

**STORAGE NAME:** h3131s2.gg

**DATE:** March 6, 1998

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
GENERAL GOVERNMENT APPROPRIATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/CS/HB 3131

**RELATING TO:** The Florida Retirement System

**SPONSOR(S):** Committees on General Government Appropriations and Governmental Operations, and Representative Feeney and others

**COMPANION BILL(S):** CS/SB 216 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
  - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill provides that a member, other than a Special Risk Class member, who has reached normal retirement date prior to the effective date of the Deferred Retirement Option Program (DROP), shall be eligible to participate in DROP for a period not to exceed 60 calendar months immediately following the effective date of the DROP. If a Special Risk Class member has reached normal retirement date before the effective date of the DROP and the member's total accrued value exceeds 75 percent of average final compensation (AFC) as of the effective date of the member's retirement, the Special Risk Class member may participate in DROP for no more than 36 calendar months immediately following the effective date of the DROP.

The bill also allows purchase of retirement credit in the Florida Retirement System for persons who possess in-state service in accredited nonpublic, nonsectarian schools and colleges.

This bill will not have a significant fiscal impact on state or local government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 2 of Chapter 97-154, Laws of Florida, and section 8 of Chapter 97-180, Laws of Florida, amended section 121.091, F.S., to create the Deferred Retirement Option Program (DROP) for all eligible Florida Retirement System (FRS) members. These amendments become effective on July 1, 1998, provided that, prior to that date, the Division of Retirement receives favorable letter rulings from the Internal Revenue Service with regard to the program. If no letter rulings are received prior to July 1, 1998, then the amendments become effective on January 1, 1999; again, provided the Division of Retirement receives favorable letter rulings before January 1, 1999. In the event favorable letter rulings are not received prior to January 1, 1999, the amendments will not take effect.

The amendments to section 121.091, F.S., provide that, after the effective date of DROP, an eligible FRS member who "**first reaches normal retirement date or age**," may elect to participate in DROP, provided the member elects to participate within the 12 months following that date. This language has caused confusion because it leads one to believe that "normal retirement age" is somehow different from "normal retirement date." It may appear that they are distinctly two different points in time; when, in fact, "normal retirement age" is attained on the "normal retirement date." "Normal retirement date" is defined in section 121.021(29), F.S. (1996 Supp.) to mean:

the first day of any month following the date a member attains one of the following statuses:

- (a) Completes 10 or more years of creditable service and attains age 62;
- (b) Completes 30 years of creditable service, which may include a maximum of 4 years of military service credit, so long as such credit is not claimed under any other system, regardless of age;
- (c) If a special risk member:
  - 1. Completes 10 or more years of creditable service and attains age 55;
  - 2. Completes 25 years of creditable service, regardless of age; or
  - 3. Completes 25 years of creditable service, which may include a maximum of 4 years of military service credit, and attains age 52; or
- (d) If a Senior Management Service Class member:
  - 1. Completes 7 years of creditable service in the Senior Management Service Class and attains age 62;or
  - 2. Completes 30 years of creditable service, which may include a maximum of 4 years of military service credit, regardless of age.

"Normal retirement age" is attained on the "normal retirement date."

If an eligible FRS member "first reaches normal retirement date or age" prior to the effective date of the DROP, the eligible FRS member has 12 months from the effective date of the DROP within which to elect to participate in the DROP. An eligible FRS member who fails to make an election within the appropriate 12-month limitation period forfeits all rights to participate in the DROP.

Any eligible FRS member who timely elects to participate in the DROP may effectively retire, have his or her retirement benefit credited to the DROP and deposited in the FRS Trust Fund to draw interest, while continuing to work for a period of time "not to exceed a maximum of 60 months following the date on which the member first reaches normal retirement date or age." Once again the statutory language has caused confusion. There is only one point in time from which the 60-month clock can begin to run, and that is from the date the member reaches "normal retirement date," as that term is defined in section 121.021(29), F.S.

Furthermore, it is unclear whether the 60 months are any 60 months after reaching normal retirement date, or the 60 months immediately following that date. The Division of Retirement has construed this language to mean 60 months immediately following the normal retirement date.

If on the date a FRS member "first reaches normal retirement date or age" (which really means upon reaching "normal retirement date"), the FRS member continues to work for more than 60 months immediately following that date, and those 60 months of employment occur prior to the effective date of the DROP, then that FRS member is not eligible to participate in the DROP. However, if, for example, a FRS member "first reaches normal retirement date or age" and continues to work for 30 months immediately following that date, and those 30 months occur immediately prior to the effective date of the DROP, then the member has the immediate next 30 months after the effective date of the DROP within which he or she may participate in the DROP, provided a timely election to participate is made.

At the time the member enters the DROP, the member's retirement benefit will be calculated based on the option selected, years of service, and average final compensation (AFC) as of that date, and the resultant monthly retirement benefit will be paid into DROP and credited to the member. After the member enters the DROP the member is retired for the purposes of the FRS and therefore, should the member become disabled while in the DROP, the member will not be eligible to receive disability benefits from the FRS but will receive the annual benefit determined when entering DROP, plus cost of living adjustments. If the member should die while participating in DROP, the member's beneficiary will receive the accrued value of the member's individual DROP account; however, the member's survivors would only be eligible for a survivor (continuing) benefit if the member had chosen option 2, 3, or 4 when he or she retired upon entering DROP. In-line-of-duty survivor benefits are not payable to DROP participants. Options are provided for payment of DROP balances.

During the member's participation in DROP, the member's employer will pay to the Division of Retirement a contribution rate of 11.56 percent to fund the costs of DROP. This is significantly less than current contribution rates. The retirement benefits paid into the DROP will be increased by the cost of living adjustment each year. The Health Insurance Subsidy will not be included in the amount paid into the DROP account. The member will begin receiving the Health Insurance Subsidy only when the member ceases participation in DROP and begins receiving direct payment of retirement benefits.

**B. EFFECT OF PROPOSED CHANGES:**

This bill clarifies that each active member of the Florida Retirement System (FRS), employed in a regularly established position, and each active member of the State and County Officers and Employees Retirement System (SCORES) which was combined with FRS, is eligible to participate in DROP, provided:

1. They are not a renewed member of FRS (previously retired under FRS and returned to work with an FRS employer).
2. They are not a member of the optional retirement programs of the community college system, state university system, or the senior management system.

The bill provides that election to participate in DROP must be made within 12 months **immediately** following the date on which the member first reaches **normal retirement date**. Removes the reference to “**or age,**” since this reference is covered by the definition of normal retirement date in section 121.021(29), F.S.

In establishing eligibility to participate in the DROP or the 60 month maximum participation period, the member may elect to include or exclude any optional service credit purchased from the total service used to establish the normal retirement date. A member with dual normal retirement dates (service in more than one class) shall be eligible to participate in DROP within 12 months after attaining normal retirement date in either class.

The bill provides conditions under which a DROP participant may change employers while participating in DROP. It establishes a maximum of 60 months participation **immediately** following the date on which the member first reaches normal retirement date.

The bill provides that a member, other than a Special Risk Class member, who has reached normal retirement date prior to the effective date of DROP, shall be eligible to participate in DROP for a period not to exceed 60 calendar months immediately following the effective date of the DROP. If a Special Risk Class member has reached normal retirement date before the effective date of DROP and the member's total accrued value exceeds 75 percent of average final compensation (AFC), as of the effective date of the member's retirement, the Special Risk Class member may participate in DROP for no more than 36 calendar months immediately following the effective date of the DROP.

Provision is made for an elected officer who reaches normal retirement date during a term of office to defer participation in DROP until the next succeeding term in such office provided such election to participate is made within 12 months after the first day of the succeeding term. The elected officer then may participate in DROP only for up to 48 months or until the end of the term, whichever is less.

Clarifies who is the eligible beneficiary to receive DROP benefits payable should the DROP participant die prior to completing the period of DROP participation. Clarifies requirements to establish the effective date of DROP participation and the effective date of retirement of a DROP participant.

Finally, if a DROP participant fails to terminate employment as required, provision is made that each employer with whom the participant continues employment must pay to the FRS Trust Fund the difference in contributions necessary to reestablish the member retroactively in the FRS.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No. The Division of Retirement will continue to have the authority to make rules to implement the DROP.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No. The Division of Retirement will continue to administer the DROP.

(3) any entitlement to a government service or benefit?

At the time an FRS member enters the DROP, the member's retirement benefit will be calculated based on the option selected, years of service, and average final compensation, and the resultant monthly retirement benefit will be paid into the DROP and credited to the retiree where it will earn an effective annual interest rate compounded monthly. Upon concluding DROP participation, members will have options with regard to receiving the balance in their individual DROP account.

b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

The normal monthly retirement benefit of a member who elects to participate in the DROP will be paid into the DROP and credited to the account of the member for up to a maximum of 60 months. Upon concluding DROP participation, the amount in the DROP account will be available to the DROP participant as a lump sum or as an annuity.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. FRS members will have an option to participate in a Deferred Retirement Option Program that is not available to them currently.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Amends sections 121.091 and 121.1122, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

Section 1. Amends section 121.091, F.S., as follows:

1. Amends paragraph 121.091(13)(a), F.S., to clarify that each active member of the Florida Retirement System (FRS), employed in a regularly established position, and each active member of the State and County Officers' and Employees' Retirement System (SCORES) established under chapter 122 and consolidated with the FRS under section 121.011, F.S., is eligible to participate in DROP provided that the member is not a renewed member of the FRS under section 121.122, F.S., or a member of the State Community College System Optional Retirement Program under section 121.051, F.S., the Senior Management Service Optional Retirement Program under section 121.055, F.S., or the optional retirement program for the State University System under section 121.35, F.S.

Election to participate in DROP must be made within 12 months **immediately** following the date on which the member first reaches normal retirement **date** except for a member who reaches normal retirement date based on service before age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains 57, or age 50 for Special Risk Class members.

When establishing eligibility of the member to participate in the DROP or the 60-month maximum participation period, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member with dual normal retirement dates shall be eligible to elect to participate in DROP within 12 months after attaining normal retirement date in either class.

The paragraph also provides conditions under which a DROP participant may change employers while participating in DROP.

2. Amends section 121.091(13)(b), F.S., as follows:

An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 60 **calendar** months **immediately** following the date on which the member first reaches normal retirement date. However, a member, other than a Special Risk Class member, who has reached normal retirement date prior to the effective date of the DROP shall be eligible to participate in the DROP for a period of time not to exceed 60 calendar months immediately following the effective date of the DROP. A member of the Special Risk Class who has reached normal date prior to the effective date of the DROP and whose total accrued value exceeds 75 percent

of average final compensation as of his or her effective date of retirement shall be eligible to participate in the DROP for no more than 36 calendar months immediately following the effective date of the DROP.

An elected officer who reaches normal retirement date during a term of office may defer the election to participate in the DROP until the next succeeding term in such office, provided such election to participate is made within 12 months after the first day of the succeeding term. An elected officer who exercises this option may participate in the DROP only for up to 60 months or until the end of the next succeeding term after making the election to participate in the DROP, whichever is less.

3. Amends paragraph 121.091(13)(c), F.S., as follows:

Adds designation of optional form of payment of DROP benefits to list of items that must be fixed when member elects to participate in DROP.

States that the beneficiary established under the FRS shall be the beneficiary eligible to receive any DROP benefits payable if the DROP participant dies prior to the completion of the period of DROP participation. In the event the beneficiary predeceases the member, the member may name a beneficiary to receive accumulated DROP benefits payable.

States that each employee who elects to participate in the DROP shall be allowed to elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in the DROP.

Clarifies requirements to establish the effective date of DROP participation and the effective date of retirement of a DROP participant.

Deletes requirement to provide a separate accounting of each participant's accrued benefits annually.

Provides that if a DROP participant fails to terminate employment as required, each employer with whom the participant continues employment must pay to the FRS Trust Fund the difference in contributions necessary plus 6.5 percent interest compounded annually to reestablish the member retroactively in the FRS.

Section 2. Amends section 121.1122, F.S., to allow purchase of retirement credit for persons who have worked for in-state nonsectarian schools and colleges accredited by the Southern Association of Colleges and Schools.

Section 3. Provides that this act shall take effect July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Conceivably, this legislation will allow additional members to participate in the DROP, however, it will not require significant additional costs beyond what was originally planned to administer this program. These costs are as follows:

	<u>FY 97-98</u>	<u>FY 98-99</u>
Division of Retirement Operating Trust Fund	\$815,000	\$831,000

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Conceivably, this legislation will allow additional members to participate in the DROP, however, it will not require significant additional costs beyond what was originally planned to administer this program. These costs are as follows:

	<u>FY 97-98</u>	<u>FY 98-99</u>
Division of Retirement Operating Trust Fund	\$815,000	\$831,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

FRS employers will realize contribution rate savings for employees participating in DROP. Actual savings to be realized are indeterminate at this time because it is uncertain how many eligible employees will elect to take advantage of the DROP.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB 3131, as originally filed, made an exception to current law contained in Chapters 97-154 and 97-180, Laws of Florida, by providing that any active member of the Florida Retirement System, other than a member who has retired and has renewed his or her membership after such retirement, who, as of July 1, 1998, has exceeded the normal retirement age or date by 2 years or more or has exceeded the 60-month limitation shall be eligible to participate in the DROP for a period of time not to exceed 3 years.

At its January 7, 1998, Interim Committee Meeting, the House Committee on Governmental Operations adopted an amendment that removed everything from HB 3131, as originally filed, except the effective date and made substantial modifications and clarifications to current law.

At its March 2, 1998, meeting the House Committee on General Government Appropriations adopted 8 amendments which were incorporated into CS/HB 3131 to result in CS/CS/HB 3131. The amendments were as follows:

**Amendment 1:** Changed the word "employment" to "participation" to clarify that participation in the DROP does not guarantee employment for the specified period of DROP.

**Amendment 2:** Changed the phrase "retiring member" to "a member electing to participate in the DROP" to conform to provisions that allow for continued employment after meeting normal retirement date.

**Amendment 3:** Provided that an elected officer reaching retirement age may defer participation in the DROP until the next succeeding term in that office. This participation may be for up to 60 months, instead of the 48 months in CS/HB 3131, or no longer than the succeeding term of office, whichever is less.

**Amendment 4:** Clarified that if a participant dies, the beneficiary established under the Florida Retirement System is the beneficiary eligible to receive DROP benefits. In the event the beneficiary dies first, the participant may name a new beneficiary.

**Amendment 5:** Clarified that for persons who reach normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, that election to participate in the DROP may be deferred to the 12 months immediately following the date the member attains 57, or age 50 for Special Risk Class members.

**Amendment 6:** Technical conforming amendment for Amendment 5.

**Amendment 7:** Allowed accrued annual leave to be included in the calculation of a member's average final compensation for purposes of the DROP.

**Amendment 8:** Allowed purchase of retirement credit in the Florida Retirement System for persons having in-state service in accredited nonpublic, nonsectarian schools and colleges.

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Jimmy O. Helms

Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Legislative Research Director:

Jenny Underwood Dietzel

Cynthia Kelly