

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #: CS/HB 565

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Government Operations
Subcommittee; Beshears

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**COMPANION
BILLS:** CS/SB 1054

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 565 passed the House on April 22, 2015, and subsequently passed the Senate on April 27, 2015.

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits to 622,089 active members, 363,034 retired members and beneficiaries, and 38,058 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 187 cities and 268 independent hospital districts and special districts that have elected to join the system.

The membership of the FRS is divided into five membership classes, including the Senior Management Service Class (SMSC), which is less than 2 percent of the total membership of the FRS. Once a position has been designated as a SMSC position, it is not removed from the class unless the duties and responsibilities of the position change substantially and it therefore no longer meets the requirements for participation in the class. In 1997, a 6-month window was provided to local governments to allow them to reassess positions previously designated as SMSC, and to request removal from the class of any such positions that it deems appropriate.

The bill provides a similar 6-month window to allow local agency employers to reassess positions previously designated as SMSC positions and to request removal from the class of any such positions that it deems appropriate. After the initial window provided in 2015, the bill allows for subsequent reviews and reclassifications every five years.

The bill could have an indeterminate positive fiscal impact on local governments that use the additional flexibility to reduce the number of positions classified as SMSC. See Fiscal Comments.

The bill was approved by the Governor on June 11, 2015, ch. 2015-149, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹

The FRS is governed by the Florida Retirement System Act.² The FRS, which is a multiple-employer, contributory plan,³ provides retirement income benefits to 622,089 active members, 363,034 retired members and beneficiaries, and 38,058 members of the Deferred Retirement Option Program.⁴ It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 187 cities and 268 independent hospital districts and special districts that have elected to join the system.⁵

The membership of the FRS is divided into five membership classes:⁶

- Regular Class⁷ consists of 543,434 members (87.35 percent of the membership);
- Special Risk Class⁸ includes 68,593 members (11.02 percent);
- Special Risk Administrative Support Class⁹ has 84 members (.01 percent);
- Elected Officers' Class¹⁰ has 2,187 members (0.35 percent); and
- Senior Management Service Class¹¹ has 7,791 members (1.25 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

Senior Management Service Class Designation

The Senior Management Service Class (SMSC) was established as a membership class in 1987.¹² SMSC members fill senior level management positions assigned by law to the SMSC or authorized by

¹ *The Florida Retirement System Comprehensive Annual Financial Report*, Fiscal Year Ended June 30, 2014, at 29. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 6, 2015).

² Chapter 121, F.S.

³ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after June 30, 2011.

⁴ As of June 30, 2014, the FRS defined benefit plan, also known as the pension plan, had 512,364 members, and the defined contribution plan, also known as the investment plan, had 109,725 members. *The Florida Retirement System Comprehensive Annual Financial Report*, Fiscal Year Ended June 30, 2014, at 112.

⁵ Florida Retirement System Participating Employers for Plan Year 2014-15, prepared by the Department of Management Services, Division of Retirement, Revised February 2015, at 8. A copy of the document can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications (last visited March 9, 2015).

⁶ *The Florida Retirement System Comprehensive Annual Financial Report*, Fiscal Year Ended June 30, 2014, at 115.

⁷ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁸ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁹ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the FRS. Section 121.0515(8), F.S.

¹⁰ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

¹¹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

law as eligible for SMSC designation. Participation in the SMSC must be limited to and compulsory for any member of the FRS who holds a position in the Senior Management Service of the State, established by part III of chapter 110, F.S.,¹³ unless the member elects to participate in the Senior Management Service Optional Annuity Program.¹⁴

Since 1987, the Legislature has amended the list of who must participate in the SMSC.¹⁵ In 1990, local senior managers were added to the class. Participation in the SMSC is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Each local agency employer may designate up to 10 additional qualified positions (in addition to the city or county manager or appointed school superintendent) to be included in the SMSC. If the agency has 100 or more regularly established positions, it can also designate one additional SMSC position for every 100 regularly established positions, so long as the total number of additional positions does not exceed one percent of the regularly established positions within the local agency.¹⁶

Each designated position must be:¹⁷

- Non-elective managerial or policymaking;
- Filled by an employee who is not subject to a continuing contract and serves at the pleasure of the employer without civil service protection; and
- Filled by an employee who is head of an organizational unit or has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

Once a local agency position has been designated as a SMSC position, it is not removed from the class unless the duties and responsibilities of the position change substantially and it therefore no longer meets the requirements for participation in the class of membership.¹⁸ In 1997, a 6-month period was provided to allow local governments time to review positions designated as SMSC and to request removal from the class of any such position it deemed appropriate. The period lasted from July 1, 1997, through December 31, 1997.¹⁹

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.²⁰ The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans. The SMSC employer contribution rate is 4.80 percent.²¹ The contribution rate for the Regular Class is 3.53 percent.²²

¹² Section 121.055, F.S.

¹³ Section 110.402(1), F.S., provides that the Senior Management Service is created as a separate system of personnel administration for positions in the executive branch the duties and responsibilities of which are primarily and essentially policymaking or managerial in nature. Section 110.403(1)(a), F.S., provides that the number of positions included in the Senior Management Service may not exceed one percent of the total full-time positions in the career service.

¹⁴ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for Senior Management Service members. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS.

Section 121.055(6), F.S.

¹⁵ See s. 121.055, F.S.

¹⁶ Section 121.055(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Section 121.055(2), F.S.

¹⁹ Section 121.055(2)(b), F.S.

²⁰ Section 121.70(1), F.S.

²¹ Section 121.71(4), F.S.

²² *Id.*

Benefit Calculations

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.²³ The accrual rate varies by class. The accrual rate for members of the SMSC is 2.00 percent.²⁴

Rather than using a calculation to determine the member's retirement benefit, a member's investment plan benefit is the member's account balance, which is the employee and employer contributions, plus or minus investment returns, minus expenses and fees. The amount deposited in the member's account varies based on the member's class. The current deposit rate for the SMSC is 7.67 percent.²⁵

Regardless of employee class, all employees contribute three percent of their compensation towards retirement.²⁶

Effect of Proposed Bill

The bill allows local agency employers to reassess positions previously designated as SMSC positions. The bill provides a 6-month window to allow a local agency employer time to reassess its designation of positions previously designated as SMSC, and to request removal from the class of any such positions that it deems appropriate. After the initial period in 2015, the bill provides that the window for reclassification opens once every five years.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

²³ Section 121.091, F.S.

²⁴ Section 121.091(1)(a)3., F.S.

²⁵ Section 121.72(5), F.S.

²⁶ Section 121.71(3), F.S.

The bill is permissive in nature. It doesn't require a local agency to review its SMSC positions or take specific action as a result of such review. Additionally, the bill does not change the maximum number of positions that public employers can designate as senior management. The bill simply provides a periodic window to facilitate the process for local agencies to reassess and adjust the classification of certain high level positions. The bill may have an indeterminate positive fiscal impact on local governments, as the local governments may use the increased flexibility to reduce the number of positions designated as SMSC, thereby reducing associated FRS employer contributions.