

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 1670

INTRODUCER: Senator Broxson

SUBJECT: Deferred Retirement Option Program

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	_____	_____	<u>AP</u>	_____

I. Summary:

The bill increases the extended participation period in the Deferred Option Retirement Program (DROP) available to K-12 instructional and administrative personnel from 36 additional to 60 additional months after the initial 60-month DROP period. Such personnel must be participating in DROP after July 1, 2023, and on or before June 30, 2029, to be eligible for this 60-month DROP extension. Eligibility for the 60-month DROP extension period is subject to approval by an authorized supervisor.

State and local governments that participate in the Florida Retirement System will incur increased costs associated with funding the benefits granted by this bill. At this time, the bill does not include the requisite contributions to fund these benefits. An actuarial study of the impact of this legislation has been requested but has not yet been completed.

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

The bill takes effect July 1, 2023.

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.¹ The FRS is a contributory system, with active members contributing 3 percent of their salaries.²

The FRS is a multi-employer plan, governed by ch. 121, F.S., the “Florida Retirement System Act.” As of June 30, 2022, the FRS had 629,073 active non-retired members, 448,846 annuitants, 14,858 disabled retirees, and 28,827 active participants of the Deferred Retirement Option Program (DROP).³ As of September 2022, the FRS consisted of 990 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 includes the 180 cities and 153 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 537,128 active members and 7,806 in renewed membership;
- The Special Risk Class⁶ includes 72,925 active members and 1,100 in renewed membership;
- The Special Risk Administrative Support Class⁷ has 104 active members and one in renewed membership;
- The Elected Officers’ Class⁸ has 2,075 active members and 109 in renewed membership; and
- The Senior Management Service Class⁹ has 7,610 active members and 210 in renewed membership.¹⁰

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

¹ Florida Department of Management Services (DMS), Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 35, available at https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf. (last visited Mar. 27, 2023).

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. *See*, ch. 2011-68, s. 33, Laws of Fla. Members in the Deferred Retirement Option Program do not contribute to the system.

³ DMS, Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 260, available at https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf. (last visited Mar. 20, 2023).

⁴ DMS, Division of Retirement, *Participating Employers for Fiscal Year 2022-2023* (Sept. 2022), available at <https://employer.frs.fl.gov/forms/part-emp.pdf> (last visited Mar. 27, 2023).

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 includes elected state and county officers, and 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 are from *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 263.

Members of the FRS have two primary plan options available for participation:¹¹

- 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 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.¹²

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.¹³

A member vests immediately in all employee contributions paid to the investment plan.¹⁴ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹⁵ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁶ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁷ 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.¹⁸

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁹ The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.²⁰

¹¹ Florida State Board of Administration (SBA), *Plan Comparison Chart* (Jul. 2020), available at <https://www.myfrs.com/pdf/forms/plancomparison.pdf> (last visited Mar. 27, 2023).

¹² See, ch. 2000-169, Laws of Fla.

¹³ Section 121.4501(1), F.S.

¹⁴ Section 121.4501(6)(a), F.S.

¹⁵ 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, 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.

¹⁶ Section 121.591, F.S.

¹⁷ See s. 121.4501(16), F.S.

¹⁸ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate a 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.

¹⁹ Section 121.4501(8), F.S.

²⁰ FLA. CONST. art. IV, s. 4.

Pension Plan

The pension plan is administered by the Secretary of Management Services (DMS) through the Division of Retirement.²¹ The SBA manages the pension fund's assets.²²

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.²³ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁴ 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.²⁵

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 62.²⁶ 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 55.²⁷ 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; members in the Special Risk classes must complete 30 years of service or attain age 60.²⁸

Deferred Retirement Option Program (DROP)

Members who retire from the FRS pension plan are eligible to enroll in the DROP, which allows a member to continue employment with an FRS employer for up to 60 additional months.²⁹ While in the DROP, the member's retirement benefits accumulate in the FRS Trust Fund increased by a cost-of-living adjustment (COLA) each July and earn monthly interest equivalent to an annual rate of 1.30 percent on the preceding month's DROP accumulation until termination of participation in the DROP.³⁰

Generally, eligible FRS pension plan members must elect to participate in the DROP within 12 months of their normal retirement date.³¹ However, a member initially enrolled in the FRS before July 1, 2011, who reaches normal retirement date based on years of service before he or she reaches age 62 (or age 55 for special risk class members) may defer his or her entry into DROP until 12 months immediately following their 57th birthday, or 52nd birthday for special risk class members. A member who enrolled in the FRS pension plan on or after July 1, 2011, and who

²¹ Section 121.025, F.S.

²² Florida SBA, *Summary Overview of the State Board of Administration of Florida*, 4, available at https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217 (last visited Mar. 27, 2023).

²³ Section 121.021(45)(a), F.S.

²⁴ Section 121.021(45)(b), F.S.

²⁵ Section 121.091, F.S. See also, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 35-37, *supra* at 1.

²⁶ Section 121.021(29)(a)1., F.S.

²⁷ Section 121.021(29)(b)1., F.S.

²⁸ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁹ Section 121.091(13), F.S.

³⁰ *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, *supra* note 1 at pp. 38-39.

³¹ Section 121.091(13)(a), F.S.

reaches normal retirement date based on service before age 65, (or 60 for special risk class) may defer DROP participation until the 12 months immediately following his or her 60th birthday, or 55th birthday for special risk class.³²

K-12 instructional personnel employed with an FRS employer may extend their DROP participation for up to an additional 36 months, for a total of 8 years of DROP participation. Administrative personnel who are employed with a K-12 FRS employer may extend their DROP participation through the end of the current school year.³³

Similarly, law enforcement officers who are in the special risk class,³⁴ who elect to participate in DROP on or after July 1, 2022, may participate in DROP for an additional 36 calendar months beyond the 60-month DROP period, for a total of 8 years enrollment in the DROP. To qualify, the participant must enter DROP on or before June 30, 2028.³⁵

Regular School Year

Each district school board in Florida is responsible for setting the dates for the opening and closing of schools.³⁶ Schools that are governed by a district school board may not have an opening date earlier than August 10 each year,³⁷ and their school year must run for at least 180 days.³⁸ For the 2022-2023 school year, school district calendars began the traditional school year with students reporting for classes between August 10 and August 23.³⁹ Dates for the close of the school year were between May 19 and June 8.⁴⁰

Instructional Personnel and School Administrators

Instructional personnel include classroom teachers, staff who provide student personnel services, librarians and media specialists, other instructional staff, and education paraprofessionals under the direct supervision of instructional personnel in K-12 schools.⁴¹ School administrators include school principals, school or career center directors, and assistant principals in K-12 schools.⁴²

³² Section 121.091(13)(a)2., F.S.

³³ Section 121.091(13)(b)1., F.S.

³⁴ *See*, s. 121.0515(3)(a), F.S. This is a narrow permission that excludes sheriffs and elected police chiefs and does not encompass the special risk class as a whole.

³⁵ Section 121.091(13)(c), F.S.

³⁶ Section 1001.42(4)(f), F.S.

³⁷ Section 1001.42(4)(f), F.S.

³⁸ Section 1001.42(12)(a), F.S.

³⁹ Florida Department of Education, *2022-2023 School District Calendars*, <https://www.fldoe.org/core/fileparse.php/7584/urlt/school-district-calendars.xlsx> (last visited March 27, 2023).

⁴⁰ *Id.*

⁴¹ Section 1012.01(2), F.S.

⁴² Section 1012.01(3), F.S.

Contracts for Instructional Personnel

Four types of contracts are used to employ instructional personnel in Florida— continuing contracts, professional service contracts, annual contracts, and probationary contracts. Holding a continuing contract or professional service contract is often referred to as having tenured status.⁴³

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.⁴⁴

Instructional personnel hired on or after July 1, 1984, and up to July 1, 2011, were awarded professional service contracts after 3 years of probationary service on annual contracts if certified, recommended for a professional service contract by the superintendent, and reappointed by the school board.⁴⁵ 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.⁴⁶

As of July 1, 2011, instructional personnel are hired under a probationary contract for 1 year, and thereafter, are hired on an annual contract basis.⁴⁷ An annual contract is an employment contract for a period of no longer than 1 school year that a district school board may choose to award or not award without cause.⁴⁸

Contracts for School Administrators

School administrators hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁴⁹ After completing 3 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.⁵⁰

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 3 years and is subject to annual review and renewal.⁵¹

⁴³ See s. 1012.33(1), F.S. 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. 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.

⁴⁴ 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).

⁴⁵ Section 1012.33(3), F.S.

⁴⁶ *Id.* 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 3-year period, or 3 consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. Section 1012.33(3)(b), F.S.

⁴⁷ Section 1012.335(2), F.S.

⁴⁸ Section 1012.335(1)(a), F.S.

⁴⁹ See *supra* note 44.

⁵⁰ Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

⁵¹ Section 1012.33(1)(b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 121.091, F.S., to allow K-12 instructional personnel⁵² who enter DROP before June 30, 2029, to extend their participation for up to 60 calendar months beyond the initial 60-month DROP period. K-12 instructional personnel must be approved to participate in the extended 60-month DROP period by an appropriate supervisor.

If a K-12 instructional personnel is currently in his or her 36-month extended DROP period, and that extended DROP period does not end before July 1, 2023, then he or she will be able to take advantage of the increased extended DROP period provided for in the bill.

The bill also allows K-12 administrative personnel, who are authorized by their district school superintendent, to participate in DROP for up to 60 additional months beyond their initial 60-month DROP period. This replaces the 36-month extended DROP period currently in statute; therefore, any K-12 administrative personnel who is in an extended DROP period as of July 1, 2023, will be authorized to extend up to a total of 60 additional months beyond the initial 60-month DROP period.

However, administrative personnel who participate in extended DROP must have a termination date that is the last day of the last calendar month of the school year within their granted DROP extension. Should the administrative personnel's DROP extension end before that date, the member's DROP participation may be extended to the last day of the last calendar month of that school year.

Section 2 makes a legislative finding that the act fulfills an important state interest. It provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

Section 3 provides that the bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the expenditure is required to comply with a law that applies to all persons similarly situated...."

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, state universities, community colleges, counties, municipalities, and special districts.

⁵² K-12 instructional personnel are those who operate in an instructional position and are employed by either the Florida School for the Deaf and the Blind, a public K-12 educational institution, or a developmental research school.

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 be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act” (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

The bill does not provide actuarially sound funding concurrent with the increase of the benefits (effective July 1, 2023).

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

None.

B. Private Sector Impact:

Certain K-12 instructional and administrative personnel will be able to continue employment with a public K-12 educational institution for up to 2 additional years, with additional retirement benefits accruing in their DROP account during that time.

C. **Government Sector Impact:**

The increase in retirement benefits will increase the liabilities of the Florida Retirement System by an amount that has not yet been determined. The bill does not provide funding for this increase in benefits.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 121.091 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.