

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 7044

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Retirement Benefits for Certain Judges

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>GO Submitted as Committee Bill</b>
1.	<u>Loe</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Pre-meeting</b>
2.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 7044 allows certain judges who have reached the end of their Deferred Retirement Option Program participation period (typically 60 months) to transfer the accumulated DROP proceeds to the Florida Retirement System investment plan. In the investment plan, the judges will be permitted to direct the investment of these retirement benefits.

The fiscal impact on the Florida Retirement System Trust Fund is indeterminate.

The bill is effective upon becoming law.

**II. Present Situation:**

**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.<sup>1</sup> The FRS is a contributory system, with most members contributing three percent of their salaries.<sup>2</sup>

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<sup>1</sup> The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: [https://www.rol.frs.state.fl.us/forms/2013-14\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf).

<sup>2</sup> Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.<sup>4</sup>

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

- The Regular Class<sup>5</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 68,593 active members;
- The Special Risk Administrative Support Class<sup>7</sup> has 84 active members;
- The Elected Officers' Class<sup>8</sup> has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,607 members, plus 184 in renewed membership.<sup>10</sup>

### ***Investment Plan***

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.<sup>11</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>12</sup> Vested benefits are payable upon termination or death as a

<sup>3</sup> Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

<sup>4</sup> *Id.*, at 146.

<sup>5</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>6</sup> 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.

<sup>7</sup> 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 Florida Retirement System. Section 121.0515(8), F.S.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

<sup>11</sup> Section 121.4501(6)(a), F.S.

<sup>12</sup> If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>13</sup> The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>14</sup> An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.<sup>15</sup>

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>16</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>17</sup>

### ***Pension Plan***

The pension plan is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement.<sup>18</sup> Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.<sup>19</sup> For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>20</sup> Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.<sup>21</sup> For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.<sup>22</sup> For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.<sup>23</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.<sup>24</sup>

### ***Deferred Retirement Option Program***

The Deferred Retirement Option Program (DROP) is available under the Florida Retirement System Pension Plan when the member first reaches eligibility for normal retirement. The DROP allows a member to retire while continuing employment for up to 60 months. While in the

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<sup>13</sup> Section 121.591, F.S.

<sup>14</sup> See s. 121.4501(16), F.S.

<sup>15</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date.

Section 121.091(4)(f), F.S.

<sup>16</sup> Section 121.4501(8), F.S.

<sup>17</sup> Fla. Const., art IV, s. 4.

<sup>18</sup> Section 121.025, F.S.

<sup>19</sup> Section 121.021(45)(a), F.S.

<sup>20</sup> Section 121.021(45)(b), F.S.

<sup>21</sup> Section 121.091, F.S.

<sup>22</sup> Section 121.021(29)(a)1., F.S.

<sup>23</sup> Section 121.021(29)(b)1., F.S.

<sup>24</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

DROP, the member's retirement benefits accumulate in the Florida Retirement System Trust Fund (increased by a cost-of-living adjustment each July, as applicable) and earn monthly interest equivalent to an annual rate of 1.3 percent. (DROP participants with an effective DROP begin date before July, 2011, earn monthly interest equivalent to an annual rate of 6.5 percent.) The election to participate in the DROP must be made within 12 months of the member's normal retirement date, unless the member is eligible to defer the election. To participate for the maximum DROP period, the member must enter the DROP upon first reaching eligibility for normal retirement, or upon reaching an eligible deferral date as described below:

- A special risk class member who reaches his or her normal retirement date based upon years of service before reaching age 52 may defer DROP entry up to age 52 and still participate for 60 months. Also, a member of the Special Risk Administrative Support Class who has at least the number of years of Special Risk Class service required to be vested and reaches his or her normal retirement date based upon years of service before reaching age 52 may defer DROP entry up to age 52 and still participate for 60 months.
- A member of the Regular Class, Elected Officers' Class, or the Senior Management Services Class who reaches his or her normal retirement date before reaching age 57 may defer DROP entry until age 57 and still participate for 60 months. A member of the Special Risk Administrative Support Class who does not have the number of years of Special Risk Class service required to be vested would be subject to these deferral requirements.
- A member who reaches his or her normal retirement date during a term of office may defer the DROP election until the next succeeding term in that office and still participate for up to 60 months or until the end of that succeeding term, whichever is less.
- A member who is employed as K-12 instructional personnel as defined in section 1012.01(2), Florida Statutes, may elect to participate in the DROP at any time after reaching his or her normal retirement date and still participate for 60 months.

Upon termination, the DROP account is paid out as a lump sum payment, a rollover, or a combination partial lump sum payment and rollover, and monthly benefits are paid to the member in the amount as calculated upon entry into the DROP, plus cost-of-living adjustments for intervening years.

In most cases, the DROP participant must cease employment after a maximum of 60 months in the DROP, must satisfy the termination requirements for retirement, and must comply with applicable reemployment restrictions thereafter. However, certain exceptions apply:

- Effective July 1, 2002, a DROP participant who holds an elective office may end DROP participation and postpone compliance with termination requirements and reemployment limitations until he or she no longer holds the elective office (including consecutive terms in the same office). For the period between the end of DROP participation and termination, no retirement credit is earned and the member's DROP accumulation accrues no additional monthly benefits. If DROP participation began before July 1, 2010, the member's DROP accumulation continues to earn interest after participation ends and before termination. If DROP participation begins on or after July 1, 2010, the DROP accumulation does not earn interest during the period after DROP participation ends and termination.
- K-12 instructional personnel employed with a district school board, the Florida School for the Deaf and the Blind, or a developmental research school of a state university may be allowed to extend their DROP participation for up to an additional 36 months beyond their initial 60-month DROP participation period. To qualify for the extension, the DROP

participant must receive authorization from the employer and be approved by the Division of Retirement. If authorized to extend DROP participation, a participant must remain employed in an eligible position during the period of DROP extension.

### III. Effect of Proposed Changes:

The bill allows certain judges who have reached the end of their DROP participation period to transfer the accumulated DROP proceeds to the FRS investment plan. In the investment plan, the judges will be permitted to direct the investment of these retirement benefits.

**Section 1** amends section 121.053, F.S., to allow, at the end of the DROP participation period and before termination from covered employment, an eligible officer to transfer all or a portion of his or her DROP benefits and interest into the FRS investment plan. An eligible officer is defined as a county or circuit judge who is a participant of the DROP and has attained the applicable normal retirement age (age 62 or 65 depending when the judge initially enrolled in the FRS).

**Section 2** amends section 121.091, F.S., to clarify that an eligible officer who transfers the DROP benefits to the investment plan may not receive the DROP proceeds from the investment plan until the officer has terminated all employment relationships with covered employers and completed all other requirements relating to the processing of the payments.

**Section 3** amends section 121.4501, F.S., to expand the membership of the investment plan to include the eligible elected officers that have the option to transfer DROP benefits prior to termination of employment. The section is also amended to allow the investment plan to receive the transfer of the DROP benefits prior to the officer terminating employment. This transfer must constitute a “direct trustee-to-trustee transfer” under the federal tax code.

**Section 4** requires the SBA and the DMS to request a private letter ruling to ensure that the changes made to the FRS are consistent with the federal tax code regarding the qualified status of the pension plan. If the SBA or the DMS receives notification that the pension plan may be disqualified based on these changes, that portion of the bill does not apply.

**Section 5** provides that the act takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

#### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 7044 has an indeterminate fiscal impact to the private sector. Eligible officers will be permitted to direct the investment of accrued DROP benefits after the expiration of the DROP period (typically 60 months). Based on the investment experience, the eligible officers may enjoy additional investment earnings or may lose a portion of the principal DROP benefits.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact to the government sector. According to the State Board of Administration, to the extent that eligible officers remain in office beyond the 60-month DROP period and the FRS investments are positive relating to the accumulated DROP balances, the FRS Trust Fund investment earnings may be decreased. On the other hand, if the FRS pension plan incurs investment losses on accumulated DROP balances, the FRS Trust Fund will not have to use other funds to offset the losses of principal associated with DROP benefits.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 121.053, 121.091, and 121.4501 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>25</sup> State Board of Administration, *Senate Proposed Committee Bill 7044 Fiscal Analysis* (Jan. 19, 2016) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

B. Amendments:

None.

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

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