

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2132

SPONSOR: Governmental Oversight and Productivity Committee and Senator Sanderson

SUBJECT: Florida Retirement System

DATE: March 8, 2002 REVISED: 03/12/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS provides necessary implementing provisions for the Public Employees Optional Retirement Program (PEORP) created by ch. 2000-169, Laws of Florida. Its provisions establish a disability benefits program for participants and conform the contributions rates required to fund it; provide spousal notification when a survivors' benefit is chosen by the participant or a beneficiary change is made; and changes effective dates for present value calculations and the application of PEORP relative to other statute changes.

This bill amends the following sections of the Florida Statutes: 110.123, 110.205, 121.052, 121.055, 121.071, 121.35, 121.4501, 121.571, and 121.591. It also creates two undesignated sections.

II. Present Situation:

The Florida Retirement System (FRS) is a multi-employer, defined benefit, non-participatory pension plan covering 600,000 active employees and 200,000 retired or survivor beneficiaries of 800 state and local government employers. The State Board of Administration, a state agency, administers its investment operations. Employer payroll contributions and benefits are paid through the Division of Retirement of the Florida Department of Management Services. All constitutional entities of Florida government are compulsory members. Statutory entities, including cities, may join at their option. The plan contains five classes of membership of public officers and employees with a uniform, six-year vesting schedule. A normal, unreduced retirement benefit is achieved at the attainment of 30 years of service or age 62, or 25 years of service and age 55. Reduced benefits are available for early retirement, or for participants accepting a survivors' option. About ninety percent of the membership is in the Regular Class

with some one-half of total membership employed in educational units. FRS participants may enroll in a retirement deferral program, called DROP, for up to an additional 5 years of service.

Chapter 2000-169, Laws of Florida, created an alternative pension choice provision for FRS members. This defined contribution plan permits employees to enroll in a personally owned plan that permits them to manage their own funds and receive an actuarial equivalent equity transfer for their years of accumulated FRS service. Persons choosing such an option contractually agree to discharge the FRS of all further financial obligation in exchange for an equity transfer. In this choice plan the member will choose from an array of investment providers and products that have been competitively procured over the past two years by the SBA. Branded, nationally recognized firms will participate in this offering. The SBA will also offer an unbranded selection in which participants may pick funds directly rather than provider companies. A brokerage window that permits on-line, active trading is not yet operational. DROP eligibility is not available for such defined contribution participants.

Employee selection periods are set in three phases beginning in June 2002 and ending in February 2003. Following an information and education period, state employees will choose first, succeeded by education employees in September 2002. It will conclude with local government employees in December 2002. Each participant will be permitted a one-time re-enrollment in the defined benefit plan.

The implementing law specifically requires compliance with the United States Internal Revenue Code, Title 26, United States Code, to assure its tax-qualified status. Florida law also requires adherence to the federal Employee Retirement Income Security Act (ERISA), which sets fiduciary standards on plans, products, administrators and trustees, notwithstanding the exemption provided government plans.

The FRS incorporates within its structure a series of benefits beyond nominal retirement income. A death and disability income benefit is bundled within the single payroll rate structure. All FRS plan members carry with them the eligibility for a health insurance subsidy, that is, the ability to receive a payment not to exceed \$150 a month to defray the cost of post-retirement health insurance premiums. This subsidy is financed through a uniform employer payroll assessment across all retirement membership classes. Chapter 2000-169, L.O.F., required a similar disability benefit to be incorporated into the investment plan but did not execute the rate structure for it in light of the two-year delayed effective date and the need for an actuarial study. That study was authorized in the enacting legislation, commissioned by the DMS, and received in January 2001.¹ In addition to a recommended rate structure the study made several other suggestions: the disability program should be self-insured and internally administered; it should create a trust which offers the concurrent advantages of self-insurance and asset protection; and that initial account balance transfers from PEORP should pay benefits to disabled participants first.

III. Effect of Proposed Changes:

Sections 1. Section 110.123(2), F.S., is amended to provide a cross-reference and continued eligibility for post-retirement insurance coverage for any state officer or employee in PEORP

¹ *Study of Disability Benefits Per HB 2393*, William M. Mercer, Incorporated, January 2001.

upon satisfying the normal retirement requirements of law or having met the retirement standards of the Internal Revenue Code and attained 6 years of creditable service.

Subsection (3) is amended to provide a similar cross-reference for the state employee group insurance program, as above.

Subsection (4)(h) is amended to delete reference to language on insurance benefit participation at retirement.

Section 2. Section 110.205(2), F.S., is amended to include county health department directors and administrators in the Department of Health among the list of executive branch positions exempted from the Career Service System and placed in the Senior Management Service. Their current placement is in paragraph (q) of that subsection which provides benefits in the Selected Exempt Service.

Sections 3 and 4. The CS amends ss. 121.052 and 121.055 F.S., to embed in each of the FRS membership classes a provision requiring employer payroll contributions to be made by the fifth working day of the succeeding month. Additionally, the Chief Deputy Court Administrator in each judicial circuit is placed in the Senior Management Class.

Section 5. Section 121.071(5), F.S., as amended, is amended further to provide that employer payroll contributions shall be posted by the fifth working day of the succeeding month.

Section 6. Section 121.35, F.S., is amended to provide conforming changes to the new governance structure of the public education system. It deletes references to the Board of Regents and changes references from the “State University System” to the “Division of Colleges and Universities.” It provides to participants in the university system optional retirement program the same benefit distribution options provided members of the PEORP. Generally, these options are a full or partial cash distribution or a roll-over to a qualified successor retirement plan.

Section 7. Section 121.4501, F.S., is amended to provide a definition of “average monthly compensation” and “covered employment.” The former is defined to mean one-twelfth of the definition provided in s. 121.021, F.S., while the latter is defined to mean employment in a regularly established position. The section determines the time period at which the present value of a participant’s accumulated benefit obligation, that is, the current cash value of the promised defined retirement benefit, will be calculated. The computation period for the determination of the present value calculation of a member’s accumulated benefit obligation for persons transferring from the defined benefit to the defined contribution program will be set at midnight June 30, 2002, September 30, 2002, and December 31, 2002, respectively, for state employees, education employees, and local government employees. Employees whose initial date of hire follows the open enrollment period for their employer group shall have their accumulated benefit obligation determined at midnight on the last day of the month prior to their enrollment in the PEORP. Subsections (7) and (16) are amended to delete current law provisions on the benefit payment process and reference the revised process provided in the newly created s. 121.591, F.S.

Section 8. Section 121.571, F.S., is amended to provide for the deposit of funds for the disability component of the PEORP to a separate account administered by the Division of Retirement. The current and proposed disability rates to be paid by employers are as follows:

PEORP Disability Income Payroll Contribution Rates

Membership Class	Current	Proposed
Regular Class	.39 %	.25 %
Special Risk Class	1.25 %	1.33 %
Special Risk, Administrative	.73 %	.45 %
Elected Officers' Class		
Legislators	.61 %	.41 %
Governor/Cabinet	.61 %	.41 %
State Attorneys/PDs.	.61 %	.41 %
Justices/Judges	1.45 %	.73 %
County Elected Officers	.86 %	.41 %
Senior Management Class	.50 %	.26 %

Section 9. Section 121.591, F.S., is created to provide the process for the payment of benefits under the PEORP. Both the SBA and the DMS will adopt respective rules for the discharge of their specific responsibilities. For the receipt of normal benefits the member must apply at termination of employment to the third-party administrator. Benefits are payable in lump sum, a roll-over distribution to a qualified retirement plan, or in periodic distributions as determined by the SBA.

Subsection (2) governs the procedures for receipt of disability income benefits, in lieu of a normal benefit. Participants transferring from the defined benefit plan shall have a portion of the transferred balance deposited in the PEORP disability account. Disabled participants will be entitled to receive a monthly benefit after completing 8 years of service or, if disabled in the line of duty, a benefit regardless of length of service. A person whose employment is terminated forfeits the right to a disability benefit. The division retains the right to require proof of disability and to assess it in light of the statutory standard that it is total and permanent. The participant may reapply for determination of disability eligibility if first denied. The division may require periodic examinations for verification of disability. If a recipient returns to a covered employment position, transferred amounts will receive a separate accounting. Upon failure to return to a covered employment position upon recovery, any amounts due will be deposited in the participant's PEORP account with unvested amounts forfeited after five years. The subsection provides an alternative procedure for justices and judges who are retired through the operation of Article V, State Constitution. In that circumstance a monthly disability benefit would be payable from the General Revenue Fund. Any employer contributions, or transferred account balances, would be paid from that fund also.

Subsection (3) is created to provide a death and survivors' benefit. Upon a participant's death all vested accumulations will be paid to the named beneficiary as a full or partial lump sum or roll-over to an eligible retirement plan.

Subsection (4) provides a limitation on legal remedies for any benefits payable under PEORP.

Section 10. The bill provides a statement of important state interest to effect compliance with Art. VII, s. 18, State Constitution, Part VII of ch. 112, F.S., and Art. X, s.14, State Constitution.

Section 11. The DMS is authorized to contract with a private-sector company for administration of the disability benefits. By March 1, 2003, the department is to provide the Legislature with a report on an alternative administration and funding of disability benefits for both the PEORP and the FRS including commercial insurance coverage.

Section 12. The DMS is directed to seek a private letter ruling from the Internal Revenue Service on the disability retirement program and to promulgate such rules as necessary to maintain the tax-qualified status of that benefit program and the FRS.

Section 13. The act takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Art. VII of the State Constitution provides that no county or municipality is bound by any general law requiring the county or municipality to spend funds or to take an action requiring the expenditure of funds unless certain exemptions or exceptions apply. However, laws of insignificant fiscal impact (\$1.6 million) are exempt from this provision. In addition, there is an exception from this provision if the Legislature determines that the bill fulfills an important state interest and similarly situated persons are all required to comply.

The additional expansion of Senior Management Class benefits to the named employees will increase retirement contributions by the employers by about 3.5 percent. The FRS is a multi-employer plan with a significant portion of its membership composed of counties and cities. However, preliminary estimates indicate that this will impact approximately 150 employees, with a few being employees of municipalities and counties.

Because it is unlikely that the cumulative annual impact on counties and municipalities will exceed the insignificant fiscal impact threshold, the CS appears to be exempt from Article VII, Section 18 of the Florida Constitution. In addition, because provisions in the CS apply to state employers, as well as county and city employers, and the bill contains a finding of important state interest, the bill appears to be excepted from Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Senate Bill 2134 is the accompanying trust fund bill to provide for the required account separation.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The effect of PEORP enrollment is to give participants, after vesting, full equity ownership in their retirement account. The promise to pay benefit features of the existing plan is exchanged for a promise to distribute from a variable equity amount in PEORP. That equity is determined at net asset value, close of markets, Eastern Time each business day.

C. Government Sector Impact:

Members of PEORP will receive a normalized contribution to their accounts, that is, a contribution which actuarially reflects the true normal cost of the equivalent benefit had they remained in the defined benefit plan. For the past two years the Legislature has chosen to charge employers in the defined benefit plan a below normal cost rate through recognition of a portion of the plan surplus, using that difference to fund other government priorities.

Overall, this bill provides a lower disability rate assessment than that contained in current law, which will be reflected in lower employer contributions for the disability income portion of the benefit. The dollar amounts listed below represent the fully allocated and itemized costs of the benefit which otherwise would be aggregated within the total cost structure of the defined benefit plan.

PEORP Disability Benefits, Employer Cost by Fiscal Year

EMPLOYER	FY 03	FY 04	FY 05
State Agencies	\$ 11,242,000	\$ 11,804,000	\$ 12,395,000
Local Governments	\$ 29,585,000	\$ 31,064,000	\$ 32,617,000
TOTAL	\$ 40,827,000	\$ 42,868,000	\$ 45,012,000

The additional expansion of Senior Management Class benefits to the named employees will increase retirement contributions by the employers by about 3.5 percent. This represents the difference in the payroll contribution rates between the Regular Class and the Senior Management Class. Normal retirement remains unaffected at 30 years or age 62. The non-cash benefits of employer-paid health and disability insurance and

pre-credited leave balances are already provided these positions if they otherwise are state employees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning Local and Military Affairs:
Includes the Duval County Clerk of Court and Sheriff in the Elected Officer Class of FRS,
should they choose to participate. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
