

**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 Governmental Oversight and Accountability Committee

**BILL:** CS/SB 1130

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Ring

**SUBJECT:** Florida Retirement System

**DATE:** March 10, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

- This bill makes the following changes to the Florida Retirement System (FRS):
- Closes the defined benefit plan to specified members enrolled on or after July 1, 2011. Members of the Elected Officers Class, the Senior Management Service Class, or any member of any class for which position the starting salary is more than \$75,000, except those who are eligible to and elect to enroll in an optional retirement program, will be enrolled in the FRS defined contribution plan.
  - Changes vesting for members enrolled in the defined contribution plan on or after July 1, 2011. Such members vest in graded increments over a five-year period.
  - Extends the vesting period for members enrolled in the defined benefit plan from 6 to 8 years.
  - Changes the FRS from a noncontributory system to a contributory system and requires each active member of the FRS to contribute a percentage of pre-tax gross salary to fund retirement benefits, effective July 1, 2011. The maximum employee contribution is 2 percent for any member of the Regular Class or Special Risk Class and 4 percent for any member of the Senior Management Service Class or Elected Officers' Class. Employee contributions are no longer required if the FRS reaches or exceeds 100% of actuarial funding. For fiscal year 2011-2012, the contribution rates for all members are set at 0 percent for gross compensation

up to and including \$40,000, plus no more than 2 percent for gross compensation in excess of \$40,000 and up to and including \$75,000, plus no more than 4 percent for gross compensation that is greater than \$75,000.

- Amends the definitions of “compensation” and “average final compensation.” Accumulated annual leave payments and overtime payments in excess of 300 hours are not included for service earned on or after July 1, 2011.
- Creates an additional death benefit for members of the defined contribution plan who are killed in the line of duty.

The bill also:

- Establishes the required employer payroll contribution rates for each membership class and subclass of the FRS retirement plan for the fiscal year beginning July 1, 2011.
- Requires each active member of the Senior Management Service Optional Annuity Program, the State University System Optional Retirement Program, and the Community College Optional Retirement Program to contribute the same percentage of gross salary to fund retirement benefits as those contributed by FRS employees, effective July 1, 2011.
- Provides that each state university may develop and implement strategies to deliver health care benefits to its employees.
- Makes changes to the names of the FRS defined benefit and defined contribution plans to conform to current usage.
- Creates conforming and implementing provisions related to the substantive changes.

This bill substantially amends the following sections of the Florida Statutes:

110.123, 112.0801, 112.363, 112.65, 121.011, 121.021, 121.051, 121.0515, 121.052, 121.053, 121.055, 121.071, 121.081, 121.091, 121.1001, 121.121, 121.122, 121.125, 121.35, 121.355, 121.4501, 121.4502, 121.4503, 121.571, 121.591, 121.5911, 121.70, 121.71, 121.72, 121.73, 121.74, 121.75, 121.77, 121.78, and 1012.875.

## **II. Present Situation:**

### **Florida Retirement System**

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to the 572,000 active and 319,000 retired members and beneficiaries of its more than 900 state and local government public employers. Originally established in 1970 as the successor to the Teachers’ Retirement System and the State, and County Officers’ and Employees’ Retirement System, the FRS is today a combination of five previously separate pension plans. Benefit payments are administered by the Department of Management Services through its Division of Retirement while investment management is undertaken by the Board of Administration. Established as a Section 401(a) government plan under the Internal Revenue Code, its benefits are exempt from federal taxation until received by the employee.

As a defined benefit plan, the FRS “Pension Plan” provides retirement income expressed as a percent of final pay. Participants accrue retirement credits based upon their eligibility in one of several membership classes. Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus up to 500 hours of annual leave,

yield a monthly annuity benefit at normal retirement. The accrual rates range from 1.60 percent for the Regular Class to 3.33 percent for Justices and Judges. For most membership classes normal retirement occurs at the earlier attainment of 30 years' service or age 62. For public safety employees in the Special Risk Retirement and Special Risk Administrative Support Classes, normal retirement is the earlier attainment of age 55 or 25 years' service. Members seeking early retirement dates receive a five percent reduction in the benefit for each year below their normal age threshold.

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DRO) under which a participant may extend employment for an additional five years - eight years for instructional personnel in district school boards - and receive a lump sum benefit at a fixed rate of interest, currently 6.5 percent, for that additional service. Enrollment in DRO requires the participant to serve the employer with a deferred resignation from employment at the end of the period. The defined benefit plan includes a fixed, annual cost-of-living adjustment of 3 percent.

The 2000 Legislature enacted sweeping changes to the FRS by creating the Public Employees Optional Retirement Program (Part II of ch. 121, F.S.), an alternative defined contribution or "Investment Plan" for its members. While a defined benefit plan provides an annuitized monthly benefit expressed as a percent of final pay, a defined contribution plan gives members an equity interest in their employer's payroll contributions and their earnings, although it does not assure a guaranteed result. DRO enrollment is unavailable in the Investment Plan due to the incompatibility of plan designs.

Reenrollment in the FRS is prohibited for retirees who are initially reemployed on or after July 1, 2010.

Management employees and instructional employees in higher educational units are also permitted to enroll in one of three other separate optional retirement programs that exist outside of FRS authority.

#### Employer Contribution Rates

FRS employers are responsible for contributing a set percentage of their employee's monthly compensation to the Division of Retirement to be distributed into the Florida Retirement System Contributions Clearing Trust Fund. The employer is required to make these contributions no later than the fifth working day of the month following the end of the payroll period.<sup>1</sup>

The employer contribution rate is a "blended contribution rate" set by statute, which is the same percentage regardless of which plan their employee participates in. 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.<sup>2</sup> The current employer contribution rate for each membership class is:

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<sup>1</sup> Section 121.78, F.S.

<sup>2</sup> Section 112.63, F.S.

Membership Class	Effective July 1, 2009	Effective July 1, 2010
Regular Class	8.69 %	9.63 %
Special Risk Class	19.76 %	22.11 %
Special Risk Administrative Support Class	11.39 %	12.10 %
Elected Officer's Class <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>	13.32 % 18.40 % 15.37 %	15.20 % 20.65 % 17.50 %
Senior Management Class	11.96 %	13.43 %

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After employer contributions are placed into the FRS Contributions Clearing Trust Fund, benefits under the Investment Plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas benefits under the Pension Plan are placed into the FRS Trust Fund.<sup>4</sup>

Calculation of Pension Plan Benefits

Benefits payable to a pension plan retiree are calculated using formulas that include the average final compensation. "Average final compensation" means the average of the 5 highest fiscal years of compensation for creditable service prior to retirement, termination, or death. The average final compensation includes accumulated annual leave payments, not to exceed 500 hours, and all payments defined as compensation in s. 121.021(22). The average final compensation does not include compensation paid to professional persons for special or particular services; payments for accumulated sick leave made due to retirement or termination; payments for accumulated annual leave in excess of 500 hours; bonuses as defined in s. 121.021(47); third party payments made on or after July 1, 1990; or fringe benefits such as automobile or housing allowances.<sup>5</sup>

"Compensation" means the monthly salary paid a member by his or her employer for work performed arising from that employment. Compensation includes overtime payments paid from a salary fund; accumulated annual leave payments; payments in addition to the employee's base rate of pay if specified conditions apply; amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.<sup>6</sup>

<sup>3</sup> Section 121.71, F.S.

<sup>4</sup> See ss. 121.4503 and 121.72, F.S.

<sup>5</sup> Section 121.021(24), F.S.

<sup>6</sup> Section 121.021(22), F.S.

### Investment Plan Death Benefit

In the event of the death of a participant in the investment plan, vested benefits will be paid to the participant's designated beneficiary or beneficiaries.<sup>7</sup>

### **Optional Retirement Programs**

Eligible employees may elect to participate in one of three optional retirement programs in lieu of participation in the FRS.

Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program.<sup>8</sup> Employees in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program.<sup>9</sup> Eligible employees of a community college may elect to enroll in the Community College Optional Retirement Program.<sup>10</sup>

### **III. Effect of Proposed Changes:**

Section 1 amends s. 110.123, F.S., to make technical drafting changes and conforming changes.

Section 2 amends 112.0801, F.S., to make technical drafting changes.

Section 3 amends s. 112.363, F.S., to make technical drafting changes and conforming changes.

Section 4 amends 112.65, F.S., to make technical drafting changes and conforming changes.

Section 5 amends s. 121.011, F.S., to:

- Provide that effective July 1, 2011, the FRS must require employee and employer contributions as provided for in s. 121.071 and part III of the chapter.
- Specifies that the amount of employee retirement contributions may not exceed 2 percent of annual compensation for any member of the Regular Class or Special Risk Class and may not exceed 4 percent of annual compensation for any member of the Senior Management Service Class or Elected Officers' Class.

Section 6 amends s. 121.021, F.S., to:

- Amend the definition of "compensation" for purposes of the FRS defined benefit program to exclude overtime payments paid from a salary fund in excess of 300 hours and accumulated annual leave payments, for service earned on or after July 1, 2011. Service earned before that date will be subject to the current definitions.
- Amend the definition of "average final compensation" for purposes of the FRS defined benefit program to exclude accumulated annual leave payments and overtime payments paid from a salary fund in excess of 300 hours, for service earned on or after July 1, 2011. Service earned before that date will be subject to the current definitions.

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<sup>7</sup> Section 121.591(3), F.S.

<sup>8</sup> Section 121.055(6), F.S.

<sup>9</sup> Section 121.35, F.S.

<sup>10</sup> Section 1012.875, F.S.

- Extends the vesting period for members of the FRS defined benefit program from 6 to 8 years.
- Make technical drafting changes and conforming changes.

Section 7 amends s. 121.051, F.S., to:

- Provide that the governing body of a charter school joining the FRS prior to July 1, 2011, may elect to provide or not provide benefits based on the past service of officers and employees as described in s. 121.081(1). This corresponds with the closure of the FRS defined benefit program to new enrollees, because there is no past purchase of past service in the FRS defined contribution plan.
- Require eligible employees initially enrolled in the FRS on or after July 1, 2011, except those who are eligible to and elect to enroll in one of the three optional retirement programs, to become members of the FRS defined contribution program. Such employees may not use the second election opportunity specified in s. 121.4501(4)(e).
- Make technical drafting changes and conforming changes.

Section 8 amends s. 121.0515, F.S., to make technical drafting changes and conforming changes.

Section 9 amends s. 121.052, F.S., to:

- Specify that effective July 1, 2011, members of the Elected Officers' Class will begin paying contributions as specified in s. 121.71. If a member ceases to fill an office covered by the class for 3 calendar months for any reason other than retirement and has not been employed in any capacity with any participating employer for 3 calendar months, the member is entitled to a refund of all employee contributions made before or after participation in the noncontributory plan. Partial refunds are not permitted. The refund may not include interest earnings on contributions made to the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund if a qualified domestic relations order is filed against the member's retirement account. By taking a refund of employee contributions, the member waives all rights to the service credit under the FRS represented by the refunded contributions, including the health insurance subsidy, except the right to purchase prior service credit in accordance with s. 121.081(2).
- Make technical drafting changes.

Section 10 amends s. 121.053, F.S., to:

- Make technical drafting changes.

Section 11 amends s. 121.055, F.S., to:

- Specify that effective July 1, 2011, members of the Senior Management Service Class will begin paying contributions as specified in s. 121.71. Three months after termination of employment from all participating employers for any reason other than retirement, a member is entitled to a refund of all employee contributions. Employer contributions made on behalf of the member are not refundable. The refund may not include interest earnings on contributions made to the pension plan. A member may not receive a refund if a qualified domestic relations order is filed against the member's retirement account. By taking a refund of employee contributions, the member waives all rights to the service credit under the FRS

represented by the refunded contributions, including the health insurance subsidy, except the right to purchase prior service credit in accordance with s. 121.081(2).

- Specify that members of the Senior Management Service class who are participating in the Senior Management Service Class optional annuity program will begin paying contributions July 1, 2011. The member will pay the amount of the employee contribution required in s. 121.71(3). The member's employer will pay the difference between 12.49 percent of the member's gross monthly compensation and the amount of the member's contribution.
- Make technical drafting changes and conforming changes.

Section 12 amends s. 121.071, F.S., to:

- Specify that effective July 1, 2011, employees and employers will pay retirement contributions as specified in s. 121.71.
- Specify that 3 calendar months after termination from all participating employers for any reason other than retirement, a member is entitled to a refund of all employee contributions made before or after participation in the noncontributory plan. Partial refunds are not permitted. Employer contributions made on behalf of the member are not refundable. The refund may not include interest earnings on contributions for a member of the defined benefit program. A member may not receive a refund if a qualified domestic relations order is filed against his or her retirement account. By obtaining a refund of contributions, a member waives all rights under the FRS and the health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).
- Specify that if a member or former member of the defined benefit program receives an invalid refund from the FRS Trust Fund, such person must repay the full amount of the refund, plus interest at 6.5 percent compounded annually on each June 30 from the date of refund until full repayment is made. The invalid refund must be repaid before the member retires or, if applicable, transfers to the defined contribution plan.
- Make technical drafting changes and conforming changes.

Section 13 amends s. 121.081, F.S., to:

- Specify that to claim prior service performed on or after July 1, 2011, for which the member had credit under the Florida Retirement System and received a refund of contributions 3 months after termination of employment, the member shall contribute at the rate that was required during the period of service being claimed, plus 6.5 percent interest, compounded annually on each June 30 from date of refund until the full payment is made to the Florida Retirement System Trust Fund, and shall receive credit in the membership class in which the member participated during the period claimed.
- Make technical drafting changes and conforming changes.

Section 14 amends s. 121.091, F.S., to:

- Specify that upon termination from all participating employers for 3 calendar months for any reason other than retirement, a member may receive a refund of all employee contributions to the pension plan. Partial refunds are not permitted. The refund may not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a qualified domestic relations order is filed against his or her

retirement account. By obtaining a refund of contributions, a member waives all rights under the FRS and the health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

- Make technical drafting changes and conforming changes.

Section 15 amends s. 121.1001, F.S., to:

- Make technical drafting changes and conforming changes.

Section 16 amends s. 121.121, F.S., to:

- Specify that effective July 1, 2011, any leave of absence purchased pursuant to the section shall be at the employee and employer contribution rates specified in s. 121.71 in effect during the leave for the class of membership from which the leave of absence was granted.
- Make technical drafting changes.

Section 17 amends s. 121.122, F.S., to:

- Allow reenrollment after retirement in the Regular Class in the FRS investment plan. Such members must meet the reemployment after retirement limitations in s. 121.091(9) and resatisfy the vesting requirements of the investment plan. Such members are not entitled to disability benefits as provided in s. 121.091(4) or s. 121.591(2).
- Make technical drafting changes.

Section 18 amends s. 121.125, F.S., to make technical drafting changes and conforming changes.

Section 19 amends s. 121.35, F.S., to:

- Specify that effective July 1, 2011, members of the State University System Optional Retirement Program will begin paying contributions. The member will pay the amount of the employee contribution required in s. 121.71(3). The member's employer will pay the difference between 10.43 percent of the member's gross monthly compensation and the amount of the member's contribution.
- Make technical drafting changes and conforming changes.

Section 20 amends s. 121.355, F.S., to make technical drafting changes and conforming changes.

Section 21 amends s. 121.4501, F.S., to:

- Change the name of the "Public Employee Optional Retirement Program" to the "Florida Retirement System Investment Plan."
- Specify that enrollment in the defined contribution plan is compulsory for eligible employees in the Elected Officers' Class, Senior Management Service Class, or in a position for which the starting salary is greater than \$75,000 who are employed on or after July 1, 2011, except those who are eligible to and elect to enroll in one of the three optional retirement programs.
- Create definitions for "district school board employer," "investment plan," "local employer," and "state employer."
- Specify that if contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred, the member is entitled to the additional contributions or is responsible for returning any



excess contributions resulting from the correction if the return of such contributions by the plan is made within 1 year after the making of the erroneous contributions or such other period allowed by applicable Internal Revenue Service guidance. The present value of the member's accumulated benefit obligation may not be recalculated.

- Delete obsolete language regarding old plan choices.
- Specify that on or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.
- Specify that a member of the investment plan who takes a distribution of any contributions from his investment plan account is considered a retiree. Upon reemployment in a regularly established position with a participating employer, the member returns as a new hire and, if applicable, may participate in the FRS.
- Specify that a refund of any employee contributions or additional employee payments which exceed the employee contributions that would have accrued had an employee enrolled before July 1, 2011 remained in the pension plan and not transferred to the investment plan is not permitted.
- Specify that on or after July 1, 2011, an employee in the pension plan who obtains a refund of employee contributions shall retain his or her prior plan choice upon return to employment in a regularly established position with an employer participating in the FRS.
- Specify that a member who terminates covered employment in the FRS and takes a distribution of any contributions from his or her investment plan account is considered a retiree. Upon reemployment in a regularly established position with a covered employer, the retiree returns as a new hire and, if applicable, may participate in the FRS.
- Specify that employee contributions shall be paid on a pretax basis, as provided in s. 401 of the Internal Revenue Code. Such contributions may not exceed federal limitations. An employee is responsible for monitoring his or her individual contributions to ensure that he or she does not exceed the maximum deferral amounts permitted under the Internal Revenue Code. An employee's total contribution equals the sum of all amounts deducted from the participant's salary by his or her employer in accordance with s. 121.71(2) and credited to his or her individual account in the investment plan, plus any earnings on such amounts and any specified contributions.
- Specify that a member is fully and immediately vested in all participant contributions paid to the investment plan, plus interest and earnings thereon and less investment fees and administrative charges.
- Create a new vesting schedule for employees enrolled in the FRS investment plan on or after July 1, 2011. Such employees vest at 40% upon completion of three years of service, 80% upon 4 years of service, and 100% upon 5 years of service.
- Specify that if the member elects to receive any of his or her vested employer or participant contributions upon termination of employment as defined in s. 121.021, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided by s. 401(a)(9) of the Internal Revenue Code, the member shall forfeit all nonvested employer contributions and accompanying service credit paid on behalf of the participant to the investment plan.
- Specify, to comply with IRS requirements, that the normal retirement date is the date on which a member attains age 62 or completes 5 years of service, whichever occurs later.
- Make technical drafting changes and conforming changes.

Section 22 amends s. 121.4502, F.S., to make technical drafting changes and conforming changes.

Section 23 amends s. 121.4503, F.S., to make technical drafting changes and conforming changes.

Section 24 amends s. 121.571, F.S., to make technical drafting changes and conforming changes.

Section 25 amends s. 121. 591, F.S., to:

- Specify that the de minimis account which the SBA and DMS are authorized to cash out must not be more than \$5,000.
- Specify that any nonvested accumulations in the investment plan, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund, are forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under the section.
- Require a member or former member who has received an invalid distribution and does not repay the full amount to terminate employment from all participating employers.
- Specify that the distribution payment method selected by the plan member or beneficiary, and the retirement of the member or beneficiary, is final and irrevocable at the time a benefit distribution payment is cashed, deposited, or transferred to another financial institution. Any additional service that remains unclaimed at retirement may not be claimed or purchased, and the type of retirement may not be changed, except that if a member recovers from a disability, the member may subsequently request normal service benefits. A member may not receive a distribution of employee contributions if a qualified domestic relations order is filed against the member's investment plan account.
- Create an additional death benefit for members of the defined contribution plan who are killed in the line of duty. The surviving spouse of a participant killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the participant at the time of death for the rest of the surviving spouse's lifetime. If the surviving spouse of a participant killed in the line of duty dies, the monthly payments that would have been payable to the surviving spouse had such surviving spouse lived shall be paid for the use and benefit of such participant's children under 18 years of age and unmarried until the 18<sup>th</sup> birthday of the participant's youngest child. If a participant killed in the line of duty leaves no surviving spouse but is survived by children under 18 years of age, the benefits provided shall be paid for the use and benefit of the participant's child or children under 18 years of age and unmarried until the 18<sup>th</sup> birthday of the participant's youngest child.
- Make technical drafting changes and conforming changes.

Section 26 amends s. 121.5911, F.S., to make technical drafting changes and conforming changes.

Section 27 amends s. 121.70, F.S., to make technical drafting changes and conforming changes.

Section 28 amends s. 121.71, F.S., to:

- Specify administrative and tax provisions regarding employee contributions. Beginning July 1, 2011, each employee shall contribute the specified contributions to the plan. The employer shall deduct the contribution from the employee's monthly salary and submit it to the Division of Retirement. The contributions shall be reported as employer-paid contributions, and shall be credited to the account of the employee. The contributions shall be deducted from the employee's salary before the computation of applicable federal taxes and treated as employer contributions under 26 U.S.C. 414(b)(2). Although designated as employee contributions, the employer specifies that the contributions are being paid by the employer in lieu of contributions by the employee. The employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid to the plan. Such contributions are mandatory and each employee is deemed to have consented to the payroll deductions. Payment of an employee's salary or wages, less the contribution, is a full and complete discharge and satisfaction of all claims and demands for the service rendered by employees during the period covered by the payment, except for claims to benefits to which they may be entitled under this chapter.
- Specify that employee retirement contributions are not required if the FRS reaches or exceeds 100 percent of actuarial funding. However, employee contributions shall be set for an entire fiscal year. Effective July 1, 2011, required employee retirement contribution rates for all members for the 2011-2012 fiscal year are set at 0 percent for gross compensation up to and including \$40,000, plus no more than 2 percent for gross compensation in excess of \$40,000 and up to and including \$75,000, plus no more than 4 percent for gross compensation that is greater than \$75,000.
- Set out the employer rates and the rates to fund any unfunded actuarial liabilities payable by the employers. The employers are permitted to deduct the employee contributions from the employee's monthly gross salary on a pretax basis. Employee contributions are set at an undefined percentage of gross salary beginning July 1, 2011. The employer contributions are set to meet the blended normal costs of the FRS (the defined benefit and defined contribution plans combined). The contribution rates for the unfunded actuarial liability are set at 0% for FY 2011-2012 and at the blended UAL rate beginning July 1, 2012. Under current law, the UAL rates will also be imposed upon the optional retirement programs offered for the state university system, the community colleges and the Senior Management Service.
- Provide that if a member is reported under an incorrect membership class and the amount of contributions reported and remitted are less than the amount required, the employer shall owe the difference, plus the delinquent fee, of 1 percent for each calendar month or part thereof that the contributions should have been paid. This delinquent assessment may not be waived. If the contributions reported and remitted are more than the amount required, the employer shall receive a credit to be applied against future contributions owed.
- Make technical drafting changes and conforming changes.

Section 29 amends s. 121.72, F.S., to make technical drafting changes and conforming changes.

Section 30 amends s. 121.73, F.S., to:

- Specify that effective July 1, 2011, allocations from the FRS Contribution Clearing Fund to provide disability coverage for participants in the investment plan and to offset the costs of administering such coverage shall be the actuarially indicated amount necessary to fund the statutorily authorized benefit for the plan year as determined by the department's actuary.

- Make technical drafting changes and conforming changes.

Section 31 amends s. 121.74, F.S., to make technical drafting changes and conforming changes.

Section 32 amends s. 121.75, F.S., to make conforming changes.

Section 33 amends s. 121.77, F.S., to make technical drafting changes and conforming changes.

Section 34 amends s. 121.78, F.S., to:

- Specify that retirement contributions paid for a prior period shall be charged a delinquent fee of 1 percent for each calendar month or part thereof that the contributions should have been paid. This includes prior period contributions due to incorrect wages, contributions from an earlier report or wages, and contributions that should have been reported but were not. The delinquent assessments may not be waived.
- Specify that if employee contributions reported by an employer on behalf of an employee are reduced as a result of employer errors or corrections and the employee has terminated employment and taken a refund or distribution, the employer shall be billed and is responsible for recovering from the employee any excess contributions erroneously provided by the employer.
- Specify that if the employer submits excess employer or employee contributions, the employer shall receive a credit to be applied against future contributions owed. The employer is responsible for reimbursing the employee for any excess contributions submitted if any return of such an erroneous excess pretax contribution by the program is made within 1 year after making erroneous contributions or such other period as allowed under applicable Internal Revenue guidance.
- Make technical drafting changes and conforming changes.

Section 35 amends s. 1012.875, F.S., to:

- Specify that effective July 1, 2011, each participant in the State Community College System Optional Retirement Program shall contribute an amount equal to the employee contribution required under s. 121.71(3). Effective July 1, 2011, each employer shall contribute on behalf of each program member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.
- Make technical drafting changes and conforming changes.

Section 36 provides a statement of legitimate state interest as required by Article VII, s. 18(a) of the State Constitution and requires that all benefits be funded on a sound actuarial basis as required by Article X, s.14 of the State Constitution, and Part VII of ch. 112, F.S.

Section 37 requests the Division of Statutory Revision to rename the title of part II of chapter 121, Florida Statutes, as "Florida Retirement System Investment Plan."

Section 38 specifies that effective upon the act becoming a law, the State Board of Administration and the Department of Management Services shall, as soon as practicable, request a determination letter and private letter ruling from the United States Internal Revenue

Service. If the Internal Revenue Service refuses to act upon a request for a private letter ruling, the legal opinion from a qualified tax attorney or firm may be substituted for the private letter ruling. If the board or the department receives notification from the United States Internal Revenue Service that this act or any portion of this act will cause the Florida Retirement System, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, then that portion does not apply. Upon such notice, the state board and the department shall notify the presiding officers of the Legislature.

Section 39 provides that each state university may develop and implement cost-effective strategies to deliver health care benefits to its employees, including faculty and staff. Each university may develop health benefit programs, including, but not limited to, group or self-insurance plans, as well as the necessary administrative services required to implement and administer such programs if the annual costs in the year of the implementation do not exceed current state expenditures.

Section 40 specifies that except as otherwise expressly provided in the act, the effective date is July 1, 2011.

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

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

Subsection (a) of s. 18, Art. VII of the Florida 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 a legislative finding that the bill fulfills an important state interest.

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

None.

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

None.

##### **D. Other Constitutional Issues:**

The Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.<sup>11</sup> The “Florida Protection of Public Employee Retirement Benefits Act” prohibits “the use of any procedure, methodology, or assumptions the

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<sup>11</sup> Section 14, Art. X, Florida Constitution.

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.”<sup>12</sup>

Provisions in the bill that create additional benefits may require an actuarial study.

The Florida Constitution also requires each law to address only one subject.<sup>13</sup> Because this bill is an act relating to retirement, inclusion of the provision regarding university health benefits may be problematic.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

#### **Employee Contribution**

Each active employee of the FRS, the Senior Management Service Optional Annuity Plan, the State University System Optional Retirement Plan and the Community College Optional Retirement Plan will contribute a percentage of his/her gross salary on a pretax basis.

### C. Government Sector Impact:

#### **Closing Defined Benefit Plan**

Closing the defined benefit plan to specified members may result in temporary increased funding requirements as liabilities in benefit payments continue but employer contributions for new members are decreased. Closing the defined benefit plan to specified members may also result in increased funding requirements for the disability program for the same reason.

#### **Death Benefit for Defined Contribution Plan**

Creating a monthly death benefit for survivors of a defined contribution plan participant killed in the line of duty will result in indeterminate increased funding requirements.

#### **Requiring Employee Contributions**

Requiring employee contributions to the FRS will result in an indeterminate increase in cash flow.

#### **Administrative Costs**

<sup>12</sup> Section 112.61, F.S.

<sup>13</sup> Section 6, Art. III, Florida Constitution.

The changes made in the bill may result in increased administrative costs incurred by the Division of Retirement within the Department of Management Services.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

To remain compliant with Internal Revenue Service regulations, it may be necessary to clarify that changes made to vesting requirements are for prospective service earned only, and to clarify whether members will be entitled to accumulated annual leave earned but not paid out before the effective date of the bill.

Other economic factors and policy considerations could result in a change to the employer contribution rates listed in the bill.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on March 10, 2011:**

- Allows reenrollment after retirement in the FRS defined contribution program.
- Specifies that employees eligible to enroll in one of the three optional retirement programs (State University System Optional Retirement Program, Senior Management Service Optional Retirement Program, and Community College Optional Retirement Program) may elect to do so in lieu of compulsory enrollment in the FRS defined contribution program.
- Specifies that enrollment in the FRS defined contribution program is compulsory only for members of the Elected Officers Class, the Senior Management Service Class, or any member of any class for which position the starting salary is more than \$75,000.
- Clarifies that the changes to the definitions of “compensation” and “average final compensation” will apply to service earned on or after July 1, 2011.
- Allows up to 300 hours of overtime payments to be included in “compensation” and “average final compensation” for service earned on or after July 1, 2011.
- Extends the vesting period for employees enrolled in the defined contribution plan to 8 years.
- Specifies a maximum employee contribution of 2% for any member of the Regular Class or Special Risk Class, and of 4% for any member of the Senior Management Service Class or Elected Officers Class.
- Specifies that for fiscal year 2011-2012, the employee contribution rates for all members will be 0 percent for gross compensation up to and including \$40,000, plus no more than 2 percent for gross compensation in excess of \$40,000 and up to and including \$75,000, plus no more than 4 percent for gross compensation that is greater than \$75,000.

- Provides that employee contributions are not required if the FRS reaches or exceeds 100% of actuarial funding. Specifies that employee contributions are set for an entire fiscal year.
- Provides that each state university may develop and implement cost-effective strategies to deliver health care benefits to its employees, including faculty and staff. Each university may develop health benefit programs, including, but not limited to, group or self-insurance plans, as well as the necessary administrative services required to implement and administer such programs if the annual costs in the year of the implementation do not exceed current state expenditures.
- Removes language raising the age by which a member must enroll in DROP.
- Removes language requiring an actuarial study pertaining to DROP funding.
- Removes language authorizing full-time equivalent positions and appropriating funds to the DMS.
- Removes provisions not necessary to implement the main provisions of the bill.
- Changes the effective date from June 30, 2011 to July 1, 2011.

B. Amendments:

None.