

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 613 Deferred Retirement Option Program for Correctional Officers

**SPONSOR(S):** Garcia and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1034

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	14 Y, 0 N	Villa	Miller
2) Appropriations Committee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits for employees of state and county government agencies, district school boards, state colleges, and universities. It also serves as the retirement plan for participating employees of the cities and special districts that have elected to join the system. Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan.

The Deferred Retirement Option Program (DROP) allows eligible members of the FRS to participate in the program and defer receipt of retirement benefits while continuing employment with his or her FRS Employer. Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months. However, certain instructional personnel and law enforcement officers are authorized to participate in DROP for up to 36 calendar months beyond the 60-month period.

The bill modifies DROP to allow a member of the Special Risk Class who is a correctional officer and who is a DROP participant on or after July 1, 2023, to participate for up to 36 calendar months beyond the 60-month period if he or she enters DROP on or before June 30, 2028.

The bill finds 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.

The bill will likely have a significant, yet indeterminate negative fiscal impact on state and local government expenditures. See Fiscal Comments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group. The FRS was amended in 1998 to add the Deferred Retirement Option Program (DROP) under the defined benefit plan and amended in 2000 to provide a defined contribution plan alternative to the defined benefit plan for FRS members effective July 1, 2002.<sup>1</sup>

The FRS is a multi-employer, contributory plan<sup>2</sup> governed by the Florida Retirement System Act.<sup>3</sup> As of June 30, 2022, the FRS had 629,073 active members,<sup>4</sup> 448,846 retired members and beneficiaries, and 28,827 members in DROP.<sup>5</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and state universities. The FRS also serves as the retirement plan for participating employees of the 180 municipalities, 153 special districts, and two independent hospitals that have elected to join the system.<sup>6</sup>

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

- The Regular Class<sup>7</sup> has 537,128 active members and 7,806 in renewed membership.
- The Special Risk Class<sup>8</sup> has 72,925 active members and 1,100 in renewed membership.
- The Special Risk Administrative Support Class<sup>9</sup> has 104 active members and one in renewed membership.
- The Elected Officers' Class<sup>10</sup> has 2,075 active members and 109 in renewed membership.
- The SMSC<sup>11</sup> has 7,610 active members and 210 in renewed membership.<sup>12</sup>

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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, 2022, at 35, *available at*: [https://employer.frs.fl.gov/forms/2021-22\\_ACFR.pdf](https://employer.frs.fl.gov/forms/2021-22_ACFR.pdf) (last visited February 20, 2023).

<sup>2</sup> Prior to 1975, members of the FRS were required to make employee contributions of either four percent gross compensation for Regular Class members or six percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011, at three percent.

<sup>3</sup> Ch. 121, F.S.

<sup>4</sup> As of June 30, 2022, the FRS Pension Plan, which is a defined benefit plan, had 444,150 members, and the investment plan, which is a defined contribution plan, had 184,923 members. FRS Comprehensive Annual Report, *supra* note 1 at 260.

<sup>5</sup> FRS Comprehensive Annual Report, *supra* note 1 at 42.

<sup>6</sup> *Id.* at 298.

<sup>7</sup> The Regular Class is for all members who are not assigned to another class. S. 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. S. 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 FRS. S. 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. S. 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. S. 121.055, F.S.

<sup>12</sup> FRS Comprehensive Annual Report, *supra* note 1 at 263.

## Plan Choice

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

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

When an employee is initially hired in an 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 has one additional opportunity to choose to switch between plans (this is referred to as the second election).<sup>13</sup>

## 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 pension plan. The earliest that any member could participate in the investment plan was July 1, 2002. The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>14</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>15</sup>

A member vests immediately in all employee contributions paid to the investment plan.<sup>16</sup> With respect to the employer contributions, a member vests after completing one work year with an FRS employer.<sup>17</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>18</sup>

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. The amount of money contributed to each member's account varies by class as follows:<sup>19</sup>

<b>Membership Class</b>	<b>Percentage of Gross Compensation<sup>1</sup></b>
Regular Class	9.30%
Special Risk Class	17.00%
Special Risk Administrative Support Class	10.95%
Elected Officers' Class	
• Justices and Judges	16.23%
• County Elected Officers	14.34%
• Others	12.38%
Senior Management Service Class	10.67%

<sup>1</sup> Includes the three percent employee contribution.

The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>20</sup> An FRS member who qualifies for disability while enrolled in the investment plan

<sup>13</sup> S. 121.4501(4)(b), F.S.

<sup>14</sup> S. 121.4501(8), F.S.

<sup>15</sup> Art. IV, s. 4(e), FLA. CONST.

<sup>16</sup> S. 121.4501(6)(a), F.S.

<sup>17</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, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. S. 121.4501(6)(b) – (d), F.S.

<sup>18</sup> S. 121.591, F.S.

<sup>19</sup> S. 121.72(6), F.S.

<sup>20</sup> 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.<sup>21</sup>

### Pension Plan

The pension plan is a defined benefit plan administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>22</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>23</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>24</sup> A member vests immediately in all employee contributions paid to the pension plan.

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>25</sup> For members of the pension plan initially enrolled before July 1, 2011, normal retirement, which is when a member is first eligible for unreduced benefits, occurs at the earliest attainment of 30 years of service or age 62.<sup>26</sup> For members in the Special Risk and Special Risk Administrative Support Classes enrolled before July 1, 2011, normal retirement is the earliest of 25 years of service or age 55.<sup>27</sup> Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.<sup>28</sup>

### Deferred Retirement Option Program

All membership classes in the FRS Pension Plan may participate in DROP.<sup>29</sup> The program allows eligible members<sup>30</sup> of the FRS to defer receipt of retirement benefits while continuing employment with the FRS employer. The deferred monthly benefits accrue, plus interest, in the FRS on behalf of the member for the period of time the member participates in DROP. Upon termination of the employment, the member receives the total DROP benefits and begins to receive the previously determined normal retirement benefits.<sup>31</sup>

Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months.<sup>32</sup> However, instructional personnel employed by the Florida School for the Deaf and the Blind, instructional personnel in grades K-12, and personnel employed by a developmental research school may participate in DROP for up to 36 calendar months beyond the 60-month period.<sup>33</sup> In addition, last year the Legislature authorized a member of the Special Risk Class who is a law enforcement officer and who is a DROP participant on or after July 1, 2022, to participate for up to 36 calendar months beyond the 60-month period if the participant enters DROP on or before June 30, 2028.<sup>34</sup>

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<sup>21</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate a non-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. S. 121.091(4)(f), F.S.

<sup>22</sup> S. 121.025, F.S.

<sup>23</sup> S. 121.021(45)(a), F.S.

<sup>24</sup> S. 121.021(45)(b), F.S.

<sup>25</sup> S. 121.091(1), F.S.

<sup>26</sup> S. 121.021(29)(a)1., F.S.

<sup>27</sup> S. 121.021(29)(b)1., F.S.

<sup>28</sup> S. 121.021(29)(a)2. and (b)2., F.S.

<sup>29</sup> A member in the FRS Investment Plan may not participate in DROP. Investment Plan members are considered retired from the FRS when the member takes a distribution from his or her account.

<sup>30</sup> See s. 121.091(13)(a), F.S.

<sup>31</sup> S. 121.091(13), F.S.

<sup>32</sup> S. 121.091(13)(b), F.S.

<sup>33</sup> S. 121.091(13)(b)1.a., F.S.

<sup>34</sup> Ch. 2022-156, Laws of Fla., codified in S. 121.091(13)(b)1.c., F.S.

## Effect of the Bill

The bill modifies DROP to allow a member of the Special Risk Class who is a correctional officer<sup>35</sup> and who is a DROP participant on or after July 1, 2023, to participate for up to 36 calendar months beyond the 60-month period if he or she enters DROP on or before June 30, 2028.

The bill finds 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.

### B. SECTION DIRECTORY:

Section 1 amends s. 121.091, F.S., relating to benefits payable under the system.

Section 2 provides that the act fulfills an important state interest.

Section 3 provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill will likely have a significant, yet indeterminate negative fiscal impact on state and local government expenditures. The bill authorizes certain correctional officers to extend DROP participation for up to 36 calendar months beyond the current 60-month limitation period. FRS participating employers will be responsible for paying any applicable employer contributions during the extended period. The dollar amount of expenditures required by the bill depends on the number of correctional officers entering DROP before June 30, 2028, that will elect to participate in DROP beyond the 60-month period and is otherwise indeterminate.

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<sup>35</sup> In order to be designated as a special risk member, effective October 1, 1978, the member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395, F.S. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or as of July 1, 1984, the member must be the supervisor or command officer of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, are not included; however, wardens and assistant wardens, as defined by rule, are included. S. 121.0515(3)(c), F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires certain correctional officer employing agencies to make FRS employer contributions for up to an additional 36 calendar months beyond the current 60-month DROP limitation period; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply as the bill finds that the act satisfies an important state interest and similarly situated state and local employing agencies are required to comply.

##### 2. Other:

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.

#### B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.