

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill provides an additional opportunity for local government employees, in the Senior Management Service Class, who have withdrawn from the FRS to have one opportunity to transfer back to the FRS defined benefit plan or defined contribution plan.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to more than 630,000 active and 226,000 retired members and beneficiaries of its more than 800 government employers.¹ The active membership of the FRS is divided into five membership classes: Regular Class; Special Risk Class; Special Risk Administrative Support Class; Elected Officers' Class; and Senior Management Service Class. Each class is separately funded based upon the costs attributable to the members of that class.

Senior Management Service Class

The Senior Management Service Class includes any member who holds a position in the Senior Management Service of the State of Florida, certain positions included in the class by law,² as well as additional managerial and policymaking positions included in the class as designated by specified employer groups as permitted by law.³ In addition, elected officers may elect to participate in the Senior Management Service Class rather than the Elected Officers' Class. Contribution rates for the Senior Management Service Class are 11.64 percent versus 9.98 percent for the Regular Class.

Members of the Senior Management Service Class may withdraw from the FRS, and the decision is irrevocable for as long as the employee holds the position. Those members are not eligible to participate in the Senior Management Service Optional Annuity Program.⁴

Defined Benefit Plan and Defined Contribution Plan

The default choice in the FRS is a defined benefit, or percent of final pay pension arrangement, in which a final benefit is calculated on the basis of service, retirement class factor, and the average of the

¹ Department of Management Services 2005 Substantive Bill Analysis, HB 483, February 21, 2005, at 2.

² By law, participation in the Senior Management Service Class is compulsory for each university president in the State University System and each community college president in the State Community College System; for the manager of each participating city or county; for all appointed district school superintendents; for the Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Military Personnel, Director of Administration of the Department of Military Affairs; for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the Capital Collateral Regional Counsels, the clerks of the district courts of appeals, the marshals of the district courts of appeals, and the trial court administrator in each judicial circuit; for any judge of compensation claims with the Office of the Judges of Compensation Claims within the Department of Labor and Employment Security.

³ Subject to meeting specified criteria, by law, limited numbers of additional managerial or policymaking positions may be designated for inclusion in the Senior Management Service Class by local government agencies, the Florida Legislature, the Auditor General's Office, the Commission on Ethics, the Executive Service of the State University System, the State Board of Administration, the Department of Military Affairs, and Offices of the State Attorney and Public Defender.

⁴ Section 121.055, F.S.

best five years' salary. Since 2001, the FRS has permitted employees to select a defined contribution alternative in which employees own and actively manage the contributions to their individual account. Both choices are accompanied by equivalent disability benefits for service and non-service related illness or injury. Retirees from either plan are also permitted to receive a contribution from a separate account to subsidize payment of health insurance premiums.

The United States Internal Revenue Service prohibits any person from participating in two retirement plans at the same time for the same work experience.

Effect of Bill

The bill creates a definition of the term "enrolled actuary." However, the term "actuary" is already defined in current law and is not substantively different from the definition of the new term.⁵ It also removes unnecessary cross-references as a result of the creation of the definition.

The bill provides a six month window (January 1, 2006 – June 30, 2006) for a local government employee, in the Senior Management Service Class, who has withdrawn from the FRS to have one opportunity to transfer from his or her optional retirement program to the FRS defined benefit plan or defined contribution plan (Public Employee Optional Retirement Program or PEORP), subject to the terms of the program selected. An employee who chooses to transfer to PEORP must retain his or her contributions, interest, and earnings in the local optional retirement program. An employee who chooses to transfer to the FRS defined benefit plan must receive service credit equal to his or her years of service under the local program, but only upon payment to the FRS Trust Fund of an amount representing the present value of the employee's accumulated benefit obligation for the affected period of service.

The present value is calculated using the discount rate and other relevant actuarial assumptions that were used to value the FRS defined benefit plan liabilities in the most recent actuarial valuation. The calculation includes any service already maintained under the defined benefit plan in addition to the period of withdrawal. The present value of any service already maintained under the defined benefit plan must be applied as a credit to the total cost resulting from the calculation.

The Division of Retirement must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., providing a definition of the term "enrolled actuary."

Sections 2 and 3 amend ss. 121.051 and 121.0511, F.S., removing cross-references.

Section 4 amends s. 121.055, F.S., relating to the Senior Management Service Class.

Section 5 provides a July 1, 2005, effective date.

⁵ The bill defines the term "enrolled actuary" to mean "an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries." Section 121.021(6), F.S., defines the term "actuary" to mean "a fellow of the Society of Actuaries or a member of the American Academy of Actuaries or an organization of which one or more members is a fellow of the Society of Actuaries or a member of the American Academy of Actuaries or both."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See FISCAL COMMENTS.
2. Expenditures:
See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See FISCAL COMMENTS.
2. Expenditures:
See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The bill should have no more than a nominal impact on the funding of the FRS. The cost of the transfer to the FRS defined benefit plan would be based upon a cost formula certified by an enrolled actuary, and FRS defined contribution plan participation would be prospective with the required contributions being paid thereafter; however, any cost that becomes a system liability would be addressed in future actuarial valuations.⁶

The affected FRS employers would pay employer contributions from the date of the employee's transfer to the FRS defined benefit plan or defined contribution plan.⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill appears to comply with the requirements of s. 14, Art. X of the State Constitution.

Article X, s. 14, Florida Constitution

⁶ Department of Management Services 2005 Substantive Bill Analysis, HB 483, February 21, 2005, at 4.

⁷ *Id.*

Since 1976, the Florida Constitution has required that retirement benefit increases under public pension plans in the state of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of chapter 112, F.S.

Article X, s. 14 of the Florida Constitution is implemented by statute under part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to "prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.