**

	2019			2020		
	Pension Plan	Investment Plan	Total FRS	Pension Plan	Investment Plan	Total FRS
<b>Members</b>	502,146	145,796	647,942	479,043	165,295	644,338
<b>% of Total FRS</b>	77.5%	22.5%		74.3%	25.7%	
<b>Payroll (\$ m)</b>	\$24,534.3	\$8,654.5	\$33,188.9	\$24,765.7	\$9,653.3	\$34,419.1
<b>% of FRS</b>	73.9%	26.1%		72.0%	28.0%	

**Table 2** shows the overall results of plan choice for all FRS participants in a choice window regardless of class. **Table 3** shows the plan choices made by Special Risk Class members, and **Table 4** shows the plan choices made by non-Special Risk Class members. Note that prior to FY 2018-19 the default plan for non-Special Risk Class members was the pension plan, but beginning in FY 2018-20 the default plan became the investment plan. Recent enrollment history indicates that roughly 30-35 percent of the new enrollees participate in the pension plan.

**Table 2. Total FRS Participants in Choice Window**

Fiscal Year	Total Number in Choice Window	Percentage enrolled in Investment Plan	Percentage enrolled in Pension Plan
<b>FY 2017-18</b>	55,669	25%	75%
<b>FY 2018-19</b>	46,492	70%	30%
<b>FY 2019-20</b>	57,978	68%	32%
<b>FY 2020-21 (through Dec.)</b>	23,085	65%	35%

**Table 3. Special Risk Members in Choice Window and Plan Enrollments**

Fiscal Year	Total Number in Choice Window	Enrolled in Investment Plan	% of Total	Enrolled in Pension Plan	% of Total
<b>FY 2017-18</b>	5,918	788	13.3%	5,130	86.7%
<b>FY 2018-19</b>	4,833	503	10.4%	4,330	89.6%
<b>FY 2019-20</b>	5,935	475	8.0%	5,460	92.0%
<b>FY 2020-21 (through Dec.)</b>	2,914	132	4.5%	2,782	95.5%

**Table 4. Non-Special Risk Members in Choice Window and Plan Enrollments**

Fiscal Year	Total Number in Choice Window	Enrolled in Investment Plan	% of Total	Enrolled in Pension Plan	% of Total
<b>FY 2017-18</b>	49,751	13,089	26.3%	36,662	73.7%
<b>FY 2018-19</b>	41,659	31,848	76.4%	9,811	23.6%
<b>FY 2019-20</b>	52,043	38,977	74.9%	13,066	25.1%
<b>FY 2020-21 (through Dec.)</b>	20,171	14,958	74.2%	5,213	25.8%

***Investment Plan***

In 2000, the Public Employee Optional Retirement Program (investment plan) was created as 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.<sup>11</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>12</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>13</sup> The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>14</sup> An FRS 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>15</sup>

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>16</sup> The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>17</sup>

**Table 5** shows the component parts of the investment plan cost structure paid by the participating employers. The investment account amounts are supplemented by three percent contributions by the employees.

**Table 5. Cost Components of the FRS Investment Plan**

<b>Class and Subclass</b>	<b>Investment Account</b>	<b>Disability Account</b>	<b>In-line-of-duty Death Benefits</b>	<b>Total Employer Cost</b>
<b>Regular</b>	3.30%	0.25%	0.05%	3.60%
<b>Special Risk</b>	11.00%	1.33%	1.21%	13.54%
<b>Special Risk Admin.</b>	4.95%	0.45%	0.03%	5.43%
<b>State Officers</b>	5.38%	0.41%	0.15%	6.94%
<b>Judicial Officers</b>	9.23%	0.73%	0.09%	11.05%
<b>Local Officers</b>	7.34%	0.41%	0.20%	8.95%
<b>Senior Management</b>	4.67%	0.26%	0.05%	4.98%

<sup>11</sup> Section 121.4501(6)(a), F.S.

<sup>12</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 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.

<sup>13</sup> Section 121.591, F.S.

<sup>14</sup> See s. 121.4501(16), F.S.

<sup>15</sup> 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.

<sup>16</sup> Section 121.4501(8), F.S.

<sup>17</sup> FLA CONST. art. IV, s. 4.

**Pension Plan**

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<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> 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>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

**Table 6** shows the normal cost of the pension plan (less the employee contribution of 3%) as determined by the state actuary as of July 1, 2019. These costs are supplemented by three percent contributions by employees. The chart also shows the contribution necessary to amortize the pension plan unfunded actuarial liabilities.

**Table 6. Normal Cost and UAL Costs as percent of payroll by Class**

Class or Subclass	Normal Cost less Employee Contribution	Contribution necessary to amortize Unfunded Actuarial Liabilities
Regular	5.19%	4.26%
Special Risk	15.41%	8.95%
Special Risk Admin.	11.13%	30.87%
State Officers	8.76%	60.66%
Judicial Officers	13.64%	28.26%
Local Officers	10.57%	52.59%
Senior Management	6.90%	25.95%
DROP	7.03%	8.29%

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<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.  
<sup>22</sup> Section 121.021(29)(a)1., F.S.  
<sup>23</sup> Section 121.021(29)(b)1., F.S.  
<sup>24</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

**Contribution Rates**

Employers participating in the FRS are required to contribute a specified percentage of each member’s monthly compensation to the Division of Retirement 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>25</sup> The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans. Employers participating in the FRS also pay to the SBA an assessment equal to 0.06% of payroll for administrative and educational expenses.

**Table 7** shows the costs of benefits offered under the FRS plans and paid by employer as determined by the state actuary as of July 1, 2019. The table also shows the statutorily required contribution rates paid by each employer based on class participation.

**Table 7. Plan Costs and Blended Rates as percentage of payroll by Class and Subclass**

Class (Subclass)	Pension Plan (Normal Cost)	Investment Plan	Blended Rates for Normal Cost (effective July 1, 2020)	Blended Rates for UAL costs (effective July 1, 2020)
<b>Regular</b>	5.19%	3.60%	4.84%	3.44%
<b>Special Risk</b>	15.41%	13.54%	15.13%	7.60%
<b>Special Risk Admin.</b>	11.13%	5.43%	9.89%	24.23%
<b>State Officers</b>	8.76%	6.94%	8.38%	48.81%
<b>Judicial Officers</b>	13.64%	11.05%	13.31%	24.70%
<b>Local Officers</b>	10.57%	8.95%	10.07%	37.39%
<b>Senior Management</b>	6.90%	4.98%	6.39%	19.18%
<b>DROP</b>	7.03%	n/a	7.03%	8.29

Although the unfunded actuarial liabilities (UAL) are associated with the pension plan only, the employers pay the contribution rates based on the payroll of both pension plan and investment plan members.

**2020 Actuarial Valuation of the Pension Plan**

Annually, the Department of Management Services contracts with the state actuary to complete an actuarial valuation of the FRS pension plan. **Table 8** below summarizes the actuarial liabilities, actuarial assets, the unfunded actuarial liabilities, and the funded status of the pension plan.<sup>26</sup>

<sup>25</sup> Section 121.70(1), F.S.

<sup>26</sup> Florida Retirement System Actuarial Valuation as of July 1, 2015, at p. 3; Florida Retirement System Actuarial Valuation as of July 1, 2016, at p. 3; Florida Retirement System Actuarial Valuation as of July 1, 2017, at p. 3; Florida Retirement System Actuarial Valuation as of July 1, 2018, at p. 3; Florida Retirement System Actuarial Valuation as of July 1, 2019, at p. 3; and Florida Retirement System Actuarial Valuation as of July 1, 2020, at p. 3.

**Table 8. Summary of Valuation Results**

	Valuation ending June 30, 2015	Valuation ending June 30, 2016	Valuation ending June 30, 2017	Valuation ending June 30, 2018	Valuation ending June 30, 2019	Valuation ending June 30, 2020
<b>Actuarial Liabilities</b>	<b>\$165.5 B</b>	<b>\$170.4 B</b>	<b>\$178.6 B</b>	<b>\$186.0 B</b>	<b>\$191.3 B</b>	<b>\$200.3 B</b>
<b>Actuarial Assets</b>	<b>\$143.2 B</b>	<b>\$145.5 B</b>	<b>\$150.6 B</b>	<b>\$156.1 B</b>	<b>\$161.0 B</b>	<b>\$164.3 B</b>
<b>Unfunded Actuarial Liabilities</b>	<b>(\$22.3 B)</b>	<b>(\$24.9 B)</b>	<b>(\$28.0 B)</b>	<b>(\$29.9 B)</b>	<b>(\$30.3 B)</b>	<b>(\$36.0 B)</b>
<b>Funded Status</b>	<b>86.5%</b>	<b>85.4%</b>	<b>84.3%</b>	<b>83.9%</b>	<b>84.2%</b>	<b>82.0%</b>

**Optional Retirement Programs**

Eligible employees may choose to withdraw from the FRS and 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 (SUSORP);<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 (SCCSORP).<sup>29</sup>

***State University System Optional Retirement Program***

On July 1, 1984, the State University Optional Retirement Program (SUSORP) was established as an optional program under the FRS for eligible State University faculty and administrators. The program was later expanded in 1988 to include the State University System Executive Service and in 1999 to include all administrative and professional personnel exempt from career service.

Eligible employees are compulsory participants in SUSORP during their first 90 days of employment. If an eligible member fails to enroll in SUSORP and execute an investment contract with a provider company during this period, the member is deemed to have elected to participate in the FRS.

The SUSORP is a defined contribution plan qualified under the provisions of section 403(b) of the Internal Revenue Code that provides retirement and death benefits through contracts with

<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. Effective July 1, 2017, the SMSOAP is closed to new members. 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.



designated investment providers<sup>30</sup>. The program was established to aid the university system in recruiting employees by offering more portability to employees who don't expect to remain in the State University System long enough to vest in the FRS pension plan (ten-year vesting when the SUSORP was created). It provides for full and immediate vesting of all contributions submitted to the participating companies on behalf of the participant upon signing an investment contract within 90 days of employment in an eligible position. Contributions, which are invested as directed by the participant, accumulate in individual participant accounts, together with investment earnings. At retirement, the accumulated benefits are payable to the participant or to his or her beneficiaries or estate.

The employer and employee contribute the percentage of the member's salary designated by law on the member's behalf. The member selects from among the investment products offered by the provider companies in which the employer contribution is invested; a total of 0.01 percent of the salary is retained in the SUSORP Trust Fund for administrative expenses. Effective July 1, 2012, the employer contribution rate is 5.14 percent. In addition, effective July 1, 2011, there is a mandatory employee contribution of three percent. The member may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account.

#### ***State Community College System Optional Retirement Program***

In 1995, the Florida Legislature enacted provisions<sup>31</sup> allowing faculty and certain administrators with a state community college *in the FRS Regular Class* to opt out of the FRS and enroll in an optional retirement program known as the State Community College System Optional Retirement Program (SCCSORP). The board of trustees of the employing agency as authorized under section 1001.64, Florida Statutes, must implement this program either individually or in consortia with other community colleges. Effective July 1, 2012, the employer contribution rate is 5.15 percent. In addition, effective July 1, 2011, there is a mandatory employee contribution of three percent. The member is immediately vested upon signing an investment agreement with a provider company and may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account.

In 2003, legislation<sup>32</sup> was enacted to give SCCSORP participants an open-ended opportunity to transfer back to the FRS. If the employee elects to transfer to the investment plan, the employee's SCCORP account is retained and he/she starts anew under the investment plan. To transfer to the pension plan, the employee pays a specified amount<sup>33</sup> to receive service credit equal to his/her years of service under the SCCORP. No similar transfer opportunity is available for management-level (non-Regular Class) community college employees.

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<sup>30</sup> The five approved participating companies currently available under SUSORP are: Equitable, TIAA, AIG (VALIC), VOYA Financial, and MetLife Insurance Company (USA).

<sup>31</sup> See chapter 95-392, Laws of Florida.

<sup>32</sup> See section 121.051(2)(c)3., Florida Statutes, enacted by chapter 2003-260, Laws of Florida.

<sup>33</sup> The cost for the transfer is a sum representing the present value of the member's accumulated benefit obligation for the affected period of service.

### III. Effect of Proposed Changes:

The bill requires all members initially enrolled in the FRS on or after July 1, 2022, to participate in the investment plan. Employees who are initially enrolled in the FRS before July 1, 2022, will not have their retirement choices impacted. Specifically, the bill:

- Closes the pension plan (defined benefit plan) to new enrollees, except investment plan members who become totally and permanently disabled or die in-the-line-of-duty;
- Prohibits members participating in the State Community College System Optional Retirement Program from transferring to the FRS after June 30, 2022.
- Prohibits elected officials from joining the Senior Management Class in lieu of participation in the Elected Officers Class;
- Requires that, if a member eligible to withdraw from the FRS to participate in the State University System Optional Retirement Program fails to execute a contract with a SUSORP investment provider within 90 days after eligibility, the member is deemed to have elected membership in the FRS investment plan, retroactive to the date of eligibility; and
- Increases the employer-paid assessment for administrative and educational services by one basis point.

#### **Closing the Pension Plan**

The bill provides that new enrollees in the FRS will be compulsory members of the investment plan. Enrollees initially enrolled in the system before July 1, 2022, will continue to have a choice between the two primary plans, but members enrolled on or after July 1, 2022, will be automatically enrolled into the investment plan.

Except for members who are eligible for an optional retirement plan, or eligible to withdraw from the FRS, all other new members will be compulsory members of the investment plan.

#### **Optional Retirement Programs**

The bill provides that an employee who has elected to participate in the State Community College System Optional Retirement Program may elect to withdraw from the optional retirement program and transfer to the FRS before July 1, 2022. On or after that date, an employee who elects to participate in the State Community College System Optional Retirement Program may not transfer out of the optional retirement program. As a result, the bill makes the employee's election to participate in this optional program irrevocable on and after July 1, 2022.

The bill provides that new enrollees who are eligible for the State University System Optional Retirement Program will default to the FRS investment plan on and after July 1, 2022, if the member does not elect to participate in the optional retirement program. Currently, the member defaults into the pension plan.

## **Elected Officials**

The bill prohibits elected officials from joining the Senior Management Service Class in lieu of participating in the Elected Officers' Class, after June 30, 2022. Elected officials can participate in the FRS in the Elected Officers' Class or withdraw from the system.<sup>34</sup>

## **Assessment for Administrative and Educational Services**

The bill increases the employer-paid assessment for administrative and educational services by one basis point, effective July 1, 2022. The revenues from this assessment are used by the SBA to provide administrative services for the investment plan and financial educational services for all members of the FRS.

The bill provides a statement of important state interest.

The bill takes effect July 1, 2022

### **Section by section:**

**Section 1** amends s. 121.051, F.S., to limit the ability of members of the SCCSORP to transfer to the FRS on or after June 30, 2022; provide for compulsory membership in the FRS investment plan for employees initially enrolled after a specified date; and authorize certain employees to participate in the investment plan.

**Section 2** amends s. 121.052, F.S., to prohibit members of the Elected Officers' Class from joining the Senior Management Service Class after June 30, 2022.

**Section 3** amends s. 121.35, F.S., to provide that certain participants in the optional retirement program for the State University System have a choice between the optional retirement program and the FRS investment Plan; and provide for compulsory membership in the investment plan for employees initially enrolled after June 30, 2022, who fail to execute within 90 days of eligibility a contract with a provider participating in the SUSORP.

**Section 4** amends s. 121.4501, F.S., to require certain employees initially enrolled in the FRS on or after July 1, 2022, to be compulsory members of the investment plan; provide for the transfer of certain contributions; revise a provision relating to acknowledgment of an employee's election to participate in the investment plan; revise the education component; and delete the obligation of system employers to communicate the existence of both retirement plans.

**Section 5** amends s. 121.74, to increase the employer assessment for administrative and educational expenses by one basis point, effective July 1, 2022.

**Section 6** amends s. 238.072, F.S., to conform cross references.

**Section 7** amends s. 413.051, F.S., to conform cross references.

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<sup>34</sup> Members of the Elected Officers' Class may withdraw from the FRS. Section 121.052(3), F.S.

**Section 8** provides that the act fulfills an important state interest.

**Section 9** provides an effective date of July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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 action that requires the expenditure of money. An exception to this provision applies in instances where the legislature finds that the bill fulfills an important state interest and when similarly situated persons are required to comply. This bill contains a statement indicating that the bill fulfills an important state interest and the bill applies to similarly situated persons (all employers who participate in the FRS) so it appears that this exception would apply.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

###### Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida must 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 that 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>35</sup> This “preservation of rights” provision<sup>36</sup> was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.<sup>37</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>38</sup>

The Florida Supreme Court further held that the “preservation of rights” provision was not intended to bind future legislatures from prospectively altering benefits that accrue for future state service.<sup>39</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>40</sup>

This bill does not change any benefits that an FRS member has earned prior to July 1, 2022. In fact, members enrolled in the FRS before July 1, 2022, should experience no change in the benefits available under the FRS. The bill only changes the FRS system for participants initially enrolling in the system on or after July 1, 2022.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

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<sup>35</sup> Section 121.011(3)(d), F.S.

<sup>36</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>37</sup> *Id.* at 1035.

<sup>38</sup> *Id.* at 1036.

<sup>39</sup> *Id.* at 1037.

<sup>40</sup> *Scott v. Williams*, 107 So.3d 379 (Fla.2013).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact relating to compulsory membership in the investment plan for members initially enrolling in the FRS on or after July 1, 2022, is unknown at this time. The special actuarial study on such impacts is currently underway. Any impacts will be borne by the employers participating in the FRS.

Beginning July 1, 2022, the bill increases the employer paid assessment for administrative and educational services by one basis point. This assessment is expected to generate roughly \$3.4 million annually for the State Board of Administration to offset additional costs associated with the increase in the number of members participating in the investment plan and an increase in the workload relating to educational services offered to FRS members.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 121.051, 121.052, 121.35, 121.4501, 121.74, 238.072, and 413.051 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.