

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 151 Cost-of-living Adjustment of Retirement Benefits

SPONSOR(S): Busatta Cabrera

TIED BILLS: IDEN./SIM. **BILLS:** SB 242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee		Villa	Miller
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

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 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.

Current law provides an FRS Pension Plan member whose effective retirement date was before July 1, 2011, with a 3 percent annual cost-of-living adjustment (COLA). However, in 2011, the COLA was eliminated for service earned on or after July 1, 2011. Accordingly, members initially enrolled in the FRS on or after July 1, 2011, do not receive a COLA when they retire. For retirees with years of service prior to 2011, the COLA amount is prorated.

The bill restores the annual COLA to 3 percent for all retired FRS Pension Plan members beginning July 1, 2024. It removes the COLA conditional restoration language in current law.

The bill will have a significant fiscal impact on state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer, and the Attorney General, commonly referred to as the “Board of Trustees.”¹ The SBA has responsibility for investing the assets of the Florida Retirement System (FRS) Pension Plan² and administering the FRS Investment Plan,³ which combined represent approximately \$190.8 billion, or approximately 84.4 percent of the \$225.4 billion in assets managed by the SBA, as of October 31, 2023.⁴ The SBA also manages over 25 other investment portfolios, with combined assets of approximately \$34.6 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.

Florida Retirement System

The FRS was established in 1970 when the Legislature consolidated the Teachers’ Retirement System, the State and County Officers and Employees’ Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group. The FRS was amended in 1998 to include the Deferred Retirement Option Program (DROP) under the defined benefit plan and in 2000 was amended to provide a defined contribution plan alternative to the defined benefit plan for FRS members effective July 1, 2002.⁵

The FRS is a multiple-employer, contributory plan⁶ governed by the Florida Retirement System Act.⁷ As of June 30, 2023, the FRS has 646,277 active members,⁸ 455,601 retired members and beneficiaries, and 27,767 members in DROP.⁹ 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.¹⁰

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 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.¹¹

¹ See also art. XII, s. 9, FLA. CONST.

² S. 121.151, F.S.

³ S. 121.4501(8), F.S. See also, rule 19-13.001, F.A.C.

⁴ State Board of Administration, *Performance Report Month Ending: October 31, 2023*, <https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Trustees/2023/October%202023%20Monthly%20Trustee%20Report.pdf?ver=2023-12-22-140235-787>, (last visited January 5, 2024).

⁵ 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. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports [hereinafter *Annual Report*] (last visited January 4, 2024).

⁶ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent of their salaries 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.

⁷ Ch. 121, F.S.

⁸ As of June 30, 2022, 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 5, at p. 188.

⁹ *Id.*

¹⁰ *Id.*, at 226.

¹¹ 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.

Membership of the FRS is divided into the following membership classes:¹²

- Regular Class¹³ consists of 550,931 members (85.27 percent of the total 2023 FRS membership). This class is for all members who are not assigned to another class.
- Special Risk Class¹⁴ includes 75,495 members (11.68 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 Class¹⁵ has 93 members (0.014 percent). This class is for former Special Risk Class members who provide administrative support within an FRS special 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' Class¹⁶ has 2,105 members (0.33 percent). This class is for elected state and county officers and those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers.
- Senior Management Service Class¹⁷ has 7,714 members (1.19 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.

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 SBA is primarily responsible for administering the investment plan.¹⁸

A member vests immediately in all employee contributions paid to the investment plan.¹⁹ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.²⁰ 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.²¹

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.

FRS Pension Plan

¹² Annual Report, *supra* note 5, at 191.

¹³ S. 121.021(12), F.S.

¹⁴ S. 121.0515, F.S.

¹⁵ 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. S. 121.0515(8), F.S.

¹⁶ S. 121.052, F.S.

¹⁷ S. 121.055, F.S.

¹⁸ S. 121.4501(8), F.S.

¹⁹ S. 121.4501(6)(a), F.S.

²⁰ 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. S. 121.4501(6)(b) – (d), F.S.

²¹ S. 121.591, F.S.

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.²² Investment management is provided 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.²⁵

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 62.²⁶ Those members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of credible service or attain age 65.²⁷ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earlier of 25 years of credible service or age 55.²⁸

Cost-of-living Adjustment

For an FRS Pension Plan member whose effective retirement date was before July 1, 2011, the member receives a 3 percent annual cost-of-living adjustment (COLA).²⁹ In 2011, the COLA was eliminated for service earned on or after July 1, 2011.³⁰ Accordingly, for members initially enrolled in the FRS on or after July 1, 2011, the COLA is zero. For retirees with years of service prior to 2011, the COLA amount is prorated.³¹

Below are examples of potential COLAs, dependent on the years of service before July 1, 2011.

Total Years of Service	Years of Service before July 1, 2011	COLA
30	30	3.00%
30	25	2.50%
30	20	2.00%
30	15	1.50%
30	10	1.00%
30	5	0.50%
30	0	0.00%

²² See s. 121.025, F.S.

²³ S. 121.021(45)(a), F.S.

²⁴ S. 121.021(45)(b), F.S.

²⁵ S. 121.091(5)(a), F.S.

²⁶ S. 121.021(29)(a)1., F.S.

²⁷ S. 121.021(29)(a)2., F.S.

²⁸ S. 121.021(29)(b), F.S.

²⁹ S. 121.101(3), F.S.

³⁰ Ch. 2011-68, s. 17, Laws of Fla.

³¹ Section 121.101(4)(c), F.S., explains that the COLA is prorated by taking the product of 3 percent multiplied by the quotient of the sum of the member's service credit earned for service before July 1, 2011, divided by the sum of the member's total service credit earned. Example: A member with 10 years of service prior to July 1, 2011 retires after 30 years of service. Divide 10 by 30 and multiply by 3 percent. In this example, the member's COLA would be 1.0%.

The chart below shows the number of retirees receiving a full COLA (Tier I) and a reduced COLA (Tier II) as of March 21, 2023.³²

FRS Employer	Tier I Retirees Receiving a 3% COLA	Tier II Retirees Receiving a 0.00% to 2.99% COLA
State	61,167	25,570
State Universities	14,430	6,236
Counties	64,904	37,009
State Boards	135,984	72,628
State Colleges	9,402	4,972
Others	8,868	6,723
Total	294,755	151,913

Current law provides for the restoration of the COLA effective June 30, 2016, subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for such purpose.³³ To date, the Legislature has not provided funding to restore the COLA to current or future retirees.

Effect of the Bill

The bill restores the annual COLA to 3 percent for all retired FRS Pension Plan members beginning July 1, 2024. It removes the conditional COLA restoration language in current law.

B. SECTION DIRECTORY:

Section 1 amends s. 121.101, F.S., relating to cost-of-living adjustment benefits.

Section 2 provides a declaration of important state interest.

Section 3 provides an effective date of July 1, 2024.

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.

³² Fla. H.R. Appropriations Committee Staff Analysis for CS/CS/HB 239 (2023) at p. 5, available at: <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0239c.APC.DOCX&DocumentType=Analysis&BillNumber=0239&Session=2023> (dated March 30, 2023).

³³ S. 121.101(5), F.S.

D. FISCAL COMMENTS:

Revising employer contribution rates for the restoration of the COLA will have a significant fiscal impact on funds paid into the FRS Trust Fund. An actuarial study for the restoration of COLA has not been completed for Fiscal Year 2024-25. However, an actuarial study was completed for Fiscal Year 2023-24. The actuarial study for Fiscal Year 2023-24 provides that the estimated amount to restore the COLA for the 2023-24 fiscal year was as follows:³⁴

Employer Contribution Group	Estimated Increase in Contributions
State Agencies	\$331.8 Million
School Boards	\$796.7 Million
State Universities	\$204.2 Million
Colleges	\$61.7 Million
Counties	\$863.3 Million
Other	\$143.1 Million
Total:	\$2,400.8 Million

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill will result in increased employer contribution rates from county and municipal participants in the FRS; however, an exception may apply as the Legislature has determined that this bill satisfies an important state interest and all similarly situated persons are required to comply with the act.

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.

B. RULE-MAKING AUTHORITY:

³⁴ Memorandum to Ms. Andrea Simpson, State Retirement Director, Florida Department of Management Services, Division of Retirement, *Re: Special Actuarial Study of Prospective Minimum COLA Rate for Tier I and Tier II Members and Beneficiaries*, (dated February 14, 2023) on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

The bill neither provides additional rulemaking authority nor appears to require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 32, the bill references the cost-of-living benefit instead of the cost-of-living adjustment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES