



## II. Present Situation:

**Profile of the FRS<sup>1</sup>**— The FRS was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, and Highway Patrol officers. The Judicial Retirement System was consolidated into the FRS in 1972. Today, the FRS is the fourth largest public retirement system in the United States, covering 683,811 active employees, 276,252 Pension Plan annuitants (retirees and their surviving beneficiaries), and 31,253 participants of the Deferred Retirement Option Program (DROP). Approximately 9,000 retirees are currently reemployed in the system.

As of June 30, 2008, about 175 Florida cities<sup>2</sup> were covering firefighters, police, and/or general employees under the FRS and there were 223 independent special districts<sup>3</sup> with members in the FRS. As of June 30, 2008, district school boards represented nearly half (49.22%) of the FRS membership, with community colleges (2.77%) and universities (3.53%) of the FRS membership. State employees (excluding university employees) represented 17.11% of the FRS. Remaining members were employed by local agencies, including counties (23.15%) as well as cities and special districts (4.21%) that have opted to join the FRS.

The FRS consists of five membership classes - the Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected Officers' Class, and Senior Management Service Class. The FRS Regular Class includes all members who are not eligible for membership in any of the other membership classes (about 88 percent of all FRS members).

*Reemployment Restrictions*— After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his or her FRS benefits. However, subject to the exceptions described below, if a retiree is reemployed in his or her first year of retirement by a FRS employer, the following limitations apply during the first calendar month of retirement:

A retiree who did not participate in DROP must terminate all employment (be off payroll with all FRS employers for one calendar month) to meet the definition of termination and complete retirement from the FRS. If a retiree returns to work for a participating employer during the first calendar month of retirement, the retiree will void his or her retirement and the retiree's FRS membership will be reestablished. All retirement benefits must be repaid and the member must reapply for retirement, establishing a later effective date of retirement.

A retiree who participated in DROP must meet the termination requirement noted above for the calendar month following the end of his or her DROP participation. If reemployment occurs within this first calendar month, the retiree's DROP participation and retirement are void. Any

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<sup>1</sup> Member counts are based on a "snapshot" of the FRS taken on June 30, 2008. These counts include members of the Teachers' Retirement System, State and County officers and Employees' Retirement System, and special retirement programs.

<sup>2</sup> In January 1, 1996, many cities and special districts were authorized by law to "opt out" of the FRS for new employees. Many chose to do so, and since that time, some have elected to rejoin the FRS. As of June 30, 2008, among the 175 cities participating in the FRS, there are 26 cities that have chosen to withdraw from the system and do not cover new members under the FRS.

<sup>3</sup> This number includes 13 independent special districts closed to new FRS members since January 1996.

funds received, including his or her DROP accumulation, must be repaid to the FRS. The member must reapply to establish an effective retirement date and may no longer be eligible to participate in DROP.<sup>4</sup>

During the 2nd through 12th months following retirement, as noted above, an FRS retiree cannot earn a salary from any FRS participating employer while drawing retirement benefits from the system. If a retiree works for a participating employer during this period, the retiree must inform the Division. Except as otherwise noted below, if a retiree works during this limitation period, the Division will suspend his or her benefits and the retiree must repay any such benefits inappropriately received. After the first 12 months of retirement, there are no further reemployment limitations.

Exceptions to reemployment limitations:

- An FRS retiree who is elected or appointed to an elective office is exempt from reemployment limitations.
- A retired justice or judge on temporary assignment to active judicial service pursuant to Article V of the State Constitution is exempt from reemployment limitations after being retired for one calendar month. Such justices or judges are not eligible for renewed membership.
- District School Boards.— An FRS or TRS retiree may be reemployed without limitation as a classroom teacher on an annual contractual basis or as a noncontractual substitute or hourly teacher without limitation. Additionally, noncontractual employment is allowed without further limitation for an FRS retiree only who is hired as an education paraprofessional, a transportation aide, a bus driver, or a food service worker.
- Florida School for the Deaf and the Blind.— An FRS or TRS retiree may be reemployed on an annual contractual basis as classroom teacher or as substitute or hourly teacher on a noncontractual basis, without limitation. (A substitute residential instructor and a substitute nurse are included in the category of noncontractual substitute or hourly teacher.)
- Charter Schools.— An FRS or TRS retiree may be reemployed as classroom teacher on an annual contractual basis or as substitute or hourly teacher on a noncontractual basis, without limitation.
- Developmental Research Schools (University Lab Schools).— An FRS or TRS retiree may be reemployed on an annual contractual basis as classroom teacher or as a substitute or hourly teacher on a noncontractual basis, without limitation.
- Community Colleges.— An FRS or TRS retiree may be reemployed as part-time, noncontractual adjunct instructor or an FRS retiree may be employed as a phased retirement program participant for up to 780 hours.
- Universities.— An FRS or TRS retiree may be reemployed as an adjunct faculty member or a phased retirement program participant with the State University System for up to 780 hours.
- Firefighters or paramedics.— An FRS retiree may be reemployed as a firefighter or paramedic serving in temporary or regularly established positions for up to 780 hours.

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<sup>4</sup> An exception applies in the case of DROP participants whose positions are covered by the Elected Officers' Class.

A member who retires on disability cannot work in gainful employment (regardless of whether in private sector or public sector) and continue to receive disability benefits.

*Renewed Membership*— FRS retirees and retirees of other state-administered retirement programs who are reemployed in FRS-covered employment will renew their membership in the FRS and earn service credit toward a “second-career” retirement benefit for which they will qualify upon vesting again. Renewed members may elect to participate in either the FRS Investment Plan or FRS Pension Plan.

Renewed members who retire and receive a second-career retirement benefit, including former DROP participants, must meet the definition of termination and are once more subject to reemployment limitations and exceptions previously described.

Renewed members are not eligible to participate in DROP or the Special Risk Class membership, or receive disability benefits. However, the surviving spouse and/or dependent children of a renewed member may qualify for survivor benefits.

*Actuarial Sound Funding of Public Pension Plan Benefit Improvements*— Since 1976, Art. X, s. 14, State Constitution, has required that benefit improvements under public pension plans in the State of Florida must 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.

*Minimum Funding Standards of Public Pension Plans*— Art. X, s. 14, State Constitution, is implemented by statute under part VII of chapter 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to “... prohibit 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.”<sup>5</sup>

### **III. Effect of Proposed Changes:**

The CS/CS/SB 1182 provides the following:

For persons retiring on or after January 1, 2010, the following changes apply uniformly to both defined benefit plan members and defined contribution plan members:

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<sup>5</sup> The “Present Situation” in this bill analysis was written in its entirety by the Division of Retirement, Department of Management Services, in the agency bill analysis for SB 1182, dated March 2, 2009.

- Access to renewed membership in the FRS across all classes when a retiree is reemployed is closed.
- Reemployment exceptions that allow a retiree to receive a subsequent pension for renewed membership are eliminated.
- Current FRS members who have retired and are receiving a benefit or a distribution and have been reemployed are not affected.
- There is no impairment of health insurance benefits except that the effect of the change from one month to six months of removal from covered payrolls requires many members to assume any uncovered insurance premium expenses for the second through the six month.

The bill defines “retiree” for the non-integrated optional retirement programs and makes miscellaneous and grammatical changes for clarification. The bill does not change the 36-month DROP extension for K-12 instructional personnel.

The bill does not change the ability of DROP participants in positions covered by the Elected Officers’ Class to defer termination past the participant’s DROP end date until the end of their current term or consecutively held terms of office. The DROP accumulation period will end but the DROP account still earns interest. No additional retirement benefits are paid and service credit cannot be claimed for this period.

The committee substitute requires the Department of Management Services to request a special actuarial study to determine the employer contribution rates required by the act and to notify legislative leadership of its results within one week of receipt.

#### **IV. Constitutional Issues:**

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

The Division of Retirement has determined that a special actuarial study is required to determine the fiscal impact of this bill on the FRS.

Because the direction of impact of this bill is to reduce the incidence of reemployment in a second career with successive pension eligibility, the greater likelihood is that a revised actuarial study will conclude that this proposal lowers the benefit cost to the FRS employers. As of April 17, 2009, there were 10,497 active renewed members in the FRS receiving a first career benefit and earning service credit towards a second career benefit. The numbers are almost evenly divided between DROP and non-DROP participants.

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

None.

##### **C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

As discussed below in *Related Issues*, persons participating in the Investment Plan who transfer their account balances to a private Individual Retirement Account, or similar tax-sheltered instrument, will be treated differently during subsequent reemployment. This is caused from existing statute which prevents an Investment Plan participant from receiving more than a ten percent distribution of the account until the expiration of the ninetieth days from termination of employment. The succeeding six months suspense period from resumption of employment with a participation employer is in addition to this ninety day period. A similarly situated Pension Plan participant is required to be removed from all payrolls for six months.

**C. Government Sector Impact:**

This bill requires an actuarial special study to determine the fiscal impact to the FRS. The FRS plan year concludes June 30, 2009. July 1, 2009 begins a new plan year and with it the initiation of a new five-year mortality and morbidity, or experience, study on the demographic composition of the membership. Actuarial studies are commissioned when a new plan change is contemplated. They range in cost from \$15,000 to \$65,000, depending upon complexity and the sufficiency of available data. The division advises that the study will be procured separately from the experience study and incur a supplemental charge.

**VI. Technical Deficiencies:**

The barcode 823856 amendment to barcode amendment 476274, which is the basis for the current committee substitute, revised the reemployment periods for designated employees of district school boards. In so doing it created more favorable reemployment provisions for them than exist in current law. The formatting of this amendment essentially voided the termination of employment requirements of current law, to the detriment of others similarly situated. A corrective amendment is required to address this effect. Such a corrective change could take a number of forms and may involve a recoding of the change or a delay in the effect of the entire subsection on when the reemployment restrictions begin.

Three other style and drafting changes are required to format provisions of this bill equally to participants in the Pension and Investment Plan. These changes are not materially different from the policy direction established in the bill.

**VII. Related Issues:**

Neither current law, nor the changes proposed to it in this bill, will affect the pension status of persons who are reemployed in the following circumstances:

1. Individuals who are reemployed as independent contractors are not excluded from subsequent employment, nor are they governed by the suspension of benefit provisions in current law or in this bill. Such persons are not paid from a salary appropriation (FTE or OPS) and, therefore, do not enjoy the status as employees. These individuals will have to assure their employer, as will the employer have to be assured itself, that the reengagements are consistent with independent contractor guidelines published by the Division of Retirement in compliance with the Internal Revenue Code.
2. Individuals who terminate employment and do not claim a benefit or receive a distribution will be excluded from the reemployment restrictions as they have not claimed a benefit. In a subsequent reemployment relationship they will have their original service reestablished but it will be governed by the law in effect at the time.
3. Members of the Investment Plan who terminate employment, take a distribution, roll-over that distribution to a private retirement account through a trustee-to-trustee transfer or receive it in cash, and are subsequently reemployed in a covered position with a participating FRS employer will be treated slightly differently from similarly situated persons in the Pension Plan, as discussed above, under *Private Sector Impact*.
4. The State of Florida through its agencies makes wide use of independent contract vendors. Subsequent reemployment of a retiree by any such vendor, other than an existing FRS employer, does not impair receipt of FRS retirement benefits or distributions as such non-governmental vendors cannot be employer-members of the FRS.

## VIII. Additional Information:

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

### **CS by Governmental Oversight and Accountability on April 21, 2009:**

The CS increases the removal from payrolls provision of 30 days in current law to six calendar months and precludes the earning of a second career benefit after January 1, 2010. After expiration of the six months' period there is no limitation upon reemployment nor are there any limitations on the 780-hour earning limitations imposed by current law as all of those provisions are repealed. The prohibition on the earning of a second career benefit is uniform across all six FRS membership classes.

### **CS by Ethics and Elections Committee on April 7, 2009:**

The CS/CS/SB 1182 makes technical changes, corrects certain statutory cross-reference provisions in the original committee substitute, provides for a special actuarial study to determine the contribution rates required by this act, and revises the effective date of this act.

### **CS by Community Affairs Committee on March 31, 2009:**

The CS/SB 1182 corrects the technical deficiencies identified in the original bill, provides that the provisions of the bill apply equally across all classes of the FRS for persons who retire on or after January 1, 2010, and eliminates all reemployment exceptions currently in law for persons who retire on or after January 1, 2010.

B. Amendments:

None.

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

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