

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 7028

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Judicial Retirement

DATE: February 11, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McVaney</u>	<u>McVaney</u>		Pre-meeting

I. Summary:

SPB 7028 amends s. 121.052, F.S., relating to the Florida Retirement System, to clarify that only a justice and judge who reaches age 70 prior to July 1, 2019, is authorized to purchase service credit relating to (a) temporary duty as a senior judge after that date or (b) the remainder of the justice or judge’s term of office.

Current law provisions that allow a justice or judge who attains age 70 prior to July 1, 2019, to purchase service credit at the justice or judge’s own expense are continued. If the retirement benefits are not vested when the justice or judge attains age 70, the purchased service credit is limited to the months necessary to achieve vesting. If the retirement benefits are vested at age 70, the purchased service credit is limited to the months remaining in the unexpired term of office.

The bill is not expected to have an impact on state or local revenues or expenditures.

The bill takes effect July 1, 2019.

II. Present Situation:

State Court System Generally

The judicial power is vested in a supreme court, district courts of appeal, circuit courts, and county courts.¹

The Florida Supreme Court consists of seven justices.² These justices are appointed by the governor and are subject to retention elections by the voters. There is a district court of appeal serving each appellate district.³ The legislature has authorized a total of 64 judgeships within the

¹ FLA. CONST. art. V, s. 1.

² FLA. CONST. art. V., s. 3.

³ FLA. CONST. art. V., s. 4.

five appellate districts.⁴ These justices and judges are appointed by the governor and continue to serve subject to retention elections. The term of office for these justices and judges is 6 years.

There is a circuit court serving each judicial circuit.⁵ The state is divided into 20 judicial circuits.⁶ The legislature has authorized 599 judgeships at the circuit court level.⁷ There is a county court in each county.⁸ The legislature has authorized 322 county judgeships.⁹ These judges may be either appointed by the governor or elected by the voters. The term of office for these judges is 6 years.

Age restriction on serving as a justice or judge

Article V, section 8 of the State Constitution sets out the eligibility for office of justice and judges. The relevant qualification for this discussion is the age restriction. Prior to July 1, 2019, no justice or judge can serve after attaining age 70, except upon temporary assignment or to complete a term, one-half of which has been served (at the time the judge reached age 70). Beginning July 1, 2019, the restriction is modified to prohibit a justice or judge from serving after attaining age 75, regardless of whether the service is temporary or is intended to complete the judge's term.

Temporary service

A retired justice or judge may be assigned temporary duty in any court as long as the retired justice or judge was not defeated in seeking reelection to, or did not fail to be retained in a retention election of, his or her last judicial office, and is not practicing law.¹⁰ Compensation as a "senior judge"¹¹ is \$375 per day or portion thereof.¹²

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.¹³ The FRS is a contributory system with active members contributing three percent of their salaries.¹⁴

⁴ Section 35.06, F.S.

⁵ FLA. CONST. art V., s. 5.

⁶ Section 26.021, F.S.

⁷ Section 26.031, F.S.

⁸ FLA. CONST. V., s. 6.

⁹ Section 34.022, F.S.

¹⁰ Section 25.073(1), F.S.

¹¹ "Senior judge" is the common reference to a retired justice or judge assigned temporary duty.

¹² Section 25.073(2)(a), F.S., provides that the compensation will not be less than \$200 per day or portion of a day. The Chief Justice of the Supreme Court has set the compensation at \$375 per day.

¹³ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 35. Available online at: https://www.rol.frs.state.fl.us/forms/2017-18_CAFR.pdf. (Last visited January 28, 2019.)

¹⁴ 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.

The FRS is a multi-employer plan governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2018, the FRS consisted of 1,002 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 173 cities and 267 special districts that have elected to join the system.¹⁵

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.

The membership of the FRS is divided into five membership classes: the Regular Class;¹⁶ The Special Risk Class;¹⁷ the Special Risk Administrative Support Class;¹⁸ the Elected Officers' Class;¹⁹ and the Senior Management Service Class.²⁰ The Elected Officers' Class is subdivided into three subclasses: Judicial Officers, County Officers and State Officers.

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.²¹ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²² 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.²³ For judicial officers, the service accrual rate is 3.3 percent for each year of service.

Contribution Rates

Each class and subclass is funded separately based upon the costs attributable to the members of that class or subclass. Employers participating in the FRS are required to contribute a specified percentage of the member's monthly compensation. 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.²⁴ 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.

¹⁵ See *supra* note 13, at 196.

¹⁶ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

²¹ Section 121.021(45)(a), F.S.

²² Section 121.021(45)(b), F.S.

²³ Section 121.091, F.S.

²⁴ Section 121.70(1), F.S.

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 (UAL) over a thirty-year period. For purposes of this legislation, the relevant current employer contribution rates²⁵ for the Judicial Officer subclass within the Elected Officers Class are 12 percent of payroll for normal costs and 27.05 percent of payroll for the amortization of the unfunded actuarial liabilities of the FRS. The employee also pays three percent of salary.

Purchase of service credits by judicial officers

Section 121.052, F.S., allows a judicial officer who reaches age 70 and is not permitted to complete the judicial term because of age limitation under s. 8, Art. V of the State Constitution to purchase certain service credit under the Florida Retirement System. The purchase of service credit must occur after the time period relating to the service purchased as elapsed.

If the judicial officer reaches age 70, the judicial officer may purchase, at his or her own expense, any service credit after age 70 through the end of the officer’s term. The judicial officer must wait until the period purchased has elapsed. With this purchase, the judicial officer’s retirement benefit will be increased prospectively.

If a judicial officer reaches age 70 and the retirement benefit is not vested, the judicial officer may purchase service credit for service as a temporary judge. Such service must be immediately following the judicial officer’s last full term of service. The purchase of service credit is limited to the amount of time needed to vest retirement benefits. The purchase of such service is at the judicial officer’s expense at the amount of contributions that would have been paid had the judicial officer continued in office for the time period claimed, plus 6.5 percent interest.

Assuming the salaries in effect on June 30, 2019, for each level of judicial officer and a 42.05 percent contribution rate, the table below shows the cost to purchase one month of service and 12 months of service (without the application of interest).

Level of Court	Salary	Cost of 1 month	Cost of 12 months
Supreme Court	\$220,600	\$7,730	\$92,762
District Court	\$169,554	\$5,941	\$71,297
Circuit Court	\$160,688	\$5,631	\$67,569
County Court	\$151,822	\$5,320	\$63,841

Because the age restriction in the State Constitution was changed to age 75 effective July 1, 2019, a justice or judge attaining age 70 after July 1, 2019, will not be ineligible to complete a term based on attaining age 70. Thus, no one should become eligible to purchase the service credit after July 1, 2019.

²⁵ Section 121.71(4) and (5), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 121.052, F.S., to clarify that only a judge or justice who reaches age 70 prior to July 1, 2019, is eligible to purchase certain service credit for purposes of the Florida Retirement System.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not impose, authorize, or raise a state tax or fee.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill does not impact state or local taxes or fees.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.052 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.

B. Amendments:

None.

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