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: SB 1380

SPONSOR: Senator Clary

SUBJECT: Florida Retirement System; Public School Employees

DATE: March 14, 2003 REVISED: 03/19/03

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	O'Farrell	ED	Fav/1 amendment
2.			GO	
3.			AED	
4.			AP	
5.			RC	
6.				

I. Summary:

Retirement Related Issues: SB 1380 proposes to create a sub-class of the FRS Regular Class consisting of instructional staff and school administrators who are employed by county school boards, public charter schools that participate in the FRS, and the Florida School for the Deaf and Blind. This bill would provide improved retirement benefits to this group of FRS members including 3-year average final compensation (AFC). Members would qualify for normal retirement after 25-years of public school member service or age 55 with at least 6 years but less than 25 years of public school member service. Members who choose to take early retirement would have their retirement penalty calculated as a reduction from age 55. The bill provides improved per-year accrual values with an applicability date of July 1, 2003. For each year members choose to work after July 1, 2003, they could replace the lower value with the higher value calculation for two prior years of work. The number of prior work years that could be switched in value would be up to 18 years.

The bill proposes to remove the 780-hour limitation for non-contractual work performed by FRS retirees who are reemployed during the 2nd – 12th calendar months following termination for retirement. The positions of substitutes and hourly teachers would be removed from the reemployment exceptions that FRS retirees may work without suspending their retirement benefit. This bill proposes to expand reemployment exceptions for district school boards to allow FRS retirees to be reemployed as contractual classroom instructors and school administrators without suspending their retirement benefit. These employees must be off all employment for the first calendar month after termination for retirement to finalize their retirement.

The bill proposes to amend the eligibility of instructional personnel to elect their Deferred Retirement Option Program (DROP) participation until anytime after completing 25 years of

service as a public school member and allows certain instructional personnel and administrators to participate in DROP for more than 60 months.

The bill contains a provision that the costs attributable to benefit improvements for the public school member sub-class of the Regular Class are to be funded from surplus actuarial assets, to the extent that surplus is available.

The bill authorizes the Division of Retirement to have an actuarial analysis performed of the impact for allowing members to transfer retirement benefits accrued through the FRS defined benefit plan to out-of-state governmental entities. The bill also proposes to allow the transfer of retirement credit from out-of-state governmental entities to both of the primary plans of the FRS.

Education Related Issues: The bill provides that school boards may adopt policies to provide a comprehensive benefit package for school district personnel.

The bill allows the reappointment of instructional personnel who have not passed the mastery of general knowledge test within the first year of employment as required in s. 1012.56, Florida Statutes. The reappointment must be limited to teachers whose students have demonstrated annual learning gains appropriate for the grade level. It is not specified how many times a teacher may be reappointed under these circumstances.

The bill removes the requirement that teachers holding temporary certificates demonstrate mastery of the general knowledge requirement within the first year of employment.

Language is added to create an "Executive Leadership" certification. The language describes an incentive/recognition program rather than an actual area of certification. Incentives may include merit pay, spending flexibility, relaxed regulation, additional resources and/or public recognition.

A new section of statute to create a "Professional Development for School Administrators Program" is included. The bill creates an advisory council for the establishment of professional development standards and requires the Secretary of Education to implement and request funding for that purpose.

This bill substantially amends sections 121.021, 121.091, 1001.43, 1012.27, 1012.56, and 1012.61, Florida Statutes. The bill creates sections 1012.597 and 1012.987, Florida Statutes.

The effective date of the bill is July 1, 2003

II. Present Situation:

Chapter 121, Florida Statutes, establishes the Florida Retirement System (FRS). The FRS was created in 1970 as the successor benefit plan to the separate Teachers' Retirement System, Highway Patrol retirement plan, and the State and County Officers and Employees Retirement System. The predecessor teachers' plan was approaching insolvency and its combination with the other solvent plans rescued it from financial collapse. In 1972 the FRS incorporated the last remaining independent state retirement plan, the Judicial Retirement System. Today the FRS covers about 600,000 active and 200,000 retired employees and beneficiaries. It is one of the five largest plans in the nation and reports itself as the most efficient public plan in the country in terms of administrative cost per member.

The FRS is a nonparticipatory, multi-employer pension plan covering the employees, survivors, and dependents of some 800 State of Florida agency and local government employers. The FRS is, however, a predominantly local government plan. The principal employer categories are district school boards, counties, and community colleges. State officers and employees comprise only about 25 percent of the membership. Membership is compulsory for state agencies and constitutional entities; it is optional for municipalities and independent special districts that may participate by resolution of their governing authorities. Withdrawal of optional membership can be affected only by statute and was last undertaken for public hospitals in 1995.

The FRS is composed of several sub-classes of membership with separate benefit accrual rates: Regular (1.60 percent-1.68 percent); Special Risk (3.00 percent); Special Risk, Administrative Support (1.6 percent); Senior Management (2.00 percent); Justices and Judges (3.33 percent); and Elected Officers (3.00 percent).[1]

Eligibility for normal, unreduced retirement occurs at the earlier completion of 30 years of service or age 62, or 25 years of service and age 55 for the two special risk classes. Members must satisfy minimum service periods to qualify, or vest, for benefits. Effective July 1, 2001, three separate vesting periods[2] were collapsed into one uniform 6-year period. Early retirement can occur at any age subsequent to vesting but is accompanied by an annual penalty of 5 percent per year measured from age 62. Incorporated within the structure of the Defined Benefit (DB) plan is a disability retirement benefit that provides both for an in-line-of-duty and non-duty pension payment.

Beginning in 2002, the FRS permitted participants to select either the defined benefit retirement program or a defined contribution retirement program known as the Public Employee Optional Retirement Program (PEORP). The defined benefit retirement program offers a monthly benefit payable in the form of an annuity over the retiree's lifetime that is calculated as a percentage of the member's highest five years' of average final pay. The PEORP is a personally owned defined contribution plan in which participants will manage their pension assets.

Active members may choose to participate in a Deferred Retirement Option Program (DROP) during the last five years of their service.[3] Under its provisions participants have their accrued monthly pension benefit paid into an account bearing a fixed interest rate of 6.5 percent. Upon cessation of employment they may receive the account proceeds in a full or partial lump sum payment or they may transfer the accumulated account balance to another qualified retirement plan.

[1]Accrual rate is the recognized pension value per year of creditable service. Accrual rate multiplied times total length of creditable service in years multiplied times average final compensation (inclusive of up to 500 hours of annual leave) equals an Option 1 benefit for the life of the named retiree only. There are three other reduced benefit options that incorporate survivors' benefits.

[2] These vesting periods were 7 years, 8 years, and 10 years of service.

[3] Participation in DROP requires the member to qualify for normal retirement and contractually commit to termination of employment within a five-year period.

Retired members receive a fixed 3 percent cost-of-living allowance each July 1 on their monthly benefit and DROP account. Members who have terminated employment with vested rights, that is, the right to receive a future benefit, do not have these benefits indexed to inflation until the commencement of benefit payments. State of Florida employees have the additional option of maintaining their health insurance and prescription drug coverage at retirement at full cost less a monthly health insurance subsidy payment equal to $5 per month per year of service not to exceed $150.

Benefit administration is the responsibility of the Division of Retirement in the Department of Management Services. Investment activities are conducted by a constitutional agency, the State Board of Administration headed by the Governor, Chief Financial Officer, and Attorney General in their collegial capacity and Trustees of the Florida Retirement System Trust Fund. Article X, s. 14 of the State Constitution and chapter 121 and Part VII of chapter 112, Florida Statutes, govern the operation of the system and its requirement that benefits must be prefunded in a sound actuarial manner.

With regard to statutory provisions not related to retirement issues, the following comments summarize the current status:

No specific mention of benefit packages occurs for school district personnel, but the district school board may adopt policies and procedures for the management of all personnel of the school system.

Teachers are required to pass a test on the mastery of general knowledge. Holders of a temporary certificate are required to pass the test within 1 calendar year of the date of employment.

The annual payment for accumulated sick leave that is earned for that year, and that is unused at the end of the school year, is restricted to instructional staff and educational support employees.

Terminal pay for unused sick leave for administrative personnel is restricted to one-fourth of unused sick leave accumulated on or after July 1, 2001 and may not exceed 60 days of actual payment. Sick leave accumulated before July 1, 2001 may be retained; however, sick leave earned after that date may not be accumulated for terminal pay purposes until the accumulated leave balance for leave earned before July 1, 2001, is reduced to less than 60 days.

III. Effect of Proposed Changes:

ISSUES RELATED TO RETIREMENT: SB 1380 would effectively create a sub-class of the Regular Class of the Florida Retirement System (FRS) for public school members comprised of instructional personnel and school administrators who are employed by district school boards, public charter schools, and the School for the Deaf and Blind. Members in this sub-class of the Regular Class would be eligible for normal retirement after 25 years of public school member service or age 55 and 6 years of public school member service, would receive early retirement benefits reduced from age 55, would receive benefits calculated on 3-year average final compensation, and would receive improved Regular Class accrual values for service after July 1, 2003, with the ability to retroactively apply these improved accrual values by 2 years for every year of service after July 1, 2003.

School administrators and instructional personnel could participate in the Deferred Retirement Option Program at anytime after completing 25 years of public school member service. This same group of DROP participants could exceed the 60-month participation limit with the consent of their school board. The proposed changes to DROP participation eligibility from "anytime after reaching their normal retirement date" to "anytime after completing 25 years of public school service" would limit the number of instructional personnel or school administrators who could defer participation in DROP to any future date after reaching normal retirement eligibility due to the fact that the bill provides that public school sub-class members must complete 25 years of service as a public school member. (Thus, as currently written, the earliest that a public school sub-class member could defer DROP participation to "anytime in the future" would be July 1, 2028, or 25 years after the effective date of the bill which is July 1, 2003.) Members who became employed in positions covered by the public school member sub-class of the Regular Class and who reach normal retirement based upon reaching age 55 would have to enter DROP immediately in order to participate for the current 60-month limitation, otherwise, like other FRS members, the maximum period of DROP participation would decrease from the 60-month maximum on a month-by-month basis for each month that DROP participation was delayed.

Reemployment restrictions would be liberalized for retirees employed by district school boards after meeting the definition of termination. School boards could employ retirees as education paraprofessionals, transportation assistants, bus drivers, transportation aides, or food service workers on a noncontractual basis without limitation after termination. Classroom instructors and school administrators could be reemployed on an annual contractual basis without limitation.

FUNDING OF RETIREMENT RELATED ISSUES: SB 1380 provides funding for the benefit accrual value increase by using either available surplus actuarial assets and/or increased employer contributions based on the salaries of this new sub-class of members. The specific funding for the benefit accrual value increase appears to be based upon the costs indicated by Special Study 2001-b performed by Milliman USA, the external actuary to the Division of Retirement. This special study covered all employees instead of only the instructional personnel and school-based administrators included under SB 1380. A special study is required to identify the funding for this benefit as it applies to the members specified by this proposal.

Additionally, this bill proposes to provide 3-year average final compensation, 25-year normal retirement, and early retirement from age 55 to the members of this sub-class of the Regular Class in addition to liberalized reemployment restrictions for retirees reemployed by school boards.

ACTUARIAL ANALYSIS: The bill requires an actuarial analysis of the feasibility of allowing FRS Pension Plan members to transfer their accrued retirement benefits to out-of-state retirement plans as well as the ability of the FRS to accept such retirement benefit transfers in both the primary plans of the FRS. This report is due to the Legislature by December 31, 2003.

EDUCATIONAL ISSUES: The bill provides that a district school board may adopt policies for the provision of comprehensive benefit packages to personnel of the district school system.

The bill allows a district to reemploy a teacher who has not passed the general knowledge test under certain conditions and removes a requirement that a teacher holding a temporary certificate must pass the general knowledge test within the first year of employment.

The bill creates an executive leadership certification for school principals as a new section of statute. The State Board of Education is required to adopt rules through which principals and assistant principals may earn the certification. Criteria and incentives associated with the certification are included.

The bill removes restrictions limiting the annual payment for unused sick leave to instructional personnel and educational support personnel only, thereby expanding the number of school district employees who may participate in such a program. The section also eliminates restrictions on terminal pay for unused sick leave for administrators, thereby removing the current limits on the amount of sick leave that may be accumulated by administrators.

The bill creates a "Professional Development for School Administrators" program. The Department of Education is charged with developing a continuing education program for administrators. The Secretary of Education is charged with establishing an advisory council to make recommendations about the continuing education program. The Secretary must annually recommend specific funding for professional development of administrators.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The funding proposed by this bill is insufficient to meet the actuarially sound funding requirements of Article X, Section 14, Florida Constitution, and Part VII, Chapter 112, Florida Statutes. An actuarial special study would be required to assess the correct funding for these proposed benefit improvements of SB 1380.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The required funding and associated costs of changes proposed in this bill are not known. The benefit improvements as proposed by this bill have not been studied before. In addition, the liberalized exceptions from reemployment restrictions are significant and would result in behavioral changes that will impact the funding assumptions about when members will elect to retire, thereby requiring specific funding for this benefit improvement. An actuarial special study would be required to assess the correct funding for these proposed benefit improvements.

According to the Department of Education, there are approximately 160,000 instructional personnel with district school boards and about 7,100 school administrators, which represent 57 percent of the Regular Class members employed by district school boards as of June 30, 2002. As the implementation of the recently passed classroom size amendment is accomplished, the number of members in this sub-class will increase.

It is unclear if the mandated pre-K education provision will impact the growth of this sub-class of Regular Class members. Also, K-12 education is provided by lab schools associated with state universities and certain programs offered through other state agencies such as Juvenile Justice or the Department of Children and Families. Since this definition has specific agencies listed instead of the level of education covered, the school based administrators and instructional staff outside of district school boards, public charter schools, and the Florida School for the Deaf and Blind would not be eligible to participate in the public school member sub-class.

The contribution rate for a DROP participant is more expensive to the employing agency than is the rate for a regular employee. To the extent members choose to stay in DROP for longer than the current 5 year limit, the cost to the employer will be greater than for a regular employee.

With the passage of the Class Size Reduction Amendment in November, 2002, the State may need to employ more teachers to meet the constitutional mandates on class size. It is not clear whether the changes proposed in this bill will result in teachers retiring after 25 years, thereby accelerating the depletion of teachers by 5 years, or result in teachers choosing to join the DROP and remain employed for longer than 5 years.

VI. Technical Deficiencies:

The title Secretary of Education is used in the bill. An amendment is needed to replace that title with Commissioner of Education.

VII. Related Issues:

This bill does not contain a provision certifying that these changes serve an important state interest and treat all similarly situated employees in the same fashion. Therefore, this bill would require passage by 2/3 vote in each of the House of Representatives and the Senate in order to be exempted from the restriction on unfunded local mandates under Article VII, Section 18 of the Florida Constitution.

VIII. Amendments:

#1 by Education:
Corrects references to the Commissioner of Education.