

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SPB 7030
INTRODUCER: Governmental Oversight and Accountability Committee
SUBJECT: Retirement
DATE: April 24, 2017 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Ferrin	Ferrin		GO Submitted as Comm. Bill/Fav

I. Summary:

SPB 7030 provides that any condition or impairment of the health of a firefighter employed full-time by a state or local government which is caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or testicular cancer and results in total or partial disability or death is presumed to have been accidental and to have been suffered "in the line of duty" unless the contrary is shown by competent evidence. In the line of duty retirement compensates an employee whose disability or death arises out of and in the actual performance of employment, and provides greater compensation to the firefighter or his or her dependents than would otherwise be available. Certain criteria must be met in order to meet the presumption.

The bill also makes the following changes to the Florida Retirement System (FRS):

- Allows for renewed membership in the investment plan or one of the optional annuity retirement plans for certain former participants of those plans;
- Expands the survivor benefit for investment plan members killed in the line of duty, including Special Risk Class, by making them retroactive to 2002;
- Closes the Senior Management Service Optional Annuity Program; and
- Changes the default from the pension plan to the investment plan for members of the FRS initially enrolled after January 1, 2018.

To cover the immediate costs of the proposed changes, the bill provides adjustments to the contribution rates that fund the FRS's normal costs and unfunded actuarial liability, and adjusts the rates for transferring funds to provide in line of duty death benefits for investment plan members.

The bill provides a legislative determination that the act fulfills an important state interest.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Florida Retirement System

The 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 a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2016, the FRS had 630,350 active members, 394,907 annuitants, 16,248 disabled retirees, and 29,602 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2016, the FRS consisted of 1,029 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 193 cities and 270 special districts that have elected to join the system.⁴

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

- The Regular Class⁵ consists of 545,680 active members, plus 3,709 in renewed membership;
- The Special Risk Class⁶ includes 70,695 active members;
- The Special Risk Administrative Support Class⁷ has 76 active members;
- The Elected Officers' Class⁸ has 2,026 active members, plus 115 in renewed membership; and
- The Senior Management Service Class⁹ has 7,876 members, plus 143 in renewed membership.¹⁰

¹ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2015-16_CAFR.pdf.

² 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 July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at 120.

⁴ *Id.*, at 154.

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

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ All figures from Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at 123.

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

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

FRS 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 pension plan. The earliest that any member could participate in the investment plan was July 1, 2002.

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹¹ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹²

A member vests immediately in all employee contributions paid to the investment plan.¹³ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁴ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁵

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers. The amount of money contributed to each member’s account varies by class as follows:

Membership Class	Percentage of Gross Compensation¹⁶
Regular Class	6.30%
Special Risk Class	14.00%
Special Risk Administrative Support Class	7.95%
Elected Officers’ Class	
• Justices and Judges	13.23%
• County Elected Officers	11.34%
	9.38%

¹¹ Section 121.4501(8), F.S.

¹² Section 4(e), Art. IV, Fla. Const.

¹³ Section 121.4501(6)(a), F.S.

¹⁴ 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, 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.

¹⁵ Section 121.591, F.S.

¹⁶ Includes the three percent employee contribution.

Membership Class	Percentage of Gross Compensation ¹⁶
<ul style="list-style-type: none"> Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defender 	
Senior Management Service Class	7.67%

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (division).¹⁷ 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.¹⁸ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.¹⁹ A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.²⁰ The accrual rate varies by class as follows:

Membership Class	Accrual Rate
Regular Class	1.60%, 1.63%, 1.65%, 1.68% ²¹
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%, 1.63%, 1.65%, 1.68% ²²
Elected Officers' Class <ul style="list-style-type: none"> Justices and Judges County Elected Officers Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defender 	3.33% 3.00% 3.00%
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²³ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²⁴ Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service

¹⁷ Section 121.025, F.S.
¹⁸ Section 121.021(45)(a), F.S.
¹⁹ Section 121.021(45)(b), F.S.
²⁰ Section 121.091, F.S.
²¹ Section 121.091(1)(a)1., F.S.
²² Section 121.0515(8)(a), F.S.
²³ Section 121.021(29)(a)1., F.S.
²⁴ Section 121.021(29)(b)1., F.S.

or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.²⁵

Default and Second Election

A new member has until the last business day of the fifth month following the member's month of hire to make a plan selection. If the member fails to make a selection, the member defaults to participation in the pension plan.²⁶

After the initial election or default election to participate in either the pension plan or investment plan, a member has one opportunity, at the member's discretion and prior to termination or retirement, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.²⁷

Disability Retirement Benefits for Members of the FRS

Two types of disability retirement are available under the FRS: in the line of duty disability retirement and regular disability retirement. To qualify for either type of disability retirement, a member must be totally and permanently disabled to the extent that they are unable to work. An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.²⁸ To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.²⁹

Under the FRS pension plan, the minimum benefit under regular disability retirement is 25 percent of the employee's average final compensation.³⁰ The in the line of duty disability benefit is available to members on their first day of employment and is 42 percent of the employee's monthly compensation.³¹ There is no vesting period for in the line of duty disability benefits.³² Special Risk Class members receive a minimum in the line of duty disability benefit of 65 percent of their average final compensation.³³

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).³⁴ Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.³⁵

²⁵ Section 121.021(29)(a)2. and (b)2., F.S.

²⁶ Section 121.4501(4), F.S.

²⁷ Section 121.4501(4)(g), F.S.

²⁸ Florida Retirement System Employer Handbook, Disability Retirement, Ch. 10-3, *available at* https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf (last visited Jan. 19, 2017).

²⁹ Sections 121.091(4)(a) and 121.591(2)(b), F.S.

³⁰ Section 121.091(4)(f), F.S.

³¹ *Id.*

³² Section 121.091(4)(a)1.b., F.S.

³³ *Id.*

³⁴ Section 121.591(2), F.S.

³⁵ Section 121.591(2)(g), F.S.

Death or Survivor Benefits

Section 121.091(7), F.S., provides death benefits for active members of the FRS pension plan who die before retirement. If an employee dies before vesting, the employee's spouse receives only the accumulated FRS contributions that were made on the employee's behalf. For vested employees, the employee will be assumed to have retired on the date of death, and the spouse may elect one of the annuity options that provide payment to survivors. Because those annuity options are based on the number of years of service and are discounted based on the age of the annuity recipient, the beneficiary of younger employees with few years of service receive a relatively small monthly amount.

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan. Death benefits may be paid for an active member of the FRS pension plan who dies before retirement.³⁶ Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.³⁷ If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in the line of duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for his or her lifetime equal to one-half the member's monthly salary at death.³⁸ If an active FRS member in the Special Risk class is killed in the line of duty on or after July 1, 2013, the surviving spouse receives an additional monthly benefit equal to one-half of the member's monthly salary; making the monthly benefit equal to the member's entire monthly salary at death³⁹.

If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.⁴⁰ If the child is unmarried and enrolled as a full time student, the benefit continues until he or she turns 25.⁴¹ If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.⁴²

For instances relating to in the line of duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of the member's death.⁴³ If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or service eligible for purchase, to purchase enough service credit to vest the member posthumously.⁴⁴

³⁶ Section 121.091(7), F.S.

³⁷ Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

³⁸ Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

³⁹ Section 121.091(7)(i), F.S.

⁴⁰ Section 121.091(7)(d) and (i), F.S.

⁴¹ *Id.*

⁴² Section 121.091(7)(b) and (d), F.S.

⁴³ Section 121.091(7)(e), F.S.

⁴⁴ Section 121.091(7)(f), F.S.

Under most employee classes in the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member's account are payable to the designated beneficiary.⁴⁵

When killed in the line of duty, the surviving spouse or children of an investment plan member in the Special Risk Class may opt into the FRS investment plan survivor benefits program in lieu of receiving normal retirement benefits under the FRS investment plan.⁴⁶ By participating in the survivor benefits program, the surviving spouse and children are eligible to receive annuitized benefits much like the survivor benefits afforded to Special Risk Class members of the FRS pension plan. The investment plan survivor benefits program is funded by additional employer-paid contributions to the survivor benefits account of the FRS Trust Fund.⁴⁷

DROP

All membership classes in the FRS Pension Plan may participate in the Deferred Retirement Option Program (DROP), which allows a member to retire without terminating employment. A member who enters DROP may extend employment for an additional five years.⁴⁸ For most members, the election to participate in DROP must be made no later than twelve months after reaching normal retirement.⁴⁹ While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.⁵⁰ Upon termination of employment, the member receives the total DROP accumulations and the previously determined normal retirement benefits.⁵¹

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.⁵²

Employment after Retirement

Section 121.091, F.S., governs the payment of benefits under the FRS. It requires a member of the FRS to terminate employment to begin receiving benefits or begin participation in DROP to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with her or his FRS employer.⁵³ Termination is void if any FRS-participating employer reemploys a member during a specified period of time.⁵⁴

⁴⁵ Section 121.591(3), F.S.

⁴⁶ Section 121.591(4), F.S.

⁴⁷ *Id.*

⁴⁸ Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

⁴⁹ Section 121.091(13)(a)2., F.S.

⁵⁰ If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP is 1.3 percent.

⁵¹ Section 121.091(13), F.S.

⁵² *See s.* 121.4501(2)(k) and (4)(f), F.S.

⁵³ Section 121.021(39)(a), F.S.

⁵⁴ *Id.*

Subsection 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and authorizes those retirees to continue receiving retirement benefits.⁵⁵

Before July 1, 2010, an FRS retiree was allowed to be reemployed by an FRS employer provided certain requirements were met. A member was allowed to be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree was reemployed during months two through 12 after retiring or terminating DROP, the retiree was not authorized to receive her or his pension benefit until month 13. However, a retiree was authorized to be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.⁵⁶

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12 after retiring or terminating DROP, the retiree may not receive her or his pension benefit until month 13.⁵⁷ The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire and are reemployed on or after July 1, 2010.

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (the member could choose to participate in either the pension plan or the investment plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent child of a renewed member may qualify for survivor benefits.⁵⁸

Currently, retirees initially reemployed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and do not earn creditable service toward a subsequent retirement benefit.⁵⁹ This restriction from renewed membership includes retirees of the FRS Pension Plan and the FRS Investment Plan, as well as members of an optional retirement program.

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

⁵⁵ Section 121.091(9)(a), F.S.

⁵⁶ Section 121.091(9)(b), F.S.

⁵⁷ Section 121.091(9)(c), F.S.

⁵⁸ Section 121.122(1), F.S.

⁵⁹ Section 121.122(2), F.S.

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;⁶⁰
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;⁶¹ and
- Members of a Florida College System institution may elect to enroll in the State Community College System Optional Retirement Program.⁶²

Contribution Rates

FRS employers are responsible for contributing a specified percentage of the member’s monthly compensation to the Division of Retirement 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.⁶³ 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.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2016, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan.⁶⁴

	Valuation Results (in \$ billions)			
	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016
Actuarial Liability	\$153.3	\$160.1	\$165.5	\$170.4
Actuarial Value of Assets	\$131.7	\$138.6	\$143.2	\$145.5
Unfunded Actuarial Liability	\$ 21.6	\$21.5	\$22.3	\$24.9
Funded Percentage (Actuarial Value of Assets/Actuarial Liability)	85.9%	86.6%	86.5%	85.4%

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize the unfunded actuarial liabilities

⁶⁰ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

⁶¹ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

⁶² If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

⁶³ Section 121.70(1), F.S.

⁶⁴ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at 101.

(UAL) over a thirty year period. The following are the current employer contribution rates⁶⁵ for each class and the blended rates recommended by the state actuary beginning in July 2017:⁶⁶

Membership Class	Current Rates Effective July 1, 2016		Recommended Rates to be effective July 1, 2017	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	2.97%	2.83%	2.89%	3.30%
Special Risk Class	11.80%	9.05%	11.81%	9.57%
Special Risk Administrative Support Class	3.87%	22.47%	3.81%	29.08%
Elected Officer’s Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.63%	33.75%	6.41%	42.69%
• Justices and Judges	11.68%	23.30%	11.66%	26.25%
• County Officers	8.55%	32.20%	8.48%	35.24%
Senior Management Service Class	4.38%	15.67%	4.28%	16.70%
Deferred Retirement Option Program	4.23%	7.10%	4.17%	7.43%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.⁶⁷

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.⁶⁸

Retirement Plans for Municipalities and Special Districts

Chapters 175 and 185, F.S., provide funding mechanisms for municipal firefighters’ and police officers’ pension plans. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers participate in these plans. Two types of plans are governed by each of these chapters—charter plans and local law plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer.⁶⁹ Under local law plans, the standards may vary for determining

⁶⁵ Section 121.71(4) and (5), F.S.

⁶⁶ Letter to Ms. Elizabeth Stevens, *Re: Blended Proposed Statutory Rates for the 2017-2018 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 2, 2016 (on file with the Senate Committee on Governmental Accountability and Oversight).

⁶⁷ Section 121.71(3), F.S.

⁶⁸ See ss. 121.4503 and 121.72(1), F.S.

⁶⁹ Sections 175.191 and 185.18, F.S.

eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S., respectively.

Workers' Compensation under Chapter 440, F.S.

The employer must pay compensation or furnish benefits if the employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.⁷⁰ The injury, its occupational cause, and any resulting disability must be established to a reasonable degree of medical certainty, and the accidental compensable injury must be the major contributing cause of any resulting injuries.⁷¹

Compensation for permanent total disability is equal to two-thirds of the employee's average weekly wages payable to the employee during the continuance of the total disability.⁷²

Compensation for temporary total disability is equal to two-thirds of the employee's average weekly wages payable to the employee during the continuance of the total disability but not to exceed 104 weeks. At the earlier of the 104th week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.⁷³

Where the disability or death of an employee results from an "occupational disease," it will be treated as an injury by accident.⁷⁴ The employee or his survivors will be entitled to compensation. "Occupational disease" is defined to be "only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee."⁷⁵

Presumptions and Burdens of Proof Relating to "in the line of duty" Disability and Death

Existing In the Line of Duty Presumptions for Firefighters

Section 112.18, F.S., provides a presumption applicable to any state, municipal, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer that any such employee qualifies for in the line of duty disability or death benefits if such disability or death is the result of tuberculosis, heart disease, or hypertension.

Section 175.231, F.S., provides a similar presumption for the firefighters in any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under ch. 175, F.S., whose death or disability is the result of tuberculosis, heart disease, or hypertension.

⁷⁰ Section 440.09(1), F.S.

⁷¹ *Id.*

⁷² Section 440.15(1)(a), F.S.

⁷³ Section 440.15(2)(a), F.S.

⁷⁴ Section 440.151(1)(a), F.S.

⁷⁵ Section 440.151(2), F.S.

Section 112.181, F.S., provides a presumption applicable to any emergency rescue or public safety worker, including a firefighter, that such employee qualifies for in the line of duty disability or death if such disability or death is due to hepatitis, meningococcal meningitis, or tuberculosis.

Successful passage of a pre-employment physical examination is required for these presumptions.

Burden of Proof for In the Line of Duty Benefits

Absent one of the existing presumptions, the FRS member employee has the burden of proof when claiming in the line of duty disability or death benefits. The employee must show by competent evidence that the death or disability occurred in the line of duty in order to receive the higher benefits.⁷⁶ If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Under existing law, a firefighter that is disabled or dies as a result of cancer must show that the cancer was contracted due to some factor directly related to the employment as a firefighter. Due to latency periods,⁷⁷ it may be difficult for an employee to meet this burden.

Studies on the Incidence of Cancer in Firefighters

The 2015-2016 General Appropriations Act contained a \$965,000 appropriation funding a cancer study by the University of Miami-Sylvester Comprehensive Cancer Center through the Division of the State Fire Marshal. The study's goals are to provide firefighters access to cancer screenings, enable prevention and earlier detection of the disease, identify exposures that account for increased cancer risk, and develop new technology and methods to test and measure exposure in the field. A progress report⁷⁸ was submitted to the President of the Senate, Speaker of the House of Representatives, the Chief Financial Officer, and the Governor on June 15, 2016. Additionally, the 2016-2017 General Appropriations Act contained a \$1.5 million appropriation to continue the study. Another report will be submitted to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Governor by June 15, 2017.

A National Institute for Occupation Safety and Health (NIOSH) study of cancer among U.S. firefighters has shown higher rates of certain types of cancer among firefighters than the general U.S. population.⁷⁹ These types of cancer were mostly digestive, oral, respiratory, and urinary

⁷⁶ Sections 121.091(4)(c) and (7)(d), F.S.

⁷⁷ "The time between first exposure to a cancer-causing agent and clinical recognition of the disease is called the latency period. Latency periods vary by cancer type, but usually are 15 to 20 years, or longer. Because of this, past exposures are more relevant than current exposures as potential causes of cancers occurring in workers today. Often, these exposures are hard to document." The National Institute for Occupational Safety and Health (NIOSH), *available at* <http://www.cdc.gov/niosh/topics/cancer/clusters.html> (last visited January 20, 2017).

⁷⁸ Sylvester Comprehensive Cancer Center, *Fiscal Year 2015-2016 Progress Report of Firefighters Cancer Initiative (FCI)*, dated June 15, 2016 (on file with the Committee on Governmental Oversight and Accountability).

⁷⁹ National Institute for Occupation Safety and Health (NIOSH) study summary *available at* <https://www.cdc.gov/niosh/firefighters/ffcancerstudy.html> (last visited January 20, 2017).

cancers, although there were about twice as many firefighters with malignant mesothelioma, which is a rare type of cancer caused by exposure to asbestos.⁸⁰

Special Actuarial Study of Firefighter in line of duty Cancer Presumption

On February 23, 2017, a special study⁸¹ was completed to determine the contribution rates necessary to fund the FRS benefits that may be paid based on the presumptions proposed under Senate Bill 158 as filed during the 2017 Regular Session. The results of this study determined that the contribution rate for the Special Risk Class needed to be increased by 1 basis points (0.01 percent) to fund associated costs.

III. Effect of Proposed Changes:

Firefighters' Cancer Presumption

The bill provides that any condition or impairment of the health of a firefighter employed full-time by a state or local government which is caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or testicular cancer and results in total or partial disability or death is presumed to have been accidental and to have been suffered "in the line of duty" unless the contrary is shown by competent evidence. In the line of duty retirement compensates an employee whose disability or death arises out of and in the actual performance of employment. In the line of duty retirement provides greater compensation to the firefighter or his or her dependents than would otherwise be available.

In order to be entitled to the presumption, a firefighter must have:

- Successfully passed a pre-employment physical examination that did not reveal any evidence of a health condition.
- Been employed as a firefighter with the current employer for at least 5 continuous years before becoming disabled or before the employee's death.
- Not used tobacco products for at least 5 years before becoming disabled or before the employee's death; and
- Not been employed during the preceding 5 years in any other position that is proven to create a higher risk for the named diseases.

A firefighter employed on July 1, 2017, is not required to meet the physical examination requirement in order to be entitled to the presumption.

The proposed changes result in a 0.01 percent increase in the employer contribution rate for the Special Risk class.⁸² This is included in the rate changes in section 11 of the bill.

The additional costs to other public sector retirement plans has not been determined.

⁸⁰ *Id.*

⁸¹ Milliman, *Re: Special Actuarial Study of Firefighter ILOD Cancer Presumption*, dated February 23, 2017 (on file with the Committee on Governmental Oversight and Accountability).

⁸² Milliman, *Re: Special Actuarial Study of Firefighter ILOD Cancer Presumption*, dated February 23, 2017 (on file with the Committee on Governmental Oversight and Accountability).

The fiscal impact of this legislation as it relates to workers' compensation benefits has not been determined.

Renewed Membership

Effective July 1, 2017, the bill allows for renewed membership for certain former participants of the investment plan, Senior Management Service Optional Annuity Program, State University System Optional Retirement Program (SUSORP), or State Community College System Optional Retirement Program (SCCSORP). Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSORP or the SCCSORP, as applicable. To be eligible for renewed membership, the member must have retired from one of the four specified plans and must be employed in a regularly established position with a covered employer on or after July 1, 2017.

Such renewed member may not qualify for disability retirement benefits and must satisfy the vesting requirements of the specific plan. The bill prohibits certain funds from being paid into the renewed member's account for any employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2017. A renewed member who is not receiving the maximum health insurance subsidy is entitled to earn additional credit toward the subsidy.

Line-of-Duty Death Benefits

Effective July 1, 2017, the bill expands the survivor benefit for members of the Special Risk Class. Specifically, it provides that such survivor benefits are retroactive to July 1, 2002.

Effective July 1, 2017, the bill also establishes a survivor benefit for all other membership classes of the investment plan for members who are killed in the line of duty since 2002, which is when members were first allowed to participate in the investment plan. The survivor benefits are the same as those currently provided for other membership classes of the pension plan, which is a monthly payment equal to one-half of the member's salary at the time of death. To receive the benefit, the spouse and children must elect to transfer the balance of the member's investment plan account to the survivor benefit account of the FRS Trust Fund. The line-of-duty death benefits supersede any other distribution that may have been provided by the member's designation of beneficiary. For a member killed in the line of duty on or after July 1, 2002, but before July 1, 2017, the initial monthly benefit payable on or after July 1, 2017, will be equal to one-half the member's salary at the time of death, except that it will be:

- Actuarially reduced by the amount of the investment plan payout, if a payout was issued; and
- After the actuarial reduction, increased by the applicable cost-of-living adjustment that would have been payable if the survivor benefit payment had begun the month following the member's death. On each July 1 after the initial payment, the benefit will be increased by the applicable cost-of-living adjustment.

Senior Management Service Optional Annuity Program

The bill closes the SMSOAP to new participants effective July 1, 2017. Currently, fewer than 20 members participate in this optional retirement program.⁸³

Default

For members initially enrolled in the FRS on or after January 1, 2018, the bill changes the default from the pension plan to the investment plan. Thus, if the member does not make a selection by the end of the five month initial election period, the member will default to the investment plan instead of the pension plan. The bill maintains the member's second election option.

Important State Interest

The bill declares that it fulfills an important state interest. It provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated.”

The bill contains a finding that the bill fulfills an important state interest (section 12). The bill appears to apply to all persons similarly situated (FRS employees and those employers employing firefighters), including state agencies, school boards, community colleges, counties, municipalities and special districts. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities participating in the FRS.

B. Public Records/Open Meetings Issues:

None.

⁸³ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at p. 38. Available online at: https://www.rol.frs.state.fl.us/forms/2015-16_CAFR.pdf.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

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.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act” (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits 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.

Contractual Obligations

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provides that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.⁸⁴ This “preservation of rights” provision⁸⁵ was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.⁸⁶ The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member under the previous benefit structure remain untouched, and the member continues to enjoy that

⁸⁴ Section 121.011(3)(d), F.S.

⁸⁵ The “preservation of rights” provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So. 2d 1033, 1037 (Fla. 1981).

⁸⁶ *Id.* at 1035.

level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.⁸⁷

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits that accrue for future state service.⁸⁸ More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.⁸⁹

This bill does not change any benefits that a member earned prior to July 1, 2017.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The line of duty cancer presumption could have a significant impact on worker's compensation because the threshold eligibility test for workers' compensation is whether the disability arose "out of and in the course of employment." If the disability did not arise "out of and in the course of employment," the employee is not eligible to receive workers' compensation benefits. There is no provision under ch. 440, F.S., for a non-duty related disability as may be found in many retirement plans.

Additional workers' compensation claims costs for firefighters contracting the cancers listed in this bill are difficult to predict. The frequency, severity, and cost estimates vary widely due to factors such as age, gender, type of treatment, and recovery period⁹⁰. The Department of Financial Services estimates average costs for 58 months of treatment (not until final resolution) at⁹¹:

- \$28,988.27 for testicular cancer;
- \$115,378.06 for non-Hodgkin's lymphoma;
- \$53,357.66 for prostate cancer; and
- Between \$126,000-\$256,000 for multiple myeloma.

⁸⁷ *Id.* at 1036.

⁸⁸ *Id.* at 1037.

⁸⁹ *Rick Scott, et al. v. George Williams, et al.*, 107 So. 3d 379 (Fla. 2013).

⁹⁰ Department of Financial Services, *Senate Bill 158 Legislative Bill Analysis*, 4 (Jan. 5, 2017)

⁹¹ *Id.*

If successful workers’ compensation claims increase due to the presumption afforded by the bill, assessments paid by carriers and employers of the Special Disability Trust Fund may increase.

The Milliman actuarial and consulting firm conducted several studies at the request of the Speaker of the House of Representatives. Based on the results of the special studies, the benefit changes proposed by the bill are projected to have a total negative fiscal impact of \$10.4 million in fiscal year 2017-18. Further detail on the costs is provided in the following chart:

		Cost to Fund the Cancer Presumption, Line of Duty Benefits, and the Change in Default (\$ in millions)	
Entities Funded by the State			
State	\$		2,042,982
School Boards	\$		1,346,679
State Universities	\$		186,991
State Colleges	\$		106,780
<i>Total</i>	\$		3,683,432
Other Entities not Funded by the State			
Counties	\$		6,095,306
Other	\$		577,685
<i>Total</i>	\$		6,672,992
<i>Grand Total</i>	\$		10,356,423

The provisions relating to renewed membership in the FRS is expected to have an additional negative fiscal impact of \$9.3 million across all employers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.053, 121.055, 121.091, 121.122, 121.4501, 121.591, 121.5912, and 121.735.

This bill creates the following sections of the Florida Statutes: 112.1816.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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