

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 151 Florida Retirement System
SPONSOR(S): Appropriations Committee; Busatta Cabrera and others
TIED BILLS: IDEN./SIM. BILLS:

FINAL HOUSE FLOOR ACTION: 109 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 151 passed the House on March 8, 2024, as amended by the conference committee report, and subsequently passed the Senate on March 8, 2024. The bill includes portions of CS/SB 400.

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits for employees of state and county government agencies, district school boards, state colleges, and state universities. It also serves as the retirement plan for employees of the cities, special districts, and independent hospitals that have elected to join the system. Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan.

The Department of Management Services must compile an annual actuarial valuation of the FRS and report the results to the Legislature by December 31 of each year. Thereafter, the Legislature uses the results of the actuarial valuation to establish uniform employer contribution rates during the next legislative session to ensure the FRS is funded in a sound actuarial manner.

The bill:

- Closes the FRS Preservation of Benefits Plan to new members effective July 1, 2026.
- Allows FRS retirees to receive both compensation from an employer that participates in the FRS and retirement benefits, provided the retiree is not reemployed within the six months immediately following the date of retirement.
- Adjusts the employer contribution rates for the FRS.
- Declares that the act fulfills an important state interest.

The bill conforms law to the 2024-2025 General Appropriations Act (GAA) as retirement contributions are included in the GAA.

Provisions of the bill relating to employer retirement contribution rates will increase the amounts that FRS employers will pay for employee retirement benefits.

The bill was approved by the Governor on April 15, 2024, ch. 2024-92, L.O.F., and will become effective on July 1, 2024.

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. The FRS was amended in 1998 to add the Deferred Retirement Option Program (DROP) under the defined benefit plan and amended again in 2000 to provide a defined contribution plan alternative to the defined benefit plan for FRS members effective July 1, 2002.¹

The FRS is a multiple-employer, contributory plan² governed by the FRS Act.³ As of June 30, 2023, the FRS provides retirement income benefits to 646,277 active members,⁴ 455,601 retired members and beneficiaries, 14,499 disabled retirees, and 27,767 members in DROP.⁵ It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and state universities. The FRS also serves as the retirement plan for the employees of the 181 cities, 153 special districts, and two independent hospitals that have elected to join the system.⁶

The FRS is a low-cost system compared to other retirement systems. The cost to administer the FRS in 2022 was \$19 per active member and annuitant compared to the peer average of \$115 for other similar pension systems. Further, the number of staff required to administer the FRS is 1.3 positions per 10,000 members versus an average of 3.4 per 10,000 members of other similar retirement systems.⁷

Membership of the FRS is divided into the following membership classes:⁸

- Regular Class⁹ consists of 550,931 members (85.2 percent of the total 2023 FRS membership). This class is for all members who are not assigned to another class.
- Special Risk Class¹⁰ includes 75,495 members (11.7 percent). This class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics, and emergency medical technicians, among others.
- Special Risk Administrative Support Class¹¹ has 104 members (0.016 percent). This class is for former Special Risk Class members who provide administrative support within an FRS special

¹ DMS, *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Comprehensive Financial Report Fiscal Year Ended June 30, 2023*, at p. 33.

http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports [hereinafter *Annual Report*] (Last visited March 11, 2024).

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011, at 3 percent of salary regardless of membership class.

³ Ch. 121, F.S.

⁴ As of June 30, 2023, the FRS Pension Plan, which is a defined benefit plan, had 441,816 members, and the investment plan, which is a defined contribution plan, had 204,461 members. *Annual Report*, *supra* note 1, at p. 188.

⁵ *Id.*

⁶ *Id.*, at 226.

⁷ Email from Jeff Ivey, Deputy Chief of Staff, Department of Management Services, RE: 2022 CEM Slides (Mar. 13, 2023) on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

⁸ *Annual Report*, *supra* note 1, at 191.

⁹ S. 121.021(12), F.S.

¹⁰ S. 121.0515, F.S.

¹¹ 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.

risk employing agency. Members of this class must maintain the certification required for their former Special Risk Class position and be subject to recall into those positions if needed.

- Elected Officers' Class¹² has 2,105 members (0.33 percent). This 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.
- Senior Management Service Class¹³ has 7,875 members (1.2 percent). This 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 Class designation.

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 investment plan, which is a defined contribution plan; and
- The pension plan, which is a defined benefit plan.

TOTAL FRS Membership by Plan¹⁴			
	2022	2023	Percent Change
Investment Plan	184,923	204,461	10.57%
Pension Plan	444,150	441,816	-0.53%
Total Membership	629,073	646,277	2.73%

Total FRS Membership by Employer Group for FY 2022-2023¹⁵		Percentage of Members
School Districts	308,076	47.7%
Counties	154,648	23.9%
State Agencies	94,449	14.6%
State Universities	30,549	4.7%
Others	38,195	5.9%
School Districts	308,076	47.7%
State Colleges	20,360	3.2%

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.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷ A member vests immediately in all employee contributions paid to the investment plan.¹⁸ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁹ Vested benefits are payable upon termination of employment with the FRS employer or death, as a lump-sum distribution, direct rollover distribution, or periodic distribution.²⁰

¹² S. 121.052, F.S.

¹³ S. 121.055, F.S.

¹⁴ *Annual Report, supra* note 1, at 188.

¹⁵ *Annual Report, supra* note 1, at 189.

¹⁶ S. 121.4501(8), F.S.

¹⁷ Art. IV, s. 4(e), FLA. CONST.

¹⁸ S. 121.4501(6)(a), F.S.

¹⁹ 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.

²⁰ S. 121.591, F.S.

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:²¹

Membership Class	Percentage of Gross Compensation
Regular Class	11.30%
Special Risk Class	19.00%
Special Risk Administrative Support Class	12.95%
Elected Officers’ Class	
• Justices and Judges	18.23%
• County Elected Officers	16.34%
• Others	14.38%
Senior Management Service Class	12.67%

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).²² 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.²³ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁴ A member vests immediately in all employee contributions paid to the pension plan.

For non-special risk members of the pension plan initially enrolled before July 1, 2011, normal retirement is the earlier of 30 years of service or age 62.²⁵ Non-special risk members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65. For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earlier of 25 years of service or age 55.²⁶

Normal Retirement Pension Benefit

Statute sets the calculation used to determine a member’s benefit. A member earns a set percentage for years of service, depending on class.²⁷ Pension plan benefits are calculated as a product of a statutorily set percent and creditable years of service. The product of the percent and creditable years of service is applied to the member’s average compensation.²⁸ Below are the statutorily set percentages²⁹ and the calculations based on credible years of service.

Class	Percent per Year	Percent Earned after 25 Years	Percent Earned after 30 Years
Regular	1.6%	40.0%	48.0%
Senior Management	2.0%	50.0%	60.0%
Special Risk	3.0%	75.0%	90.0%
Elected Class - Others	3.0%	75.0%	90.0%
Elected Class - Judges	3.3%	83.3%	99.9%

²¹ S. 121.72(7), F.S.
²² S. 121.025, F.S.
²³ S. 121.021(45)(a), F.S.
²⁴ S. 121.021(45)(b), F.S.
²⁵ S. 121.021(29)(a)1., F.S.
²⁶ S. 121.021(29)(b), F.S.
²⁷ S. 121.091(1), F.S.
²⁸ S. 121.091(1)(a), F.S.
²⁹ *Id.*

Preservation of Benefits

IRC 415(b) is a federal provision that limits the benefit amount that a retired employee may receive from a defined benefit plan. The limit is adjusted by the IRS each year. Effective July 1, 2024, the limitation on the annual benefit under a defined benefit plan is \$275,000.³⁰

Current law establishes the FRS Preservation of Benefits Plan as a qualified governmental excess benefit arrangement pursuant to s. 415(m) of the IRC for the purpose of providing benefits to FRS retirees whose benefits would otherwise be limited by s. 415(b) of the IRC.³¹ Participation in the FRS Preservation of Benefits Plan is mandatory for any FRS Pension Plan retiree whose benefit exceeds the maximum amount established in s. 415(b) of the IRC and continues for as long as the retiree's earned benefit would be reduced by the federal limit.³²

Deferred Retirement Option Program

DROP³³ allows eligible members³⁴ of the FRS Pension Plan to participate in the program and defer receipt of retirement benefits while continuing employment with his or her FRS employer. The deferred monthly benefits accrue, plus interest, on behalf of the employee, for the period of time the member participates in DROP. Upon termination of the employment, the member receives the total DROP benefits and begins to receive the previously determined normal retirement amounts.³⁵ For retirements after July 1, 2010, for termination of employment to occur a member cannot be reemployed by an FRS employer for six calendar months.³⁶

Employment After Retirement

The FRS is a 401(a) qualified plan under the Internal Revenue Code (IRC). Accordingly, FRS contributions qualify for tax deductions and investment earnings are tax deferred until distributed to retirees. Federal regulations require 401(a) qualified plans to be established by an employer primarily to provide regular and clearly defined benefits to its employees over an extended period, typically for life, following retirement or upon reaching the normal retirement age.³⁷ Retirement involves more than just a decrease in the hours worked by an employee. Therefore, retirement benefits cannot be distributed solely because an employee's hours have been reduced before reaching normal retirement age.³⁸

Florida law prohibits a pension benefit from being made prior to participation in DROP or termination of employment.³⁹ The law applies the same definition of termination of employment for retirements occurring either before and after normal retirement age. Thus, determining whether a bona fide termination of employment has occurred is crucial for both the tax-exempt qualification of the FRS and state statutory compliance purposes.⁴⁰

The Internal Revenue Service (IRS), the federal agency responsible for administering the IRC, has not provided an objective test for determining whether a bona fide termination of employment has occurred. Instead the IRS has applied Treasury Regulation 1.409A-1(h)(l)(ii), which states whether a termination of employment has occurred is determined based on whether the facts and circumstances indicate that

³⁰ IRS, *2024 Limitations Adjusted as Provided in Section 415(d), etc.*, available at <https://www.irs.gov/pub/irs-drop/n-23-75.pdf> (last visited March 11, 2024).

³¹ S. 121.1001, F.S.

³² S. 121.1001(1), F.S.

³³ S. 121.091(13), F.S.

³⁴ S. 121.091(13)(a), F.S.

³⁵ *Id.*

³⁶ S. 121.021(39)(a)2., F.S.

³⁷ 26 CFR § 1.401(a)-1(b)(1)(i).

³⁸ 26 CFR § 1.401(a)-1(b)(3).

³⁹ S. 121.091, F.S.

⁴⁰ Memorandum to David DiSalvo, Director, Division of Retirement, *Re: Bona Fide Terminations from Employment and Bona Vide Volunteer Services* (dated January 8, 2021) on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

the employer and employee reasonably anticipated that no further services would be performed after a certain date⁴¹ or that the level of bona fide services the employee would perform after such date would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding 36-month period.⁴² However, when applying the regulation in the context of a 401(a) plan, the IRS has opined that “if both the employer and employee know at the time of ‘retirement’ that the employee will, with reasonably [sic] certainty, continue to perform services for the employer, a termination of employment has not occurred upon ‘retirement’ and the employee has not legitimately retired.”⁴³

In order to apply the requirement of a bona fide termination, Florida law has incorporated the federal regulation and further has implemented a reemployment limitation period in which an FRS retiree may not be reemployed⁴⁴ by an FRS employer within 6 months of termination.⁴⁵ In addition, if the retiree is reemployed by an FRS employer during months 7 through 12, the retiree’s retirement benefit for those months is suspended and forfeited.⁴⁶ After the 12-month reemployment limitation period, there are no restrictions on receiving both a salary and retirement benefits when reemployed by an FRS employer.⁴⁷

A retiree employed in violation of the reemployment limitation period and the FRS employer employing such retiree are jointly and severally liable for reimbursement to the retirement trust fund from which the benefits were paid. Pension benefits remain suspended until repayment has been made. Benefits suspended beyond the reemployment limitation period are applied towards repaying the benefits received in violation of the reemployment limitation period.⁴⁸

Florida law currently provides two exceptions to the reemployment limitation period. The first authorizes retirees to provide civic, charitable, and humanitarian services to an FRS employer during the first 12 months following retirement provided the following criteria are met:

- Before the date of retirement, there is no agreement or understanding between the employer and the retiree that the retiree will return to provide services for the employer;
- The employer or a third party does not provide any form of compensation, including any cash equivalents, to the volunteer for the volunteer service;
- Except as otherwise provided in law, a volunteer cannot be provided any employee benefits, including health or life insurance benefits. However, a volunteer may be provided certain perquisites necessary for, and for the limited purpose of, completing tasks associated with the volunteer program, such as an assigned uniform or the provision of equipment;
- The number of volunteer hours per week, including training hours, that the volunteer provides is no more than 20 percent of the number of hours that the volunteer was expected to work per week before the date of retirement;

⁴¹ The regulation provides that the employment relationship is treated as continuing intact while the individual is on a bona fide leave of absence if the leave does not exceed 6 months, or if longer, as long as the individual retains a right to reemployment pursuant to statute or contract. The IRS explains in the preamble to the regulation that “a bona fide leave of absence refers to a leave of absence where there is a reasonable expectation the service provider will return to service with the service recipient.” Department of the Treasury, Internal Revenue Service, *Application of Section 409A to Nonqualified Deferred Compensation Plans*, 26 CFR Part 1 [TD 9321], RIN 1545-BE79 (Dated April 17, 2007).

⁴² See IRS PLR 201147038; see also Memorandum to David DiSalvo, Director, Division of Retirement, *Re: Bona Fide Terminations from Employment and Bona Vide Volunteer Services* (dated January 8, 2021) on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

⁴³ IRS PLR 201147038.

⁴⁴ For purposes of the reemployment limitation period, the term “employment” includes the provision of services. S. 121.021(39), F.S.

⁴⁵ S. 121.021(39), F.S.

⁴⁶ S. 121.021(9)(c), F.S.

⁴⁷ However, for reemployed members, the FRS employer must pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the FRS in addition to the contributions for social security and for the retiree health insurance subsidy. S. 121.091(9)(c)2., F.S. In addition, a reemployed retiree may not renew membership in the FRS except as provided in law. S. 121.091(9)(c)1., F.S.

⁴⁸ S. 121.091(9)(b)1. and (9)(c)3., F.S.

- There is a clear distinction between the duties of a volunteer and the duties of an employee;
- The schedule of a volunteer, including the number of hours volunteered and the number and type of assignments for which he or she agrees to volunteer, is controlled by the volunteer; and
- The employer and retiree maintain adequate records to document adherence to the above criteria, which must be made available to DMS or the SBA upon request.⁴⁹

The second exception to the reemployment limitation period applies to law enforcement officers that are reemployed as school resource officers and authorizes such retirees to be reemployed during months 7 through 12 after retirement and receive both a salary and retirement benefits. The reemployed retired law enforcement officer may not renew membership in the FRS except as provided in law.⁵⁰

Contribution Rates

Section 121.031, F.S., requires DMS to compile an annual actuarial study of the FRS, the results of which must be reported to the Legislature by December 31 of each year.⁵¹ Thereafter, the Legislature uses the report to establish the uniform contribution rates in law during the next regular legislative session. The employer contribution rate is the same percentage regardless of whether the member participates in the pension plan or the investment plan.⁵² The employer contribution rates are set based on a percentage of the member's monthly compensation and must be paid to the division to be distributed into the FRS Contributions Clearing Trust Fund.

Effects of Proposed Changes

Employment After Retirement

The bill provides that, beginning July 1, 2024, a retiree who has met the definition of termination may be reemployed by an FRS employer and receive retirement benefits and compensation from such employer. Effectively the bill allows FRS retirees to receive both compensation from an employer that participates in the FRS and retirement benefits, provided the retiree is not reemployed by an FRS employer within six months, instead of 12 months, immediately following the date of retirement.

In accordance with current law:

- The reemployed retiree may not renew membership in the FRS except as provided in s. 121.122, F.S., and the employer must pay retirement contributions in an amount equal to the unfunded actuarial liability (UAL) portion of the employer contribution that would be required for active members of the FRS in addition to the contributions required by s. 121.76, F.S.
- A retiree initially reemployed in violation of the above requirements and an employer that employs or appoints such a person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. The employee's benefits remain suspended until repayment is made and benefits that are suspended beyond the end of the retiree's six-month reemployment limitation period apply toward the repayment of benefits received in violation of these requirements.

Preservation of Benefits

The bill closes the FRS Preservation of Benefits Plan to new members effective July 1, 2026.

Actuarial Study - Contribution Rates

⁴⁹ S. 121.091(15), F.S.

⁵⁰ S. 121.091(9)(f), F.S.

⁵¹ S. 121.031(3), F.S.

⁵² S. 121.70(1), F.S.

The bill revises the employer contribution rates for the normal costs and the UAL of the FRS based on the annual actuarial study and the actuarial studies relating to the modifications to the FRS included in the bill.

Declaration of 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill revises the employer contribution rates to fund the FRS for modifications included in the bill. However, reductions to rates provided in the 2023 Actuarial Valuation were not included as part of the contribution rates to ensure additional funding is provided to the FRS. The employer contributions for Fiscal Year (FY) 2024-2025 compared to the rates currently in effect are contained in the table below.

Membership Class	"Blended" Normal Costs		Unfunded Actuarial Liability		Combined Contribution Rates	
	7/1/2023	7/1/2024	7/1/2023	7/1/2024	7/1/2023	7/1/2024
Regular Class	6.73%	6.73%	4.78%	4.84%	11.51%	11.57%
Special Risk Class	18.66%	18.66%	11.95%	12.07%	30.61%	30.73%
Special Risk Administrative Class	11.54%	11.54%	26.22%	26.22%	37.76%	37.76%
Elected Officer Class						
Leg/Gov/SAs/PDs	10.45%	10.70%	50.21%	50.21%	60.66%	60.91%
Judges	14.90%	14.90%	27.93%	28.49%	42.83%	43.39%
County Officers	12.39%	12.39%	44.23%	44.23%	56.62%	56.62%
Senior Management	8.56%	8.56%	23.90%	23.90%	32.46%	32.46%
DROP	8.49%	8.49%	10.64%	10.64%	19.13%	19.13%

The revised employer contribution rates will have a positive fiscal impact on funds paid into the FRS Trust Fund.

The total combined employer contributions estimated to be paid into the FRS Trust Fund in FY 2024-2025 will increase by approximately \$30.6 million above the contributions paid in FY 2023-2024. The estimated increase in contributions by employer contribution group to fund the reemployment modifications for FY 2024-2025 are provided on the following table:

Employer Contribution Group	Estimated Increase in Contributions
State Agencies	\$4.6 Million
School Boards	\$9.4 Million
State Universities	\$2.5 Million
Colleges	\$0.7 Million
Counties	\$11.6 Million
Other	\$1.9 Million
Total	\$30.6 Million

Closure of the FRS Preservation of Benefits Plan to Future Retirees

Preservation of benefits payments for 2023 were made to 75 retirees and the cumulative single-year payments were approximately \$2.2 million.⁵³ Closing the plan would result in a savings to the overall FRS in the near future. As of June 2023, there are 835 members whose salaries exceed the \$275,000 IRS limitation.⁵⁴ This increases the potential pool of recipients of the plan by a factor over ten. If each employee earned a benefit in excess of the limit, the potential cost avoidance would be \$25.5 million. As public employee salaries continue to rise, more employees may qualify for payment under the plan. Closing the plan may have a significant savings to the FRS in future years.

⁵³ The state actuary, Milliman, determined that closing the FRS Preservation of Benefits Plan did not require a full study to determine the overall impacts to the retirement system. However, Milliman provided an analysis of the financial impact of closing the plan.

⁵⁴ Email from Jake Holmgren, Deputy Legislative Affairs Director, Department of Management Services, RE: Section 121.30, F.S. (Nov. 3, 2023) on file with the Appropriations Committee.