

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 14-01 Florida Retirement System

SPONSOR(S): State Affairs Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Harrington	Camechis

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits to 621,774 active members, 347,962 retired members and beneficiaries, and 38,724 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 186 cities and 267 independent hospitals and special districts that have elected to join the system.

Members of the FRS have two plan options available for participation: the defined benefit plan, also known as the pension plan, and the defined contribution plan, also known as the investment plan. In addition to the two primary plans, some eligible members have the choice of participating in optional retirement plans, which include the Senior Management Service Optional Annuity Program, State Community College System Optional Retirement Program, and the State University System Optional Retirement Program.

This bill makes changes to the FRS, including, but not limited to:

- Closing the pension plan (defined benefit) to new enrollees, except those enrollees eligible to participate in the Special Risk Class;
- Creating a third plan within the FRS, known as the FRS Hybrid Plan (consolidated defined-benefit-defined contribution), and requiring all new enrollees to participate in either the hybrid plan or the investment plan (defined contribution), effective July 1, 2015, except that enrollees eligible to participate in the Special Risk Class may choose participation in the pension plan;
- Providing an opportunity for members initially enrolled before July 1, 2015, to transfer to the new hybrid plan;
- Providing death and disability benefits for members initially enrolled on or after July 1, 2015;
- Authorizing the State Board of Administration to expand the investment options available to hybrid plan and investment plan members;
- Closing the Senior Management Service Optional Annuity Program to new participants; and
- Prohibiting elected officials from joining the Senior Management Services Class, effective July 1, 2015.

The bill does not affect the ability of any current FRS enrollee to select participation in the pension plan or the investment plan. Changes included in the bill only pertain to members initially enrolled in the system on or after July 1, 2015.

The bill provides that a proper and legitimate state purpose is served, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

The bill has an indeterminate fiscal impact on state and local governments. See Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with all members contributing 3 percent of their salaries.²

The FRS is governed by the Florida Retirement System Act.³ The FRS, which is a multi-employer, contributory plan, provides retirement income benefits to 621,774 active members,⁴ 347,962 retired members and beneficiaries, and 38,724 members of the Deferred Retirement Option Program (DROP).⁵ It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 186 cities and 267 independent hospitals and special districts that have elected to join the system.⁶

The membership of the FRS is divided into five membership classes:⁷

- Regular Class⁸ consists of 536,506 members (86.3 percent of the membership);
- Special Risk Class⁹ includes 68,800 members (11.1 percent);
- Special Risk Administrative Support Class¹⁰ has 58 members (.009 percent);
- Elected Officers' Class¹¹ has 2,094 members (0.35 percent); and
- Senior Management Service Class¹² has 7,450 members (1.2 percent).

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 benefit plan, also known as the pension plan; and
- The defined contribution plan, also known as the investment plan.

¹ *The Florida Retirement System Annual Report*, July 1, 2012 – June 30, 2013, at 18. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 21, 2014).

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 June 30, 2011.

³ Chapter 121, F.S.

⁴ As of June 30, 2013, the FRS defined benefit plan, also known as the pension plan, had 514,436 members, and the defined contribution plan, also known as the investment plan, had 107,338 members. *Supra* at FN 1.

⁵ *Id.* at 10.

⁶ Florida Retirement System Participating Employers for Plan Year 2013-14, prepared by the Department of Management Services, Division of Retirement, Revised January 2014, at 8. A copy of the document can be found online at:

http://www.dms.myflorida.com/workforce_operations/retirement/publications (last visited March 21, 2014).

⁷ *Supra* at FN 1.

⁸ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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.

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

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.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

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

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).¹⁸ 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.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ 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.²¹ The accrual rate varies by class.

Membership Class	Accrual Rate
Regular Class	1.60%
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%
Elected Officer's Class	
• Justices and Judges	3.33%
• Others	3.00%
Senior Management Service Class	2.00%

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, 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.

¹⁵ Section 121.591, F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ Section 4, Art. IV, Fla. Const.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service 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 60.²⁴

Default and Second Election

A new enrollee has until the last business day of the fifth month following the employee'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.²⁵

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.²⁶

Disability and Death Benefits

Disability retirement benefits are provided for both in-line-of-duty and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,²⁷ 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 a 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. An FRS member who qualifies for disability while enrolled in the investment plan may 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.²⁸

If the member is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.²⁹ Under the pension plan, if the member has vested at the time of his or her death, the member's joint annuitant³⁰ is entitled to receive the optional form³¹ of payment for the annuitant's lifetime.³² If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.³³ If the member is vested and dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime.³⁴ Members in the investment plan are not entitled to these death benefits; instead, the member's

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ Section 121.4501(4), F.S.

²⁶ Section 121.4501(4)(g), F.S.

²⁷ See s. 121.4501(16), F.S.

²⁸ Section 121.091(4)(f), F.S.

²⁹ For purposes of disbursement of benefits, a member is considered retired as of the date of the death.

³⁰ A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.

³¹ Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.

³² Section 121.091(7)(b)1., F.S.

³³ Section 121.091(7)(b)2., F.S.

³⁴ Section 121.091(7)(d)1., F.S. If the surviving spouse dies, or if the member is not married, the monthly payment that would have otherwise gone to the surviving spouse must be paid for the use and benefit of the member's child or children that are under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Section 121.091(7)(d)2. and 3., F.S.

beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.³⁵

DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.³⁶ While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.³⁷

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.³⁸

Health Insurance Subsidy

Upon the conclusion of DROP, or upon normal retirement or disability retirement, a retiree is eligible to receive the Health Insurance Subsidy (HIS), which assists retired members in paying for the costs of health insurance.³⁹ Eligible retirees receive \$5 per month for each year of creditable service used to calculate the retirement benefit. The HIS payment must be at least \$30, but not more than \$150 per month.⁴⁰

Optional Retirement Programs

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

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;⁴¹
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program,⁴² and
- Members of a Florida college may elect to enroll in the State Community College System Optional Retirement Program.⁴³

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.⁴⁴ The rate is determined annually based on an actuarial study by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

The following are the current employer contribution rates for each class:⁴⁵

³⁵ See s. 121.591(3)(b), F.S.

³⁶ Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

³⁷ 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 was reduced to 1.3 percent.

³⁸ See s. 121.4501(2)(k) and (4)(f), F.S.

³⁹ Sections 112.363(1) and (2), F.S.

⁴⁰ Section 112.363(3)(e), F.S.

⁴¹ 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.

⁴² 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.

⁴³ 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.

⁴⁴ Section 121.70(1), F.S.

⁴⁵ Section 121.71(4), F.S.

Membership Class	Effective July 1, 2013
Regular Class	3.53%
Special Risk Class	11.00%
Special Risk Administrative Support Class	4.17%
Elected Officer's Support Class <ul style="list-style-type: none"> • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • County Officers 	6.52%
	10.05%
	8.44%
Senior Management Service Class	4.81%

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.⁴⁶

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.⁴⁷

Effect of the Bill

The bill makes changes to the FRS; however, benefits already earned are not affected by changes in this bill. In addition, employees initially enrolled in the FRS before July 1, 2015, will not have their retirement choices affected.

Effective July 1, 2015, the bill:

- Closes the pension plan (defined benefit) to new enrollees, except those enrollees eligible to participate in the Special Risk Class;
- Creates a third plan within the FRS, known as the FRS Hybrid Plan, which is a consolidated defined-benefit-defined contribution plan, and requires all new enrollees to participate in either the hybrid plan or the investment plan (defined contribution), effective July 1, 2015, except that enrollees eligible to participate in the Special Risk Class may choose participation in the pension plan;
- Provides a death benefit to hybrid plan members;
- Provides the current disability benefit to members enrolled on or after July 1, 2015;
- Authorizes the SBA to create additional investment options available to investment plan and hybrid plan members;
- Prohibits members participating in the State Community College System Optional Retirement Program from transferring to the FRS;
- Closes the Senior Management Service Optional Annuity Program to new participants; and
- Prohibits elected officials from joining the Senior Management Service Class in lieu of participation in the Elected Officers' Class.

Closing the Pension Plan

The bill provides that new enrollees in the FRS on or after July 1, 2015, other than those enrollees employed in a position covered by the Special Risk Class, will be members of either the hybrid plan or the investment plan. Enrollees initially enrolled in the system before July 1, 2015, will continue to have a choice between the two current plans, and also may choose to enroll in the hybrid plan.

FRS Hybrid Plan

⁴⁶ Section 121.71(3), F.S.

⁴⁷ See ss. 121.4503 and 121.72(1), F.S.

The bill creates a third plan within the FRS, known as the FRS Hybrid Plan. The hybrid plan is a consolidated defined benefit-defined contribution plan. The bill provides that a member of the hybrid plan receives benefits calculated under the pension plan component and the investment plan component of the FRS. The employer contribution funds the pension plan component, and the employee contribution funds the investment plan component.

Members of the hybrid plan vest in the pension plan component after eight years of creditable service, which is the same vesting requirement for members of the pension plan. Members of the hybrid plan vest in the investment plan component immediately; members immediately vest in employee contributions in all three plans.

Calculation of Hybrid Plan Benefits

The bill provides for the same calculation of pension plan component benefits for the hybrid plan as used to calculate current pension plan benefits, except that the hybrid plan calculation will use a different accrual rate. As drafted, the bill does not include the accrual rate. Such rate will be determined by the actuarial study.

Upon retirement, the hybrid plan member will receive both a calculated defined benefit for the member's life (pension plan component benefit), and also will receive the account balance of the member's investment plan account. Such investment plan account can be received as a lump sum or used to purchase an annuity.

Default and Second Election

Members initially enrolled on or after July 1, 2015, have until the last day of the eighth month after hire to choose between participation in the investment plan or the hybrid plan, except that members of the Special Risk Class may also choose participation in the pension plan. If the member does not make a selection, the member will default to the investment plan.

The bill provides a second election option for members initially enrolled in the system on or after July 1, 2015. Such enrollee may choose to transfer to the hybrid plan from the investment plan, or from the investment plan to the hybrid plan. A member of the Special Risk Class may choose to transfer between all three plans: the pension plan, investment plan, and hybrid plan.

An employee initially enrolled on or after July 1, 2015, who was not eligible to participate in the pension plan, but who later becomes eligible to participate in the Special Risk Class, may elect to transfer to the pension plan if the employee has not already used his or her second election.

Additionally, the bill provides an option for members enrolled in the FRS before July 1, 2015, to transfer to the hybrid plan.

Death and Disability Benefits

The bill provides death and disability benefits for members of the hybrid plan. The disability benefit provided to current members of the FRS will also be provided to members enrolled in the hybrid plan. If the hybrid plan member qualifies, the member may apply for disability retirement and must transfer the member's investment plan account balance to the FRS Trust Fund.

The same in-line-of-duty death benefit will be provided to members of the hybrid plan. In addition, hybrid plan members will receive non-duty death benefits in both the pension plan component and the investment plan component of the plan; the member's eligible beneficiary is entitled to a pension benefit and the member's account balance.

DROP

The bill provides that a member of the hybrid plan may participate in DROP. Once a hybrid plan member begins DROP participation, the member may not continue to make contributions to the investment plan component and may not take a distribution from the investment plan until the member discontinues participation in DROP.

HIS

The bill provides that members of the hybrid plan are considered retired when the member begins drawing retirement benefits from the pension plan component of the hybrid plan. In addition, it provides the same health insurance subsidy for hybrid plan members as provided to current members of the FRS.

Investment Options

The bill permits the SBA to create investment products that will be offered to participants in the hybrid plan and investment plan.

Optional Retirement Programs

The bill closes the Senior Management Service Optional Annuity Program to new members on July 1, 2015. Any member may elect to participate in the annuity program before July 1, 2015, and members currently enrolled in the annuity program may continue to participate in that program. However, no new members may join the program on or after July 1, 2015.

The bill provides that an employee who has elected to participate in the State Community College System Optional Retirement Program may elect to withdraw from the optional retirement program and transfer to the FRS before July 1, 2015. On that date, an employee who elects to participate in the State Community College System Optional Retirement Program may not transfer out of the optional retirement program. As a result, the bill makes the employee's election to participate in this optional program irrevocable on and after July 1, 2015.

Elected Officials

The bill prohibits elected officials from joining the Senior Management Service Class in lieu of participating in the Elected Officers' Class. Because the Senior Management Service Optional Annuity Program will not be offered on or after July 1, 2015, elected officers will no longer be able to switch service classes for the purpose of participating in the optional annuity program. Instead, elected officials can participate in the FRS or withdraw from the system.⁴⁸

Miscellaneous Provisions

The bill provides a statement of important state interest. It also directs the SBA and DMS to request a determination letter from the Federal Internal Revenue Service (IRS) upon the bill becoming a law. If the IRS refuses to act on the request for a determination letter, a legal opinion from a tax attorney can be substituted.

The bill also provides that if any portion of the bill would cause the FRS to be disqualified for tax purposes under the Internal Revenue Code, then that portion of the bill would not apply. The SBA and DMS must notify the Legislature if any portion of the bill cannot be implemented.

B. SECTION DIRECTORY:

Section 1 amends s. 112.363, F.S., providing retiree health insurance subsidy eligibility for FRS Hybrid Plan members; specifying premium amounts.

Section 2 amends s. 121.021, F.S., revising definitions; conforming cross-references.

Section 3 amends s. 121.051, F.S., limiting the ability of members of the State Community College System Optional Retirement Program to transfer to the FRS; prohibiting membership in the FRS Pension Plan for employees initially enrolled after a specified date; authorizing certain employees to participate in the pension plan; conforming cross-references.

Section 4 amends s. 121.052, F.S., prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class after a specified date; providing an accrual rate for membership in the class; conforming cross-references.

⁴⁸ Members of the Elected Officers' Class may withdraw from the FRS. Section 121.052(3), F.S.

Section 5 amends s. 121.055, F.S., closing the Senior Management Service Optional Annuity Program to new members on a specified date; prohibiting an elected official eligible for membership in the Elected Officers' Class from enrolling in the Senior Management Service Class; closing the Senior Management Service Optional Annuity Program to new members after a specified date; providing an accrual rate for membership in the class.

Section 6 amends s. 121.091, F.S., providing for the calculation of benefits for members of the FRS Hybrid Plan; providing disability benefits for members in the hybrid plan under certain conditions; specifying that a hybrid plan member that receives a distribution of employee contributions is considered retired; providing a death benefit to members of the hybrid plan; authorizing participation in DROP for members of the hybrid plan; conforming cross-references.

Section 7 amends s. 121.35, F.S., providing that certain participants in the optional retirement program for the State University System may choose to participate in the FRS.

Section 8 amends s. 121.4501, F.S., defining the FRS Hybrid Plan; authorizing Special Risk Class members to participate in the pension plan; requiring certain employees initially enrolled in the FRS on or after a specified date to be initially enrolled in the hybrid plan; providing a member with a specified time to choose a plan; providing for the transfer of certain contributions; creating an election for members enrolled before a specified date to elect to transfer to the hybrid plan; permitting the SBA to develop investment products to be offered in the investment plan; revising the education component; conforming cross-references.

Section 9 amends s. 121.591, F.S., providing for the payment of benefits accumulated in the member account for hybrid plan members.

Section 10 amends s. 121.5911, F.S., providing for disability benefits for members of the hybrid plan.

Section 11 amends s. 121.70, F.S., providing that the hybrid plan must be included in the uniform funding of the FRS; providing that the FRS is a single plan which consists of three retirement plans.

Section 12 amends s. 121.71, F.S., providing the employee and employer contribution rates for the three plans.

Section 13 amends s. 121.72, F.S., providing for the allocation of funds for the hybrid plan.

Section 14 amends s. 121.77, F.S., authorizing the deduction of reasonable fees and appropriate charges from hybrid plan accounts.

Section 15 amends s. 121.78, F.S., providing for the assessment of penalties; directing the transfer of certain funds.

Section 16 amends s. 216.136, F.S., requiring the Florida Retirement System Actuarial Assumption Conference to include the hybrid plan and pension plan as components of the FRS.

Sections 17 through 26 amend ss. 121.0515, 121.053, 121.122, 121.125, 121.141, 121.23, 121.40, 238.072, 238.183, and 413.051, F.S., conforming cross references.

Section 27 provides a directive to the Division of Law Revision and Information.

Section 28 provides that the act fulfills an important state interest.

Section 29 requires the SBA and DMS to request a determination letter from the Internal Revenue Service.

Section 30 provides an effective date of July 1, 2014, unless otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DMS has been requested to perform an actuarial study to determine the fiscal impact on the state and other participating employers. DMS indicated the study will be completed by March 31, 2014. The hybrid plan will be designed to be financially equivalent to the baseline from an expected employer cost perspective if future actuarial experience (especially investment return experience) is steady and adheres to currently endorsed assumptions. As such, the actuarial study should not indicate that the hybrid plan is less (or more) expensive than the baseline costs associated with the current FRS plan, if future experience is close to assumed.

The SBA estimates that the cost to implement the hybrid plan would be approximately \$5 million for the first year and significantly less than \$5 million each year thereafter. DMS estimates that the cost to implement the hybrid plan would be approximately \$900,000 for the first year and approximately \$100,000 in recurring costs for each year thereafter.

Closing the Senior Management Service Class Optional Annuity Program to new participants will have an insignificant fiscal impact on the FRS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18, of the State Constitution may apply because this bill requires cities and counties to spend money or take action that requires the expenditure of money; however, an exception applies as the Legislature has determined that this bill satisfies an important state interest. In addition, similarly situated persons are all required to comply.

2. Other:

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:

SECTION 14. 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 provide 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.⁴⁹ This "preservation of rights" provision⁵⁰ 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.⁵¹ 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 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.⁵²

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.⁵³ 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.⁵⁴

This bill does not change any benefits that a member earned prior to July 1, 2015. In fact, members enrolled in the FRS before July 1, 2015, should experience no change in the benefits available under the FRS. The bill only changes the FRS system for new enrollees, enrolling in the system on or after July 1, 2015.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

⁴⁹ Section 121.011(3)(d), F.S.

⁵⁰ 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).

⁵¹ *Id.* at 1035.

⁵² *Id.* at 1036.

⁵³ *Id.* at 1037.

⁵⁴ *Rick Scott, et al. v. George Williams, et al.*, 107 So.3d 379 (Fla. 2013).

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.