

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Governmental Operations Committee

BILL: CS/SB 420

INTRODUCER: Governmental Operations Committee and Senator Lawson

SUBJECT: State Retirement Programs

DATE: March 14, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>HE</u>	<u><b>Fav/2 amendments</b></u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u><b>Fav/CS</b></u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill expands membership in optional retirement programs to certain public education employees. Specifically, this bill qualifies the following employees as eligible for these alternative programs:

- i. Public community college or community college-sponsored charter technical career center renewed members in the Regular Class of the Florida Retirement System (FRS); and
- ii. State University System renewed members of the FRS.

A one-time opportunity is provided to allow a State University System Optional Retirement Program participant a transfer from that program to the FRS or the Public Employee Optional Retirement Program.

This bill substantially amends sections 121.051, 121.35, and 121.4501 of the Florida Statutes.

## II. Present Situation:

### Florida Retirement System (FRS)

Chapter 121, F.S., contains the Florida Retirement System Act.<sup>1</sup> Section 121.051, F.S., provides that participation in the FRS is generally compulsory for all officers and employees, except in certain instances.<sup>2</sup> Employees who meet specified eligibility criteria are authorized to participate in various optional retirement programs. If an employee so elects, accrual of benefits under the FRS ceases, and is replaced by the alternative program.

### State Community College System Optional Retirement Program

Public community colleges or charter technical career center employees who are members of the Regular Class of the FRS are authorized to elect participation in the State Community College System Optional Retirement Program.<sup>3</sup> A defined contribution program as classified in section 403(b) of the Internal Revenue Code, this program provides retirement and death benefits through contracts with designated insurance carriers. Each community college contributes on behalf of each participant a percentage of the participant's salary as required by law. As of July 1, 2006, this contribution rate remains 10.43 percent, which includes a portion representing the Health Insurance Subsidy program provided to FRS retirees.

### Optional Retirement Program for the State University System

An optional retirement program for the State University System is available to persons who are otherwise eligible for membership in the FRS, and are either:

- i. Employed as instructional and research faculty in exempt positions;
- ii. Employed in administrative and professional positions in exempt positions; or
- iii. The Chancellor and the university presidents.<sup>4</sup>

Employees who become eligible to participate after January 1, 1993 are compulsory participants of the program unless the employee elects membership in the FRS.<sup>5</sup> A defined contribution program as classified in section 403(b) of the Internal Revenue Code, this program provides retirement and death benefits through contracts with designated insurance carriers. The employing university contributes on behalf of each participant a percentage of the participant's salary as required by law. As of July 1, 2006, this contribution rate remains at 10.43 percent of the participant's salary, including a portion representing the Health Insurance Subsidy Program.

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<sup>1</sup> Section 121.011(1), F.S.

<sup>2</sup> Section 121.051(1)(a), F.S., excludes faculty employed at a university medical center through a faculty practice plan; s. 121.051(1)(d), F.S., excludes certain employees of a not-for-profit corporation or association by the Board of County Commissioners of Palm Beach County, and consultants or independent contractors.

<sup>3</sup> Section 121.051(2)(c), F.S.

<sup>4</sup> Section 121.35(2), F.S.

<sup>5</sup> Section 121.35(3)(c), F.S.

## **Public Employee Optional Retirement Program**

This plan is commonly known as the FRS Investment Plan, and is a recently-provided option to the FRS Pension Plan.<sup>6</sup>

Employees eligible to participate include:

- Those who participate in, or are eligible to participate in the State Community College Optional Retirement Program; or,
- Those who are eligible to participate in, but do not participate in the State University System Optional Retirement Program.<sup>7</sup>

FRS employers contribute a set percentage of each participating employee's monthly compensation to the program, based on membership class. Participants vest after completion of one year of covered service.

### **III. Effect of Proposed Changes:**

This bill makes available certain options for public education employees:

- Regarding employees of community colleges or charter technical career centers sponsored by community colleges, this bill expands participation in the State Community College System Optional Retirement Program to include those that are eligible for renewed membership in the Regular Class of the Florida Retirement System (FRS);
- Regarding employees of the state university system, this bill expands participation in the Optional Retirement Program for the State University System to include those eligible for renewed membership in the FRS; and
- Employees who have elected participation in the State University System Optional Retirement System have the one-time option of transferring to either the FRS or the Public Employee Optional Retirement Program.

This bill provides for a transfer of benefits and cessation from future benefits under the original program for employees who elect participation in the State University System Optional Retirement Program.

For employees who elect transfer to the FRS from the State University System Optional Retirement Program, service credit is based on the actuarially determined accumulated benefit obligation for that period of service, and the transfer sum is determined by a formula and methodology certified by an enrolled actuary.

Regarding participation in the Public Employee Optional Retirement Program, this bill expands the definition of an eligible employee by both removing the restriction on employees participating in an optional retirement program, and including participants in the State University System Optional Retirement Program.

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<sup>6</sup> Chapter 2000-169, L.O.F., provided for the creation of the optional investment plan.

<sup>7</sup> Section 121.4501(2)(f), F.S.

This bill takes effect July 1, 2007.

The Department of Management Services raises the following issues:

- With the current effective date, insufficient time is allotted to provide for the creation of election transfer educational materials and ballots, and changes to the database, regarding the provision of a transfer to the FRS defined benefit or investment plan for State University System Optional Retirement Program participants.
- Providing an open election window for State University System Optional Retirement Program participants, although consistent with that provided to Community College Optional Retirement Program participants, grants far greater flexibility to these groups than that provided to other groups that are similarly situated.
- Providing automatic enrollment in the FRS, in addition to the other options available, creates confusion about which election is being selected.
- This bill does not reconcile the issue that certain faculty members employed in faculty practice plans are mandatory State University System Optional Retirement Program participants and ineligible to elect participation in the FRS.

In its committee substitute form the bill addresses the proper recognition of the appropriate actuarial benefit obligation and the creation of a one-year selection window from January 1 through December 31, 2008, to minimize the anti-selection bias that could be created by participants effectively “day-trading” their plan choices as an investment option itself.

#### **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:

Section 14 of Article X of the State Constitution requires that any changes made to a publicly funded retirement or pension system resulting in an increase in member or beneficiary benefits must also include provision for the funding of the increase in benefits on a sound actuarial basis.

The Milliman study analysis of this bill concludes that this bill meets the requirements of Article X, Section 14 of the State Constitution. Finding no fiscal impact overall, the study specifically provides:

- i. There is no fiscal impact on the FRS if certain renewed members of the FRS employed at community colleges and state universities are allowed participation in their optional retirement plans as the option already exists for otherwise eligible FRS members, and the potential class of new members is small; and
- ii. There is no fiscal impact from authorizing a State University System Optional Retirement Program participant to transfer from the FRS to the State University System Optional Retirement account a sum representing the fixed period stated in the bill, because the amount would be the present value of the accumulated benefit obligation for the corresponding service credit and would eliminate any long term liability for the service credit.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employees that qualify for optional retirement programs or transfer of benefits pursuant to this bill may benefit through the new options available.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The Department of Management Services requests two conforming changes to the bill as follows:

- i. A reference to s. 121.4501(3)(c)2., F.S., be provided, as this is the formula that is consistently used in determining the present value of a member's accumulated benefit obligation through a transfer; and
- ii. A deletion of language that provides for cost to be calculated based on an assumption that the benefit commencement occurs on the first date the employee would become eligible for unreduced benefits, for the purpose of assessing service credit. This language introduces an incorrect component into the formula, which would raise constitutional concerns and require an additional actuarial study to be performed.

**VII. Related Issues:**

The Committee Substitute addresses all of the issues raised by the Department of Management Services in its impact analysis.



## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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