

**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 400

INTRODUCER: Senators Burgess and Hooper

SUBJECT: Reemployment of Retired Law Enforcement Officers

DATE: January 26, 2024

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

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

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**I. Summary:**

SB 400 authorizes a Florida Retirement System (FRS) retired law enforcement officer to be reemployed by an FRS employer in a position that qualifies for the Special Risk Class. The officer may receive compensation from that employer and retirement benefits provided the retiree is not reemployed within the 6 months following his or her date of retirement.

The bill also reduces the amount of time a State and County Officers and Employees Retirement System (SCOERS) retiree is prohibited from receiving both a salary from an FRS employer and retirement benefits from 12 months to 6 months immediately subsequent to his or her date of retirement and limits those employees eligible for reemployment by an FRS employer to those reemployed in a position that qualifies for the Special Risk Class.

The bill is expected to increase actuarial liabilities of the Florida Retirement System by \$3 million annually system-wide.

The bill takes effect July 1, 2024.

**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 3 percent of their salaries.<sup>2</sup>

The FRS is a multi-employer plan, governed by ch. 121, F.S., the “Florida Retirement System Act.” As of June 30, 2023, the FRS had 646,277 active non-retired members, 455,601 annuitants, 14,499 disabled retirees, and 27,767 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> As of June 30, 2023, the FRS consisted of 991 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.<sup>4</sup>

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

- The Regular Class<sup>5</sup> consists of 550,931 active members and 8,433 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 75,495 active members and 1,168 in renewed membership;
- The Special Risk Administrative Support Class<sup>7</sup> has 93 active members and one in renewed membership;
- The Elected Officers’ Class<sup>8</sup> has 2,105 active members and 106 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,714 active members and 227 in renewed membership.<sup>10</sup>

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

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<sup>1</sup> Florida Department of Management Services (DMS), Division of Retirement, *Florida Retirement System Summary Plan Description*, 1 (July 1, 2023), <https://frs.fl.gov/forms/spd-pp.pdf> (last visited Jan. 5, 2024).

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

<sup>3</sup> DMS, Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2022-223 Annual Comprehensive Financial Report*, at 188, available at [https://employer.frs.fl.gov/forms/2022-23\\_ACFR.pdf](https://employer.frs.fl.gov/forms/2022-23_ACFR.pdf). (last visited Jan. 5, 2024).

<sup>4</sup> DMS, Division of Retirement, *Participating Employers for Fiscal Year 2023-2024* (Oct. 2023), available at <https://employer.frs.fl.gov/forms/part-emp.pdf> (last visited Jan. 5, 2024).

<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. *See also*, DMS, *FRS Pension Plan Member Handbook*, 9-14 (2023), available at [https://frs.fl.gov/forms/member\\_handbook.pdf](https://frs.fl.gov/forms/member_handbook.pdf) (last visited Jan. 5, 2024).

<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 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.

<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 FY 2022-23 Annual Comprehensive Financial Report*, at 191.

Members of the FRS have two primary plan options available for participation:<sup>11</sup>

- 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.<sup>12</sup> The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>13</sup> The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>14</sup>

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.<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 of employment 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> The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>19</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>20</sup>

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<sup>11</sup> Florida State Board of Administration (SBA), *Plan Comparison Chart* (Jul. 2020), available at <https://www.myfrs.com/pdf/forms/plancomparison.pdf> (last visited Jan. 5, 2024).

<sup>12</sup> See, ch. 2000-169, Laws of Fla.

<sup>13</sup> Section 121.4501(8), F.S.

<sup>14</sup> FLA. CONST. art. IV, s. 4.

<sup>15</sup> Section 121.4501(1), F.S.

<sup>16</sup> Section 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. Section 121.4501(6)(b)-(d), F.S.

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

<sup>19</sup> See s. 121.4501(16), F.S.

<sup>20</sup> 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.

### ***Pension Plan***

The pension plan is a defined benefit plan administered by the Department of Management Services (DMS) through the Division of Retirement.<sup>21</sup> The State Board of Administration manages the pension fund's assets.<sup>22</sup>

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> 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 non-special risk members of the pension plan initially enrolled before July 1, 2011, normal retirement (when first eligible for unreduced benefits) occurs at the earlier of 30 years of service or age 62.<sup>26</sup> Those non-special risk members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of credible service or attain age 65.<sup>27</sup> For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earlier of 25 years of credible service or age 55.<sup>28</sup>

### ***Deferred Retirement Option Program***

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

A member may elect to participate in DROP any time after reaching the normal retirement date.<sup>31</sup> Generally, an eligible member is authorized to participate in DROP for 8 years. However, certain instructional personnel may participate in DROP for 10 years until June 30, 2029.<sup>32</sup>

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<sup>21</sup> Section 121.025, F.S.

<sup>22</sup> SBA Florida, *Florida Retirement System Pension Plan*, <https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan.aspx> (last visited Jan. 5, 2024).

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

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

<sup>25</sup> Section 121.091, F.S. *See also*, DMS, *FRS Pension Plan Member Handbook*, 28 (2023), [https://frs.fl.gov/forms/member\\_handbook.pdf](https://frs.fl.gov/forms/member_handbook.pdf) (last visited Jan. 5, 2024).

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

<sup>27</sup> Section 121.021(29)(a)2., F.S.

<sup>28</sup> Section 121.021(29)(b), F.S.

<sup>29</sup> Currently, the interest that is applied accrues at an effective annual rate of 4 percent compounded monthly. Before July 1, 2011, the rate was 6.5 percent, and between July 1, 2011, through June 30, 2023, the rate was 1.3 percent. S. 121.091(13)(c)1., F.S.

<sup>30</sup> Section 121.091(13), F.S.

<sup>31</sup> Section 121.091(13)(a)2., F.S.

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

### ***Renewed Membership***

Effective July 1, 2017,<sup>33</sup> retirees of the investment plan, Senior Management Service Optional Annuity Program (SMSOAP), State University System Optional Retirement Program (SUSORP), or State University System Optional Retirement Program (SCCORP) may renew membership in the FRS.<sup>34</sup> Such renewed member will participate in the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSORP or the SCCSORP, as applicable. A renewed member may not qualify for disability retirement benefits and must satisfy the vesting requirements of the specific plan. A renewed member in the FRS Investment Plan who is not receiving the maximum health insurance subsidy is entitled to earn additional credit towards the subsidy.<sup>35</sup> Retired FRS Pension Plan members are not eligible for renewed membership in the FRS.<sup>36</sup>

### **Optional Retirement Programs**

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program,<sup>37</sup>
- Members in specified positions in the State University System may elect to enroll in the (SUSORP),<sup>38</sup> and
- Members in specified positions at a Florida College institution may elect to enroll in the SCCORP.<sup>39</sup>

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<sup>33</sup> Different renewed membership provisions apply to FRS members who retired and were reemployed prior to July 1, 2010. Prior to July 1, 2010, retirees of the pension plan or investment plan could renew membership in either plan or in another state administered retirement system similar to newly hired members and earn service credit towards a subsequent retirement benefit. From July 1, 2010, to July 1, 2017, FRS retirees were ineligible to be enrolled as a renewed member. S. 121.122(1) and (2), F.S.

<sup>34</sup> Section 121.122(3), (4), and (5), F.S. Upon renewed membership, the employer and the renewed member are required to pay applicable contributions.

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

<sup>36</sup> Section 121.122(2), F.S.

<sup>37</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. *See also*, Florida DMS, *Senior Management Service Optional Annuity Program*, [https://www.dms.myflorida.com/workforce\\_operations/retirement/optional\\_retirement\\_programs/senior\\_management\\_service\\_optional\\_annuity\\_program](https://www.dms.myflorida.com/workforce_operations/retirement/optional_retirement_programs/senior_management_service_optional_annuity_program) (last visited Jan. 5, 2024).

<sup>38</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(3)(c), F.S.

<sup>39</sup> If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

The SUSORP requires each employee to contribute 3 percent<sup>40</sup> of his or her gross compensation to the plan, and the employer must contribute the difference between the current employee contribution (3 percent) and 8.15 percent of the employee’s gross monthly compensation (currently, the employer contribution is 5.15%).<sup>41</sup> The state university employer is also required to contribute an amount equal to the UAL contribution to the FRS Trust Fund.<sup>42</sup>

**Contribution Rates**

Employers that participate in the FRS must contribute a specific percentage of the 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>43</sup> The rate is determined annually based on an actuarial study by the DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2023, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan:<sup>44</sup>

	Valuation Results (in \$ billions)			
	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023
Actuarial Liability	\$200.3	\$209.6	\$217.4	\$226.2
Actuarial Value of Assets	\$164.3	\$174.9	\$179.2	\$184.2
Unfunded Actuarial Liability	\$36.0	\$34.7	\$38.3	\$42.0
Funded Percentage (Actuarial Value of Assets/Actuarial Liability)	82.0%	83.4%	82.4%	81.4%

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize prior unfunded actuarial liabilities (UAL) over a thirty-year period and new tranches of unfunded actuarial liabilities over a twenty-year period. The following are the current employer contribution rates<sup>45</sup> for each class and the blended rates recommended by the state actuary beginning in July 2024:<sup>46</sup>

<sup>40</sup> This contribution is tied to the FRS employee contribution required by s. 121.71(3), F.S., which is three percent as of July 1, 2011.

<sup>41</sup> Section 121.35(4)(a)4., F.S.

<sup>42</sup> Section 121.35(4)(b), F.S.

<sup>43</sup> Section 121.70(1), F.S.

<sup>44</sup> Matt Larrabee, Milliman Actuarial Valuation, *Florida Retirement System Pension Plan Actuarial Valuation as of July 1, 2023*, 3 (Dec. 1, 2023) (on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>45</sup> Section 121.71(4) and (5), F.S.

<sup>46</sup> Letter to Kathy Gould, Florida DMS Division of Retirement Director, from Milliman Actuarial Services, entitled “*Blended Proposed Statutory Rates for the 2024-2025 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP: Table 1*” Dec. 1, 2023 (on file with the Senate Committee on Governmental Oversight and Accountability).

Membership Class	Current Statutory Rates Effective July 1, 2023		Recommended Rates to be effective July 1, 2024	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	6.73%	4.78%	6.70%	4.81%
Special Risk Class	18.66%	11.95%	18.39%	12.00%
Special Risk Administrative Support Class	11.54%	26.22%	10.92%	25.90%
Elected Officer’s Class	10.45%	50.21 %	10.68%	49.81%
<ul style="list-style-type: none"> <li>• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders</li> <li>• Justices and Judges</li> <li>• County Officers</li> </ul>	14.90%	27.93%	14.50%	28.39%
	12.39%	44.23%	12.22%	43.44%
Senior Management Service Class	8.56%	23.90%	8.44%	22.72%
Deferred Retirement Option Program	8.49%	10.64%	8.46%	10.51%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.<sup>47</sup>

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.<sup>48</sup>

**Maintaining Status as a Qualified Plan**

The FRS is a qualified governmental plan under section 414(d) under Internal Revenue Code. This means that the employer and employee contributions to the FRS qualify for tax deductions, and that investment earnings are tax-deferred until distributed to retirees.

“In order for a pension plan to be a qualified plan under section 401(a), the plan must be established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to its employees over a period of years, usually for life, *after retirement* (emphasis added) or attainment of normal retirement age . . . .”<sup>49</sup>

A termination of employment must be bona fide (i.e., not a mere subterfuge in order to initiate an otherwise impermissible distribution where no substantial change in employment has occurred).<sup>50</sup> “Retirement does not include a mere reduction in the number of hours that an

<sup>47</sup> Section 121.71(3), F.S.

<sup>48</sup> See ss. 121.4503 and 121.72(1), F.S.

<sup>49</sup> Treas. Reg. section 1.401(a)-1(b)(1)(i).

<sup>50</sup> Private Letter Ruling 201147038 (Apr. 20, 2010).

employee works. Accordingly, benefits may not be distributed prior to normal retirement age solely due to a reduction in the number of hours that an employee works.”<sup>51</sup>

Current Florida law relating to the FRS requires an employee to terminate his or her employment in order to commence a retirement benefit, either before or after normal retirement age. The determination of whether a bona fide termination from employment has occurred is critical for both the tax qualification of the FRS and Florida statutory compliance purposes.<sup>52</sup>

The Internal Revenue Service (IRS), the federal agency responsible for administering the Internal Revenue Code, has not provided an objective test for determining whether a bona fide termination of employment has occurred. Instead the IRS has applied Treasury Regulation 1.409A-1(h)(1)(ii), which states whether a termination of employment has occurred is determined based on whether the facts and circumstances indicate that the employer and employee reasonably anticipated that no further services would be performed after a certain date<sup>53</sup> or that the level of bona fide services the employee would perform after such date would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period.<sup>54</sup> However, when applying the regulation in the context of a 401(a) plan, the IRS has opined that “if both the employer and employee know at the time of ‘retirement’ that the employee will, with reasonably [sic] certainty, continue to perform services for the employer, a termination of employment has not occurred upon ‘retirement’ and the employee has not legitimately retired.”<sup>55</sup>

To apply the requirement of a bona fide termination, Florida law states “termination” occurs “when a member ceases all employment relationships with participating employers.”<sup>56</sup> This includes a relationship with an FRS-participating employer as an officer, employee, or volunteer. If the retiree is reemployed by an FRS-participating employer within the first 6 calendar months after the month of retirement, termination is deemed not to have occurred, and the retiree must return all retirement distributions, including DROP accumulations.<sup>57</sup> Generally, if the retiree is employed by an FRS-participating employer during the 7th through 12th calendar months after the month of retirement, the retiree’s benefit for those months is suspended and is forfeited.<sup>58</sup> There are no restrictions on receiving salary and retirement benefits from FRS-participating employers after the 12<sup>th</sup> calendar month from retirement.

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<sup>51</sup> Treas. Reg. section 1.401(a)-1(b)(3).

<sup>52</sup> Memorandum to David DiSalvo, Director, Division of Retirement, *Re: Bona Fide Terminations from Employment and Bona Fide Volunteer Services* (dated January 8, 2021).

<sup>53</sup> The regulation provides that the employment relationship is treated as continuing intact while the individual is on a bona fide leave of absence if the leave does not exceed 6 months, or if longer, as long as the individual retains a right to reemployment pursuant to statute or contract. The IRS explains in the preamble to the regulation that “a bona fide leave of absence refers to a leave of absence where there is a reasonable expectation the service provider will return to service with the service recipient.” Department of the Treasury, Internal Revenue Service, *Application of Section 409A to Nonqualified Deferred Compensation Plans*, 26 CFR Part I [TD 9321], RIN 1545-BE79 (Dated April 17, 2007).

<sup>54</sup> See IRS PLR 201147038; see also *Supra* note 58

<sup>55</sup> IRS PLR 201147038.

<sup>56</sup> Section 121.021(39), F.S.

<sup>57</sup> Section 121.091(9), F.S.

<sup>58</sup> Section 121.091(9)(c), F.S.



A retiree employed in violation of the reemployment limitation period and the FRS employer employing such retiree are jointly and severally liable for reimbursement to the retirement trust fund from which the benefits were paid. Pension benefits remain suspended until repayment has been made. Benefits suspended beyond the reemployment limitation period are applied towards repaying the benefits received in violation of the reemployment limitation period.<sup>59</sup>

Florida law currently provides two exceptions to the reemployment limitation period. The first authorizes retirees to provide civic, charitable, and humanitarian services to an FRS employer during the first 12 months following retirement provided the following criteria are met:

- Before the date of retirement, there is no agreement or understanding between the employer and the retiree that the retiree will return to provide services for the employer;
- The employer or a third party does not provide any form of compensation, including any cash equivalents, to the volunteer for the volunteer service;
- Except as otherwise provided in law, a volunteer cannot be provided any employee benefits, including health or life insurance benefits. However, a volunteer may be provided certain perquisites necessary for, and for the limited purpose of, completing tasks associated with the volunteer program, such as an assigned uniform or the provision of equipment;
- The number of volunteer hours per week, including training hours, that the volunteer provides is no more than 20 percent of the number of hours that the volunteer was expected to work per week before the date of retirement;
- There is a clear distinction between the duties of a volunteer and the duties of an employee;
- The schedule of a volunteer, including the number of hours volunteered and the number and type of assignments for which he or she agrees to volunteer, is controlled by the volunteer; and
- The employer and retiree maintain adequate records to document adherence to the above criteria, which must be made available to DMS or the SBA upon request.<sup>60</sup>

The second exception to the reemployment limitation period applies to law enforcement officers that are reemployed as school resource officers and authorizes such retirees to be reemployed during months 7 through 12 after retirement and receive both a salary and retirement benefits. The reemployed retired law enforcement officer may not renew membership in the FRS except as provided in law.<sup>61</sup>

### **State and County Officers and Employees Retirement System**

The State and County Officers and Employees Retirement System (SCOERS) was consolidated into the FRS in 1970 as a closed plan.<sup>62</sup> The SCOERS retirees may be reemployed by any private or public employer after retirement and receive retirement benefits and compensation without limitation, unless the public employer participates in the FRS. The SCOERS retirees reemployed by an FRS employer are prohibited from receiving a salary from reemployment and retirement benefits for 12 months after their date of retirement. Any retiree employed in violation of the reemployment limitation period must provide notice of such reemployment to his or her

<sup>59</sup> Section 121.091(9)(b)1. and (9)(c)3., F.S.

<sup>60</sup> Section 121.091(15), F.S.

<sup>61</sup> Section 121.091(9)(f), F.S.

<sup>62</sup> Annual Report, *supra* note 5, at 33.

employer and the DMS, and that person's retirement benefits will be suspended for the duration of the reemployment limitation period. A retiree employed in violation of the reemployment limitation period and any agency that knowingly employs such retiree are jointly and severally liable for reimbursement to the retirement trust fund from which the benefits were paid. In order to avoid liability, the FRS employer must have a written statement from the retiree that the person is not retired from a state-administered retirement system. Any benefits suspended beyond the reemployment limitation period will apply toward the repayment of benefits received in violation of the reemployment limitation period.<sup>63</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 121.091, F.S, to allow a law enforcement officer retired from the FRS to be reemployed by an FRS employer in a position that qualifies for the Special Risk Class and receive both compensation from the employer and FRS retirement benefits, provided the retiree is not reemployed within the 6 month period following the date of retirement. The reemployed law enforcement officer may not renew membership in the FRS, except as currently provided in law.

**Section 2** amends s. 122.16, F.S, to reduce the amount of time a SCOERS retiree is prohibited from receiving both a salary from an FRS employer and retirement benefits, from 12 months to 6 months immediately subsequent to the date of retirement, and limits those employees eligible for reemployment by an FRS employer to those reemployed in a position that qualifies for the Special Risk Class.

**Section 3** provides that the bill takes effect July 1, 2024.

### 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 law requiring the expenditure is approved by two-thirds of the membership of each house of the legislature . . . or the expenditure is required to comply with a law that applies to all persons similarly situated...."

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>63</sup> Section 122.16(1) and (2), F.S. The reemployment authorization does not apply to those members retired due to disability. See s. 122.16(2)(a), F.S. Employer and employee contributions are required as provided in s. 121.122, F.S. for renewed membership in the FRS. S. 122.16(2)(c), F.S.

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

None.

**E. Other Constitutional Issues:**

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 provisions 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 the public employee retirement systems and plans in Florida. The Act 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.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill is expected to increase actuarial liabilities of the Florida Retirement System by \$3 million annually system-wide.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The state actuary under contract with the Department of Management Services completed a special study to determine the actuarial impact on the Florida Retirement System. For the provisions of this bill as filed, the state actuary determined the system-wide costs to increase \$3

million annually. These costs are borne by the FRS-participating employers who employ Special Risk members. The table below notes the costs by employer group.<sup>64</sup>

Employer Group	Increase in Annual Contributions
State	\$0.6 m
School Boards	\$0.1 m
Universities and Colleges	Insig.
Counties	\$2.1 m
Other	\$0.2 m
<b>Total</b>	<b>\$3.0 m</b>

The state actuary also completed a study to determine the actuarial impact if the suspension of benefits during the seventh through twelfth month period is eliminated for all members of the FRS. This results indicated a system-wide cost of \$23.8 million annually. The table below shows the impacts by employer group.<sup>65</sup>

Employer Group	Increase in Annual Contributions
State	\$3.7 m
School Boards	\$7.2 m
Universities and Colleges	\$2.6 m
Counties	\$8.9 m
Other	\$1.4 m
<b>Total</b>	<b>\$23.8 m</b>

**VIII. Statutes Affected:**

This bill substantially amends sections 121.091 and 122.16 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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<sup>64</sup> Letter to Kathy Gould, Florida DMS Division of Retirement Director, from Milliman Actuarial Services, entitled, “*Special Actuarial Study of Senate Concepts to Modify Reemployment Limitations*,” at 20 (Jan. 25, 2024) (On file with Senate Committee on Governmental Oversight and Accountability).

<sup>65</sup> *Id* at 21.