

**STORAGE NAME:** h0663s1.go

**DATE:** April 15, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 663

**RELATING TO:** Florida Retirement System (Deferred Retirement Option Program)

**SPONSOR(S):** Committee on Governmental Operations & Representative Feeney

**STATUTE(S) AFFECTED:** ss. 121.021 and 121.091

**COMPANION BILL(S):** CS/SB 748 (s)

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

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

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**I. SUMMARY:**

This bill creates a Deferred Retirement Option Program (DROP) for all Florida Retirement System (FRS) members. The DROP allows a member who reaches normal retirement date or age, or who first reaches normal retirement date or age prior to the effective date of this bill, to elect to participate in DROP. Any member who elects to participate in DROP within 12 months of this date, may effectively retire, have his or her retirement benefits credited to the DROP and deposited into the FRS Trust Fund to draw interest while continuing to work for a period not to exceed a maximum of 60 months following the date on which the member first reaches normal retirement age or date.

At the time the member enters the DROP, his or her 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 he or she 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 DROP was established, 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 at the beginning of the 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 a contribution rate of 11.56 percent to fund the costs of DROP. The retirement benefits paid into the DROP will be increased by a 3 percent 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.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

There is no program such as the DROP available to FRS members at the present time. When a member retires the member must terminate all FRS employment and abide by the reemployment after-retirement limitations applicable during the first 12 months of retirement. After termination members will begin receiving their retirement benefits.

Early retirement provisions are common features of private sector and many public sector pension plans. The FRS does not have a deliberate means of accommodating early retirement, although any vested member may elect to retire subject to the 5 percent annual penalty. Educational institutions and local governments often develop supplemental annuity contracts for their retiring employees regardless of their membership status with FRS. These contracts obligate local funds, and fall outside of the permitted choices within FRS.

### B. EFFECT OF PROPOSED CHANGES:

This bill will allow FRS members to retire, and continue working and receiving a salary while accumulating an amount of money equal to up to 60 months of retirement benefits that can later be received as a lump-sum or in installments as an annuity. Positions that would have been vacated upon retirement will continue to be filled by the DROP participant for up to 60 months. Agency retirement contributions will be less for employers of members who elect to participate in the DROP.

A new program of services will have to be established by the Division of Retirement which will require additional resources and at least 12 months lead time prior to the effective date of DROP commencement.

### 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?

The Division of Retirement will 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?

The Division of Retirement will have to administer a new program of services which will require additional resources to be appropriated from the FRS Trust Fund.

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

At the time an FRS member enters the DROP, his 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. Conversely, employer contributions as a percent of salary will be reduced.

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

No.

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

Employer contributions for those members who elect to participate in the DROP will be reduced.

- 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 benefits 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 Plan 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. SECTION-BY-SECTION RESEARCH:**

Section 1. Amends s. 121.021, F.S.; provides for an exception in defining "Termination" as it pertains to DROP participants; redefines "Termination" as it pertains to those electing to participate in the DROP and requires the cessation of all employment relationships with employers, under the system, according to s. 121.091(13), F.S.; and, it further specifies that a leave of absence constitutes continuing employment relationships and the DROP participants who become employed within the next calendar month after termination by any employer of the system will be considered not to have been terminated.

“DROP Participant” is defined to mean any member who elects to retire and participate in the Deferred Retirement Option Program as provided in s. 121.091(13), F.S.

Section 2. Amends s. 121.091, F.S.; limits the provision of benefits paid, under the FRS, to only those members who meet the definition of “termination” or are excepted under the definition as qualified DROP participants.

Section 121.091(6)(h), F.S., provides that once the DROP option has been selected, and a benefit payment is credited to the DROP account, the election is **irrevocable**.

Section 121.091(7)(c),(d)(1),and(e), F.S., specifies that survivors of members electing DROP, killed in the line of duty after any benefit payments are credited to the member’s DROP account, are only eligible to receive the accrued benefits in the DROP and normal retirement benefit payments. In the event the member electing DROP is killed in the line of duty between the period they elect DROP and a benefit payment is actually credited to the account, then, the surviving spouse is entitled to a monthly pension equal to one-half the monthly salary. Survivors of members electing DROP, whose employment is terminated by death after any benefit payments are credited to their DROP account, are not eligible to purchase optional services (e.g., leaves of absence, wartime credits) performed by the member that could be claimed by the member at the time of their death. In the event the member electing DROP dies between the period he or she elects DROP and a benefit payment is actually credited to the account, then, the surviving spouse is entitled, upon application to the administrator, to purchase the optional service.

Section 121.091(9)(b)(1), F.S., permits DROP participants to receive a salary during the 60 month DROP period.

Section 121.091(9)(b)(7), F.S., provides that no employment, by an employer of any state-administered retirement system, will affect the average final compensation or years of creditable service of any DROP participant.

Section 121.091(13), F.S., establishes and defines the “Deferred Retirement Option Plan.” FRS members who elect DROP will defer receipt of retirement benefits while continuing employment with their FRS employer. Deferred monthly retirement benefits will accrue in the FRS Trust Fund on behalf of the participant, plus interest compounded monthly, for the DROP participation period.

Section 121.091(13)(a), F.S., establishes eligibility for those members of the FRS who either reach normal retirement date (30 years of service) or retirement age (62 and at least ten years of service), whichever comes first. It also establishes eligibility for those members who reach these milestones prior to the effective date of this bill. Upon reaching one of the retirement eligibility milestones, the individual has 12 months from the date of eligibility to elect participation in DROP. After the 12 month period lapses, the

individual forfeits all rights to participate in the plan. The employee, upon electing to participate in the DROP, will acknowledge in writing to the employer and the Division of Retirement the date the DROP begins. In turn, the employer, or employers if dually employed, shall acknowledge in writing to the division the date the DROP participation and employment terminates. It is permissible to participate in the DROP and be dually employed by more than one FRS employer if the employers acknowledge in writing a DROP termination date which is no later than the employees existing termination date or the 60 month limitation period.

Section 121.091(13)(b), F.S., establishes the DROP eligibility period as 60 months from the date of retirement eligibility and includes those individuals who have reached these milestones prior to the effective date of this bill. Any member exceeding the 60 month period will not be eligible to participate in the DROP. Members, by written election, will select DROP participation and termination dates. Termination dates may be subsequently altered by the participant establishing an earlier or later termination date upon written agreement with the employer. The electing member must also complete a DROP application for normal service retirement, and any other forms requested by the division. The DROP participant will be a retiree under the FRS for all purposes, except for ss. 112.3173, 112.363, 121.053, 121.122, 121.091(5)(f), and 121.091(9), F.S. Reemployed retirees with renewed membership are not eligible for DROP participation. Elected or nonelected participants in DROP may run for a term of office and extend the DROP termination date provided it is within the 60 month limitation period. Elected officers, dually employed, must satisfy the 60 month limitation period for the nonelected position and may continue employment as an elected officer. The elected officer will be enrolled as a renewed member in the Elected State and County Officers' Class or the Regular Class on the first day of the month after termination of both employment and DROP in the nonelected position.

Section 121.091(13)(c), F.S., defines the benefits payable under DROP. The member's normal retirement benefit, the annual cost of living adjustment (3 percent) and interest (6.5 percent effective annual rate, compounded monthly) will accrue in the FRS Trust Fund until a participant terminates employment or dies. The retirement effective date is the first day of the month selected by the member to begin participation in DROP. Separate accounting of each participant's accrued benefit under DROP will be calculated and provided to participants annually. Upon ceasing participation in the DROP, the division must receive verification from the employer or employers that the participant has terminated employment before DROP benefits will be distributed. The DROP participant or named beneficiary, upon termination, will receive payment of the DROP benefits according to one of the following options:

1. A **lump sum** payment of all accrued DROP benefits, plus interest and cost of living adjustments, will be paid to the participant or beneficiary net of withholding taxes.

2. All accrued DROP benefits, plus interest and cost of living adjustments, will be paid from the DROP to a **direct rollover** custodial account qualified and approved as an eligible deferred retirement account by the IRS. In the event the participant is deceased, the direct rollover will be placed in an individual retirement annuity or individual retirement account for the surviving spouse as prescribed by the IRS.

3. A **partial lump sum** payment of all accrued DROP benefits, plus interest and cost of living adjustments, will be paid to the participant or beneficiary net of withholding taxes. The remaining DROP benefits will be transferred to a custodial account qualified and approved as an eligible deferred retirement plan by the IRS.

4. A participant who does not make a DROP distribution election, within 60 days of terminating DROP, will receive a **lump sum** payment.

A DROP participant or surviving beneficiary must begin receiving payments no later than the date on which the participant reaches age 70 years and 6 months according to minimum distribution requirements of the IRS.

In the event the DROP participant does not terminate employment, the DROP election shall be considered null and void. FRS will then establish membership retroactively to the date originally commencing DROP. However, the employer shall be required to pay the difference between the DROP contributions and those contributions applicable to FRS class membership while the participant was in DROP, plus accrued interest.

The accrued benefits of DROP, and any contributions accumulated under the program will not be assignable, executed, attached, or part of any legal process with the exception of qualified domestic relations orders by a court of competent jurisdiction; income deduction orders as provided in s. 61.1301, F.S.; and federal income tax levies.

DROP participants are not eligible for disability retirement benefits.

Section 121.091(13)(d), F.S., provides that in case of a DROP participant's death, the named beneficiary will be entitled to apply for and receive the benefits in the DROP. The normal retirement benefit accrued to the DROP during the month of a participant's death will be the final monthly benefit credited for such participant and eligibility in the DROP will be terminated. In the event the participant dies after the effective date of enrollment and the first monthly benefit being credited to the DROP, FRS benefits will be paid in accordance with normal retirement provisions. DROP participant survivors are not entitled to FRS death benefits.

Section 121.091(13)(e), F.S., provides that on each July 1, a participant's normal retirement benefit will be increased by a cost of living adjustment of 3 percent.



Section 121.091(13)(f), F.S., provides that a DROP participant is not eligible to apply for the retiree health insurance subsidy payments until the participant has terminated both employment and DROP participation.

Section 121.091(13)(g), F.S., specifies that DROP participation does not qualify as renewed membership and provides that DROP participants are not eligible for renewed FRS membership until termination of employment is effectuated (refers to Elected State and County Officers' classes and retirees of a state-administered retirement system).

Section 121.091(13)(h), F.S., establishes that both termination or employment and participation in DROP are prerequisites to eligibility for reemployment and normal applicable reemployment restrictions.

Section 121.091(13)(i), F.S., establishes an employer DROP contribution rate of 11.56 percent of the participant's gross compensation. Contributions are payable to the FRS Trust Fund. Employer and Social Security contributions are not included in the DROP. However, the employer will withhold one-half of the entire Social Security contribution required for the participant. Contributions for Social Security by the employer and participant shall be in addition to the DROP contribution rate of 11.56 percent. The employer will make a .66 percent contribution constituting the employer health insurance subsidy for DROP participants filling a regularly established position.

Section 121.091(13)(j), F.S., provides that DROP participants convicted of a felony and breach of the public trust in the performance of their job will constitutionally forfeit their rights and privileges under the FRS.

Section 121.091(13)(k), F.S., authorizes the Division of Retirement to make rules to administer the DROP. The division is also not required to advise members on tax consequences related to the DROP.

- Section 3. Provides a legislative declaration of an important state interest.
- Section 4. Provides an appropriation to the Division of Retirement from the FRS Trust Fund in the amount of \$813,923 and 14 positions for the purposes of advanced planning and systems development associated with development of the DROP. The funds and positions are contingent upon the passage of this bill or substantially similar legislation.
- Section 5. Provides for an effective date of July 1, 1998, and written declaration and determination from the IRS that the FRS, as amended to include DROP, continues to be a facially qualified plan.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

To administer this program the Division of Retirement will need 14 additional permanent employees, and 2 OPS employees on contract for one year. For budget year 1997-98 and 1998-99, \$813,923 and \$650,723 respectively will be required in additional appropriations from the FRS Trust Fund. These appropriations include salaries, benefits, and the standard expense and OCO package for employees, and increased annual computer resource charges at the Technology Resource Center.

Other than the costs to administer noted above there will be no fiscal impact on the FRS if this bill is enacted. Please see Actuarial Statement of Fiscal Soundness attached. Also, please note the contribution rate savings employers would realize for employees participating in the DROP.

Please see Table 2, attached, confirming the benefits to participants for participating in the DROP.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

1997-98 \$813,923  
1998-99 \$650,723

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:

Participating individuals electing to annuitize their DROP benefits will, no doubt, be approached by firms seeking their business. Unlike life insurance, which assumes the longevity of the contract holder, an annuity promises a stream of future income based upon a lump sum payment. Individuals exercising this option need to consider the costs and benefits of this approach relative to other retirement income and expenses and the significant plan fees and commissions which can be assessed early in the contract period. This becomes especially important for individuals, their beneficiaries, and their estates, who choose FRS Option 1 for annuity payments.

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:

An agreed upon, remove everything after the enacting clause, amendment was adopted at the April 15, 1997, meeting of the Committee on Governmental Operations that does the following:

1. Adds cross-references for clarity.
2. The DROP enrollment period has been decreased from 48 months to 12 months to comport with other early retirement enrollment periods of counties, cities, and municipalities within the state, and other states.
3. An alternate effective date is provided in the event the IRS does not issue a letter of compliance by July 1, 1998. The new date is January 1, 1999. If a letter of compliance is not received prior to the alternate date, the act will automatically repeal itself.
4. DROP participants convicted of a felony and breach of the public trust in the performance of their job will constitutionally forfeit their rights and privileges under the FRS.
5. Employers are required to pay the .66 percent health insurance subsidy to the Trust Fund, so the fund is not depleted.
6. Employers rather than employees will be required to pay back the difference in the contribution rate to the FRS Trust Fund in the event a DROP participant fails to terminate employment in accordance with the provisions of the plan.
7. The Division of Retirement is given the authority to make rules to administer the DROP. The division is also not required to advise members on tax consequences related to the DROP.
8. Elected and nonelected participants in DROP may run for office provided the term does not extend beyond the 60 month limitation period, otherwise DROP participation is null and void.
9. Elected officers, dually employed in nonelected positions, must terminate their nonelected position after the 60 month DROP participation period. After termination has occurred an elected officer will be enrolled as a renewed member in FRS.
10. An appropriation from the FRS Trust Fund in the amount of \$813,923, for fiscal year 1997-98, is provided to fund salaries, benefits, expenses, and operating capital outlay for 14 permanent employees and 2 OPS employees that will be contracted for one year to administer the DROP.

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

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Jimmy O. Helms

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Jimmy O. Helms