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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 485
RELATING TO: Florida Retirement System
SPONSOR(S): Representative(s) Fiorentino, Harrell and others
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
- (2) EDUCATION INNOVATION
- (3) EDUCATION APPROPRIATIONS
- (4) COUNCIL FOR SMARTER GOVERNMENT
- (5)

I. SUMMARY:

The Florida Retirement System (FRS) was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, judges, and Highway Patrol officers. The active membership of the FRS is divided into five membership classes: the Regular Class; the Special Risk Class, the Special Risk Administrative Support Class, the Elected Officers' Class, and the Senior Management Service Class. The Regular Class includes all members who are not eligible for membership in any of the other membership classes, or about 90 percent of all FRS members.

State employees (including university employees) make up about 25 percent of the FRS membership. Remaining members are employed by local agencies, including counties, *district school boards*, and community colleges, as well as cities and special districts that have opted to join the FRS. District school board employees, instructional and non-instructional, make up almost half of the total membership of the FRS (285,499).

This bill provides a definition of "teacher member" to mean a member of the FRS who meets the definition of "teacher" as otherwise provided in current law. Using that definition in the context of retirement is unclear, because it will be difficult to determine all of the eligible members for the increased benefit, since the designated members are employed in different categories of agencies and employment, not just in district school boards.

This bill modifies the plan structure of the FRS by establishing a separate accrual rate for Regular Class members who are defined as teachers. The retirement benefit of members of this "subclass" would be calculated using a higher percentage value for each year of eligible service on and after January 1, 1997. This bill results in a higher benefit to teachers than provided to other members of the Regular Class.

This bill declares the intention of the Legislature to fund the costs attributable to the retroactive increase in accrual rates from January 1, 1997, to January 1, 2002, by an unascertained lump sum amount, to be acquired from the excess actuarial assets of the Florida Retirement System Trust Fund.

This bill has a fiscal impact on state and local governments, however, that impact is currently indeterminable.

In its current form, this bill fails to fund the benefit improvement provided by the bill. Consequently, this bill *appears to violate Article X, Section 14, of the State Constitution, which requires funding of benefit costs.* See "Constitutional Issues" section for further detail.

The Committee on State Administration adopted a strike-everything amendment that substantially modifies the bill. See "Amendments and Committee Substitute Changes" section for further detail.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Florida Retirement System

The Florida Retirement System (FRS) was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, judges, and Highway Patrol officers. Today, the FRS is the fourth largest public retirement system in the United States, covering about 600,000 active employees, close to 185,000 annuitants (retirees and their surviving beneficiaries), and about 20,500 participants of the Deferred Retirement Option Program (DROP).¹ State employees (including university employees) make up about 25 percent of the FRS membership. Remaining members are employed by local agencies, including counties, *district school boards*, and community colleges, as well as cities and special districts that have opted to join the FRS.

The active membership of the FRS is divided into five membership classes: the Regular Class; the Special Risk Class, the Special Risk Administrative Support Class, the Elected Officers' Class, and the Senior Management Service Class. The Regular Class includes all members who are not eligible for membership in any of the other membership classes (about 90 percent of all FRS members). Membership is compulsory for all full-time and part-time employees working in a regularly established position.

Section 121.071, F.S., provides required retirement contribution rates for members of the Regular Class, Special Risk Class, or Special Risk Administrative Support Class of the FRS and their employers in terms of a percentage of the member's gross compensation. As of 1975, only employers contribute toward a Regular Class members' retirement, the member does not have to contribute. As of 1999, the employer contribution rate for Regular Class members is 9.21 percent.

Section 121.091, F.S., provides that FRS retirement benefits are calculated by a formula, which is the member's years of service multiplied by a value for each year – called the accrual value or accrual rate – multiplied by the average of the member's highest five years of salary. The value per year for the Regular Class is based on the member's age or years of service at retirement. Currently, the value per year of service for the Regular Class increases with age or years of service from 1.60 percent at age 62 or with 30 years of service, 1.63 percent at age 63 or with 31 years of

¹ 2001 Bill Analysis on HB 149, Department of Management Services, February 27, 2001.

service, 1.65 percent at age 64 or with 32 years of service, to 1.68 percent at age 65 or older or with 33 or more years of service.² A member who takes early retirement receives the 1.60 percent value per year with a reduction of his or her calculated benefit of 5 percent for each year he or she is under age 62.

Under the FRS, members within the same membership class are generally subject to the same plan requirements and benefit structure. To provide for fairness and equity in funding, any proposal which substantially enhances benefits for a subgroup of a membership class, by its nature, requires the establishment of a special membership classification for that subgroup.³

An example is the Elected Officers' Class (EOC), which is currently subdivided into subclasses as follows:

- Judges have an accrual rate of 3 1/3 percent, and effective July 1, 2000, their employers pay a contribution rate of 19.48 percent.
- Governor, Lt. Governor, Cabinet, Legislators, State Attorneys, Public Defenders, and Elected County Officers and certain other local elected officials have an accrual rate of 3 percent, and effective July 1, 2000, the employers for the elected county officers pay a contribution rate of 16.05 percent, while the remaining employers will pay a contribution rate of 13.31 percent.⁴

The value per year for members of the Special Risk Class is 3 percent, 2 percent for the Senior Management Service Class, 3 percent for the Special Risk Class, 3 percent for the Elected Officers' Class, and 3 1/3 percent for the Judicial branch of the Elected Officers' Class.

With the exception of elected school board superintendents who are in the Elected Officers' Class with an accrual rate of 3 percent, all other appointed school board superintendents, university and community college presidents, senior managers employed with school boards, state universities community colleges, and state agencies are in the Senior Management Service Class with an accrual rate of 2 percent.⁵ The remaining employees, including instructional staff, and education support staff, and administrative staff are in the Regular Class.

Teachers under the FRS

Section 238.01(3), F.S., defines "teacher" to mean

any member of the teaching or professional staff and any certificated employee of any public free school, of any district school system and vocational school, any member of the teaching or professional staff of the Florida School for the Deaf and Blind, child training schools of the Department of Juvenile Justice, the Department of Corrections, and any tax-supported institution of higher learning of the state, and any member and any certified employee of the Department of Education, any certified employee of the retirement system, any full-time employee of any nonprofit professional association or corporation of teachers functioning in Florida on a statewide basis, which seeks to protect and improve public school opportunities for children and advance the professional and welfare status of its members, any person now serving as superintendent, or who was serving as county superintendent of public instruction on

² s.121.091(1)(a)1., F.S.

³ 2001 Bill Analysis on HB 485, Department of Management Services, March 2, 2001.

⁴ *Id.*

⁵ *Id.*

July 1, 1939, and any hereafter duly elected or appointed superintendent, who holds a valid Florida teachers' certificate. In all cases of doubt the Department of Management Services shall determine whether any person is a teacher as defined herein.

District school board employees, instructional and non-instructional, make up almost half of the total membership of the FRS (285,499).⁶ Although there is no data to provide the number of instructional or "teacher members" employed by district school boards, there are approximately 165,914 FRS members who hold teacher certification in Florida.⁷ This, of course, does not mean that these employees are employed as teachers. The definition of "teacher" in s. 238.01(3), F.S., is not limited to school board employees or classroom teachers. It includes members in many different agencies and categories of employment.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 121.021(62), F.S., which provides a definition of "teacher member" to mean a member of the Florida Retirement System (FRS) who meets the definition of teacher provided for in s. 238.01(3), F.S.

The definition of teacher includes:

- Teachers, professional staff and any certificated employee of any public free school, any district school system and vocational school;
- Any member of the teaching or professional staff of any tax-supported institution of higher learning of the state which would include teachers and administrative and professional positions in the State University System and the Community College System, as well as member of the teaching or professional staff of the Florida School for the Deaf and Blind, child training schools of the Department of Juvenile Justice, and the Department of Corrections;
- Department of Education employees;
- Certified employees of the retirement system;
- Employees of any nonprofit professional association or corporation of teachers functioning in Florida on a statewide basis; and,
- Superintendents who hold a valid Florida teachers' certificate, as well as certain identified others.

This bill amends s. 121.071, F.S., to modify the plan structure of the FRS by establishing a separate accrual rate for Regular Class members who are defined as teachers. The retirement benefit of members of this "subclass" would be calculated using a higher percentage value for each year of eligible service on and after January 1, 1997. This bill results in a higher benefit to teachers than provided to other members of the Regular Class.

The members that would receive this improved benefit are all those included in the definition of "teacher" in s. 238.01(3), F.S. This definition was created to describe the original membership in the Teachers' Retirement System when it was created in 1940 and includes categories of members other than classroom teachers employed in agencies other than traditional educational agencies.⁸ It will be difficult to determine all eligible members since the designated members are employed in different categories of agencies and employment, not just in district school boards.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 3.

The sponsor intends to file a strike-everything amendment, to provide, in part, a clearer definition of the persons to be affected by this bill.

“Teacher members” would have a higher accrual rate at 2.25 percent than their “bosses” who, for the most part, are in the Senior Management Service Class with an accrual rate of 2 percent. If the Regular class is subdivided into two subgroups, teachers and others, the normal cost contribution rates would initially differ due to the different demographics of the two groups even if both groups had the same benefits, and used the same assumptions. It is probable that the demographics for teachers are such that their rates would be slightly higher than the rest of the Regular Class.

Special Study 92 –1, by the Department of Management Services, looked at what the contribution rates would be by employer group if the rates were separately determined based upon the varying demographics of each group. Although instructional personnel were not specifically identified in that Study, they were estimated to be 55 percent of school board employees. The resulting normal cost portion of the contribution rate for Regular Class *school board* employees was 11.08 percent; as compared to the contributions rates of 10.79 percent for the state; 10.75 percent for the counties; 10.99 percent for the community colleges; and, 10.95 percent for cities, special districts and others.⁹

One key reason for the higher cost is because females, who live longer, make up a higher proportion of school board employees – 76 percent versus 57 percent for non-school board employees; and another reason is because school board employees enter employment at a slightly younger age. The Department of Management Services states that in the Maryland Retirement System, rates are actually separately determined for teachers and others state employees based on demographic assumptions that reflect each group's past experience.¹⁰ The normal cost for this teacher group is almost 2 percent of salary higher, partly because turn-over is less and teachers, as a group, live longer.

This bill declares the intention of the Legislature to fund the costs attributable to the retroactive increase in accrual rates from January 1, 1997, to January 1, 2002, by an unascertained lump sum amount, to be acquired from the excess actuarial assets of the Florida Retirement System Trust Fund. This appears to be a shell provision that the sponsor intends to complete by amending the bill at a later date.

This bill also provides a statement of a proper and legitimate state purpose.

This bill becomes effective January 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes.”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁹ *Id.*

¹⁰ *Id.*

2. Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill has fiscal impacts on state government and school districts, however, because there is no current actuarial study, the cost of the benefits provided by the bill cannot be determined. See also "Constitutional Issues."

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 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:

A. CONSTITUTIONAL ISSUES:

To comply with Article X, Section 14 of the State Constitution, as implemented by chapter 112, part VII, of the Florida Statutes, the cost of the bill must be funded. An actuarial special study must be conducted to determine the cost to provide this improved benefit to teachers and to determine the appropriate rate increase needed, if any, and the amount of the excess actuarial assets, which would be required to pay for the retroactive benefit increases.

This bill, as it is currently drafted, does not fund the increase in benefits provided by the bill and therefore does not comply with the funding requirements contained in Article X, Section 14 of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Department of Management Services states that the following are issues that should be considered:¹¹

- The cost to provide this benefit improvement for teachers is unknown and cannot be known until an actuarial special study is performed based on the specific provisions in the bill. The bill creates a new paragraph in the contribution section of the FRS law for “teacher members”, but it does not provide a corresponding contribution rate. The bill also states that a portion of the excess actuarial assets of the FRS Trust Fund will be used to fund the retroactive portion of the improved benefit but does not allocate a specific amount from the trust fund surplus dollars for this purpose. This amount, too, must be determined by the consulting actuaries in an actuarial special study.
- By providing a separate contribution rate, as yet undetermined, for “teacher members”, the bill effectively creates a subclass within the Regular Class for teachers. This would provide different benefits to members of the same class, based solely upon their type of employment.
- A higher accrual rate, which will increase the amount of teachers’ benefits, could encourage teachers to retire earlier. The teacher shortages projected by Governor Bush could be aggravated if experienced teachers retire early.
- The definition of “teacher” in s. 238.01(3), F.S., is outdated and ambiguous. This definition was created to describe the original membership in the Teachers’ Retirement System when it was created in 1940 and includes categories of members other than classroom teachers. It will be very difficult to administer since the designated members are employed in different categories of agencies, not just in district school boards. Depending on the intent of the Legislature, a more specific definition could be used, for example, in s. 228.041(9) and (10), F.S., “Instructional Personnel” and “Administrative Personnel”, respectively.

Since the filing of this bill, the Department of Management Services has received an actuarial study regarding the cost of the benefit increase provided in this bill. The sponsor has filed a strike-all amendment to amend the funding mechanism, so that it comports with the actuarial study. The amendment also modifies the benefit structure provided for teachers.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2001, the Committee on State Administration heard HB 485 and adopted a strike-everything amendment offered by the sponsor.

¹¹ *Id.*

The strike-everything amendment:

- Defines “public school member”, instead of providing a definition for a “teacher member”, to clarify that such members are employees of a district school board, a public charter school, or the Florida School for the Deaf and Blind.
- Separates public school members out from the Regular Class of the FRS for the purpose of employer contribution rates.
- Provides that for creditable years of Regular Class service, public school members will have their average final compensation calculated for benefit accrual rate, as follows: 1.60 percent for 0 to 6 years of service; 1.75 percent for 7 to 12 years of service; 1.90 percent for 13-18 years of service; and, 2.10 percent for over 18 years of service.
- Provides an applicability date of July 1, 2002, for the above accrual rates.
- Provides a Legislative statement of intent to fund the increases in benefits provided in the bill with a lump sum from the FRS surplus in year 2002-2003, that is the lesser of: the amount available under the rate stabilization mechanism; or, the amount necessary to pay the annual cost of the benefits not greater than \$212 million. Provides that if after the above calculations there remains an unfunded cost, then the contribution rates will be increased.
- Provides a statement of Legislative intent and purpose.

This bill, as amended, was reported favorably.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Jennifer D. Krell, J.D.

J. Marleen Ahearn, Ph.D., J.D.