



State Affairs Committee

Wednesday, February 10, 2016

9:00 AM

Morris Hall (17 HOB)

Meeting Packet

Steve Crisafulli
Speaker

Matt Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Wednesday, February 10, 2016 09:00 am
End Date and Time: Wednesday, February 10, 2016 12:00 pm
Location: Morris Hall (17 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 501 Conservation Easements by McGhee
CS/CS/HB 677 State Park Fee Discounts for Senior Citizens by Agriculture & Natural Resources
Appropriations Subcommittee, Agriculture & Natural Resources Subcommittee, Stafford
CS/HB 869 Public Records/Security Systems Plans and Information by Government Operations
Subcommittee, Harrison
CS/HB 1025 Public Records/Utility Security Information by Energy & Utilities Subcommittee, Antone,
Cortes, B.
HB 1297 Discretionary Sales Surtaxes by Cummings, Ray

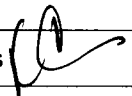
Consideration of the following proposed committee bill(s):

PCB SAC 16-03 -- Public Employees

NOTICE FINALIZED on 02/08/2016 3:24PM by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 501 Conservation Easements
SPONSOR(S): McGhee
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Moore, R.	Harrington
2) Finance & Tax Committee	14 Y, 0 N	Dugan	Langston
3) State Affairs Committee		Moore, R. <i>pel</i>	Camechis 

SUMMARY ANALYSIS

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking. They must be recorded and indexed in the same manner as any other instrument affecting the title to real property. Recording of the conservation easement gives notice to the property appraiser and tax collector of the conservation easement. Land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes is exempt from ad valorem taxation.

Once an original application for tax exemption has been granted for real property dedicated in perpetuity for conservation purposes, the property appraiser must mail a renewal application to the property owner, on or before February 1, in each succeeding year. The property owner must certify on the form that the use of the property complies with the restrictions and requirements of the conservation easement. The exemption will not be renewed unless the application is returned to the property appraiser.

The bill removes the annual application requirement and provides that, once an original application for an ad valorem tax exemption for property subject to a perpetual conservation easement has been granted, the property owner is not required to file a renewal application until the use of the property no longer complies with the restrictions and requirements of the conservation easement.

The bill is effective July 1, 2016.

The Revenue Estimating Conference determined this bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Conservation Easements

A conservation easement is a right or interest in real property which is appropriate for:

- Retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition;
- Retaining such areas as suitable habitat for fish, plants, or wildlife;
- Retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintaining existing land uses.¹

A conservation easement must prohibit or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; or
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.²

Conservation easements are acquired in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.³ Condemnation or eminent domain proceedings involving lands with a conservation easement are allowed if it is for the construction or operation of linear facilities (e.g., electric, telecommunication, or pipeline transmission lines and distribution facilities, public transportation corridors).⁴ Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.⁵

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking.⁶ They must be recorded and indexed in the

¹ Section 704.06(1), F.S.

² *Id.*

³ Section 704.06(2), F.S.

⁴ Section 704.06(11), F.S.

⁵ Section 704.06(3), F.S.

⁶ Section 704.06(2), F.S.

same manner as any other instrument affecting the title to real property.⁷ Recording of the conservation easement gives notice to the property appraiser and tax collector of the conservation easement.⁸

Ad Valorem Taxes – Generally

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,⁹ and it provides for specified assessment limitations, property classifications and exemptions.¹⁰ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.¹¹

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹²

Ad Valorem Tax Exemption for Real Property Dedicated in Perpetuity for Conservation Purposes

In November 2008, Florida's voters amended the Florida Constitution to provide an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.¹³

Land that is dedicated in perpetuity¹⁴ for conservation purposes¹⁵ and that is used exclusively for conservation purposes is exempt from ad valorem taxation.¹⁶ Additionally, land that is dedicated in perpetuity for conservation purposes and that is used for allowed commercial uses¹⁷ is exempt from ad valorem taxation up to 50 percent of the assessed value of the land.¹⁸ If the allowed commercial use includes agriculture, the use must comply with the most recent best management practices adopted by the Department of Agriculture and Consumer Services.¹⁹

If the land is less than 40 contiguous acres, the exemption will not apply unless the Acquisition and Restoration Council (ARC)²⁰ determines the use of the land for conservation purposes fulfills a clearly

⁷ Section 704.06(5), F.S.

⁸ Section 704.06(7), F.S.

⁹ Fla. Const. art. VII, s. 4.

¹⁰ Fla. Const. art. VII, ss. 3, 4, and 6.

¹¹ Section 196.031, F.S.

¹² *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

¹³ Fla. Const. art. VII, s. 3(f).

¹⁴ "Dedicated in perpetuity" is defined in s. 196.26(1)(d), F.S., to mean the land is encumbered by an irrevocable, perpetual conservation easement.

¹⁵ "Conservation purposes" is defined in s. 196.26(1)(c), F.S., as:

1. Serving a conservation purpose, as defined in 26 U.S.C. s. 170(h)(4)(A)(i)-(iii), for land which serves as the basis of a qualified conservation contribution under 26 U.S.C. s. 170(h); or
2. a. Retention of the substantial natural value of land, including woodlands, wetlands, watercourses, ponds, streams, and natural open spaces;
- b. Retention of such lands as suitable habitat for fish, plants, or wildlife; or
- c. Retention of such lands' natural value for water quality enhancement or water recharge.

¹⁶ Section 196.26(2), F.S.

¹⁷ "Allowed commercial uses" is defined in s. 196.26(1)(a), F.S., as commercial uses that are allowed by the conservation easement encumbering the land.

¹⁸ Section 196.26(3), F.S.

¹⁹ Section 196.26(7), F.S.

²⁰ The ARC is created in s. 259.035, F.S.

delineated state conservation policy and yields a significant public benefit.²¹ The ARC, in making its public benefit determination, must give particular consideration to land that:

- Contains a natural sinkhole or natural spring that serves a water recharge or production function;
- Contains a unique geological feature;
- Provides habitat for endangered or threatened species;
- Provides nursery habitat for marine and estuarine species;
- Provides protection or restoration of vulnerable coastal areas;
- Preserves natural shoreline habitat; or
- Provides retention of natural open space in otherwise densely built-up areas.²²

The ARC maintains a list of nonprofit entities that are qualified to enforce the provisions of the conservation easement.²³

Conservation easements must include baseline documentation regarding the natural values to be protected on the land and may include a management plan that details the management of the land to effectuate the conservation of natural resources on the land, unless the land needs approval from the ARC.²⁴ Lands approved by the ARC must have a management plan and a designated manager for implementing the management plan.²⁵

Buildings, structures, and other improvements on land receiving the exemption and the land area immediately surrounding the buildings, structures, and improvements must be assessed separately under ch. 193, F.S.²⁶ Structures and other improvements that are auxiliary to the use of the land for conservation purposes are exempt to the same extent as the underlying land.²⁷

Ad Valorem Tax Exemption Application and Annual Renewal Application

Generally, Florida requires that every person entitled to an ad valorem exemption annually apply with the property appraiser before March 1, listing and describing the property for which the exemption is claimed and certifying its ownership and use,²⁸ however, there are exceptions. For instance, certain types of properties are exempt from the annual application,²⁹ a property appraiser may modify the annual application requirement in some situations,³⁰ and a county may waive the annual application requirement for most exemptions.³¹ Applications filed after the first year the exemption is granted are referred to as "renewal applications."³² Failure to timely file a required application constitutes a waiver of the exemption for that year.³³

Florida currently requires annual application for the ad valorem exemption for property subject to a perpetual conservation easement.³⁴ Property owners must apply by March 1.³⁵ Once an original

²¹ Section 196.26(4), F.S.

²² *Id.*

²³ Section 196.26(9), F.S.

²⁴ Section 196.26(5), F.S.

²⁵ Section 196.26(4), F.S.

²⁶ Section 196.26(6), F.S.

²⁷ *Id.*

²⁸ Section 196.011(1), F.S.

²⁹ Section 196.011(3), F.S.

³⁰ Section 196.011(4), F.S.

³¹ Section 196.011(9)(a), F.S.

³² *See s.* 196.011(6), F.S.

³³ Section 196.011(1), F.S.

³⁴ Section 196.011(6)(b).

³⁵ *Id.*

application³⁶ for tax exemption has been granted, the property appraiser must mail a renewal application³⁷ to the property owner, on or before February 1, in each succeeding year.³⁸ The property owner must certify on the form that the use of the property complies with the restrictions and requirements of the conservation easement.³⁹ The exemption will not be renewed unless the application is returned to the property appraiser.⁴⁰

The property appraiser must accept the renewal application as evidence of exemption unless the application is denied.⁴¹ Upon denial, the property appraiser must serve by first-class mail, on or before July 1, a notice to the applicant setting forth the grounds for denial.⁴² An applicant objecting to the denial may file a petition as provided for in s. 194.011(3), F.S.⁴³

Notice to Property Appraiser of Ineligibility of Ad Valorem Tax Exemption

The owner of any property granted an exemption for real property dedicated in perpetuity for conservation purposes must promptly notify the property appraiser whenever the use of the property no longer complies with the restrictions and requirements of the conservation easement.⁴⁴ If the property owner fails to notify the property appraiser and the property appraiser determines that for any year within the preceding 10 years the owner was not entitled to receive the exemption, the property owner is subject to taxes exempted as a result of the failure plus 18 percent interest per annum and a penalty of 100 percent of the taxes exempted.⁴⁵

Effect of Proposed Changes

The bill removes the annual application requirement and provides that, once an original application for an ad valorem tax exemption for property subject to a perpetual conservation easement has been granted, the property owner is not required to file a renewal application until the use of the property no longer complies with the restrictions and requirements of the conservation easement.

The bill is effective July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 196.011(6)(b), F.S., regarding annual renewal application requirements for real property dedicated in perpetuity for conservation purposes.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

³⁶ Real Property Dedicated in Perpetuity for Conservation Exemption Application, available at <http://dor.myflorida.com/dor/property/forms/current/dr418c.pdf>.

³⁷ Real Property Dedicated in Perpetuity for Conservation Exemption Renewal Application, available at <http://dor.myflorida.com/dor/property/forms/current/dr418cr.pdf>.

³⁸ Section 196.011(6)(b), F.S.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Section 196.011(6)(a), F.S.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Section 196.011(9)(b), F.S.

⁴⁵ *Id.*

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector because it deletes the annual renewal application to maintain the ad valorem tax exemption and the consequences of a property owner's failure to return the renewal application.

D. FISCAL COMMENTS:

On October 2, 2015, the Revenue Estimating Conference determined this bill has no fiscal impact on state or local tax revenues. However, the bill may have a positive fiscal impact on local governments because property appraisers will no longer be required to mail annual renewal applications to property owners.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR suggests that the bill may cause confusion because a property owner would be required to submit a renewal application when the use of the property no longer complies with the restrictions and requirements of the conservation easement. DOR suggests the property owner notify the property appraiser when the use of the property no longer complies with the restrictions and requirements of the conservation easement, rather than submit a renewal application.⁴⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁴⁶ DOR Legislative Bill Analysis for HB 501, on file with the Agriculture & Natural Resources Subcommittee.
STORAGE NAME: h0501d.SAC.DOCX
DATE: 2/8/2016

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A bill to be entitled
 An act relating to conservation easements; amending s.
 196.011, F.S.; deleting a requirement that an
 exemption for a conservation easement must be renewed
 annually; providing that a property owner is not
 required to file a renewal application until the use
 of the property no longer complies with conservation
 easement requirements or restrictions; providing an
 effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (6) of section
 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(6)

(b) Once an original application for tax exemption has
 been granted under s. 196.26, the property owner is not required
~~to file a renewal application until in each succeeding year on~~
~~or before February 1, the property appraiser shall mail a~~
~~renewal application to the applicant on a form prescribed by the~~
~~Department of Revenue. The applicant must certify on the form~~
~~that the use of the property no longer complies with the~~
~~restrictions and requirements of the conservation easement. The~~
~~form shall include a statement that the exemption granted under~~
~~s. 196.26 will not be renewed unless the application is returned~~

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27 | ~~to the property appraiser.~~

28 | Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 677 State Park Fee Discounts for Senior Citizens

SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Agriculture and Natural Resources Subcommittee and Stafford

TIED BILLS: IDEN./SIM. BILLS: SB 1000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N, As CS	Helpling	Massengale
3) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

The Division of Recreation and Parks within the Department of Environmental Protection (DEP) manages 161 parks and 10 state trails covering 800,000 acres, 100 miles of beaches, and more than 1,500 miles of multi-use trails. The state established these areas for the protection and preservation of their natural features or historic significance and for public use and enjoyment. Entrance fees to the parks vary among the parks. Individuals may purchase an annual pass that allows entrance into Florida state parks in lieu of paying daily entrance fees for one year from the month of purchase. Active duty members and honorably discharged veterans of the United States Armed Forces, National Guard, or reserve components may receive a 25 percent discount on annual passes. Honorably discharged veterans who have service-connected disabilities; surviving spouses and parents of deceased members of the United States Armed Forces, National Guard, or reserve components who have fallen in combat; and surviving spouses and parents of a law enforcement officer or a firefighter who has died in the line of duty may receive lifetime family annual passes at no charge. In Fiscal Year 2014-2015, DEP collected \$3,500,801 for annual passes.

The bill provides a 25 percent discount on annual state park passes purchased from July 1, 2016, through June 30, 2017, by individuals 65 years of age or older. The bill requires DEP to report the total number of passes purchased by such individuals by June 30, 2017.

The bill provides \$200,000 in nonrecurring funds from the General Revenue Fund to offset the loss of revenue to the State Park Trust Fund. The bill will have a positive fiscal impact on the private sector and no fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Recreation and Parks (DRP), within the Department of Environmental Protection (DEP), manages 161 parks and 10 state trails covering 800,000 acres, 100 miles of beaches, and more than 1,500 miles of multi-use trails.¹ The state established these areas for the protection and preservation of their natural features or historic significance and for public use and enjoyment.²

DRP may charge reasonable fees, rental, or charges for the use or operation of facilities and concessions in state parks.³ These fees must be deposited in the State Park Trust Fund.⁴ DRP may use these funds to administer, improve, maintain, and acquire state parks.⁵ The appropriation to the State Park Trust Fund must be continuing and may not revert to the General Revenue Fund and must be continually available to DRP for the uses described above.⁶

Entrance fees vary among the parks. The Director of DRP must recommend standard admission and other fees taking into consideration user demand, location of the park, cost of managing and operating the park, the types of facilities available, season, and natural and resource values of the park.⁷ User fees may not become effective until they are published in a statewide news release and, if requested, reviewed at a public hearing.⁸

DRP waives entrance fees for:

- Children under six;
- Patients of Florida State Mental Institutions and clients of the Department of Juvenile Justice and the Department of Children and Family Services, and other similar institutions when such patients or clients are part of an organized group or program under the sponsorship and supervision of their respective institutions or parent agencies;
- Florida school groups, accompanied by one or more teachers, and bearing a letter from the school principal, professor, or other appropriate official, certifying that the park visit is related to a specific school curriculum and is for educational purposes rather than a purely recreational outing; and
- DRP employees and families.⁹

Individuals may also purchase an annual pass. Annual passes allow entrance into state parks in lieu of entrance fees for one year from the month of purchase.¹⁰ DRP honors annual passes at all state parks, except for the Skyway Fishing Pier State Park, where they are valid for a 33 percent discount.¹¹ Individual annual passes cost \$60 while family passes cost \$120.¹²

¹ DEP, *Division of Recreation and Parks*, available at: <http://www.dep.state.fl.us/mainpage/programs/parks.htm> (last visited January 15, 2016).

² Rule 62D-2.013(1), F.A.C.

³ Section 258.014(1), F.S.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Rule 62D-2.014(2)(c), F.A.C.

⁸ Rule 62D-2.014(2)(d), F.A.C.

⁹ Rules 62D-2.014(2)(b)1. – 4., F.A.C.

¹⁰ Florida State Parks, *Annual Pass Information*, available at: <https://www.floridastateparks.org/content/annual-pass-information#aboutannualpasses> (last visited January 15, 2016).

¹¹ Id.

¹² Id. Family annual passes cover the entrance of up to eight people in a group.

Active duty members and honorably discharged veterans of the United States Armed Forces, National Guard, or reserve components may receive a 25 percent discount on annual passes.¹³ Honorably discharged veterans who have service-connected disabilities; surviving spouses and parents of deceased members of the United States Armed Forces, National Guard, or reserve components who have fallen in combat; and surviving spouse and parents of a law enforcement officer or a firefighter who has died in the line of duty may receive lifetime family annual passes at no charge.¹⁴

Florida citizens who are at least 65 years of age and Florida citizens possessing a current social security disability award certificate or a 100 percent disability award certificate from the federal government may receive a camping permit that entitles them to a 50 percent discount on camping fees at Florida state parks.¹⁵

In fiscal year 2014-2015, DEP collected \$23,741,103 in entrance fees and \$3,500,801 for annual passes.¹⁶

Effect of Proposed Changes

The bill amends s. 258.0145, F.S., to provide a 25 percent discount on annual state park passes purchased from July 1, 2016, through June 30, 2017, by individuals 65 years of age or older. The bill requires DEP to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the total number of passes purchased pursuant to this section by June 30, 2017.

The bill provides \$200,000 in nonrecurring funds from the General Revenue Fund to offset the loss of revenue to the State Park Trust Fund as a result of the discount.

B. SECTION DIRECTORY:

Section 1. Amends s. 258.0145, F.S., relating to state park fee discounts.

Section 2. Provides an appropriation.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will have a significant negative fiscal impact on DEP revenues by providing a 25 percent discount on annual passes purchased from July 1, 2016, through June 30, 2017, by individuals 65 year of age and older. In Fiscal Year 2014-2015, DEP collected \$3,500,801 for annual passes.¹⁷

During a limited survey conducted in October and November 2013, DEP found that 13 percent of state park visitors were 65 years of age or older.¹⁸ However, DEP estimates that senior citizen visitation is higher during other parts of the year.¹⁹

¹³ Section 258.0145(1), F.S.

¹⁴ Section 258.0145(2) – (4), F.S.

¹⁵ Section 258.016, F.S.; Rule 62D-2.014(1)(b)5., F.A.C.

¹⁶ DEP, HB 677 estimates 12/3/15, on file with the Agriculture and Natural Resources Subcommittee.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

Using Fiscal Year 2014-2015 annual pass revenues, the estimated reductions in revenue would be:

Senior Citizen State Park Discount Fiscal Impact			
Percent of park visitors 65 and older	Estimated annual pass revenues from senior citizens in FY14/15	Estimated loss of revenue to the State Park Trust Fund	Total percent reduction in annual pass revenue
13%	\$455,104	\$113,776	3.2%
20%	\$700,160	\$175,040	5%
30%	\$1,050,240	\$262,560	7.5%

The amount of potential revenue lost will depend on the number of participants. The discount could result in more annual passes being purchased than in previous years, reducing the net amount of lost revenue to the trust fund. The bill provides \$200,000 in nonrecurring funds from the General Revenue Fund to offset the loss of revenue to the State Park Trust Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on individuals 65 years of age or older by providing them with a 25 percent discount on annual passes to state parks purchased from July 1, 2016, through June 30, 2017.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DEP possesses sufficient rulemaking authority to amend rules necessary to conform to changes made in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

1 A bill to be entitled

2 An act relating to state park fee discounts for senior
3 citizens; amending s. 258.0145, F.S.; providing a
4 discount on annual entrance passes for certain senior
5 citizens during a specified period; directing the
6 Department of Environmental Protection to report
7 certain information to the Governor and Legislature;
8 providing for expiration; providing an appropriation;
9 providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Subsection (5) is added to section 258.0145,
14 Florida Statutes, to read:

15 258.0145 ~~Military, law enforcement, and firefighter~~ State
16 park fee discounts.—The Division of Recreation and Parks shall
17 provide the following discounts on park fees to persons who
18 present written documentation satisfactory to the division which
19 evidences their eligibility for the discounts:

20 (5) Senior citizens who are 65 years of age or older shall
21 receive a 25-percent discount on annual entrance passes
22 purchased July 1, 2016, through June 30, 2017. The department
23 shall report by June 30, 2017, to the Governor, the President of
24 the Senate, and the Speaker of the House of Representatives the
25 total number of passes purchased pursuant to this subsection.
26 This subsection expires July 1, 2017.

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27 Section 2. For the 2016-2017 fiscal year, the sum of
28 \$200,000 in nonrecurring funds from the General Revenue Fund is
29 appropriated to the Department of Environmental Protection for
30 the purpose of offsetting the loss of revenue to the State Park
31 Trust Fund as a result of the 25-percent discount provided in s.
32 258.0145(5), Florida Statutes.

33 Section 3. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 869 Public Records/Security Systems Plans and Information

SPONSOR(S): Government Operations Subcommittee; Harrison

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Moore	Williamson
2) Criminal Justice Subcommittee	13 Y, 0 N	White	White
3) State Affairs Committee		Moore <i>AM</i>	Camechis <i>CC</i>

SUMMARY ANALYSIS

Current law provides public record and public meeting exemptions for certain information related to security systems. A security system plan or any portion thereof and any information relating to security systems held by an agency is confidential and exempt from public record requirements if the plan or information is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

Current law authorizes the release of the confidential and exempt security system plans in certain instances, but it does not authorize the release of the confidential and exempt information relating to security systems.

The bill amends the public record exemption for security systems plans to expand the list of authorized releases as follows:

- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

It also amends the public record exemption for information relating to security systems to authorize release of the confidential and exempt information as follows:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in the furtherance of that agency's duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.⁵ The general law must state with specificity the public necessity justifying the exemption⁶ and must be no more broad than necessary to accomplish its purpose.⁷

Furthermore, the Open Government Sunset Review Act⁸ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ FLA. CONST. art. I, s. 24(c).

⁶ This portion of a public record exemption is commonly referred to as a "public necessity statement."

⁷ FLA. CONST. art. I, s. 24(c).

⁸ Section 119.15, F.S.

- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁹

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁰

Public Record and Public Meeting Exemptions Related to Security Systems

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Security System Plans

Section 119.071(3)(a)1., F.S., defines "security system plan" to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

A security system plan or any portion thereof that is held by an agency¹¹ is confidential and exempt¹² from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.¹³

An agency's custodian of public records¹⁴ is authorized to disclose the confidential and exempt information to:

- The property owner or leaseholder; or
- Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.¹⁵

⁹ Section 119.15(6)(b), F.S.

¹⁰ Section 119.15(3), F.S.

¹¹ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Section 119.071(3)(a)2., F.S.

¹⁴ Section 119.011(5), F.S., defines "custodian of public records" as the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

¹⁵ Section 119.071(3)(a)3., F.S.

Other Information Related to Security Systems

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency and all meetings relating directly to or that would reveal such security systems or information are confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information. There are no exceptions provided to authorize an agency to disclose the information under certain circumstances.

Application of the Exemptions to Security Videos

In 2015, the Fifth District Court of Appeal (DCA) in *Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc.*,¹⁶ considered whether security videos from cameras installed on transit authority buses were confidential and exempt from public record requirements under ss. 119.071(3)(a) and 281.301, F.S. The court concluded that the video footage captured by the bus camera “directly relates to and reveals information about a security system,” and is therefore protected under the exemptions. The court found that “the videos, which are records, reveal the capabilities—and as a corollary, the vulnerabilities—of the current system.”

More recently, the Attorney General considered whether surveillance tapes from a security system for a public building are protected under ss. 119.071(3)(a) and 281.301, F.S. Citing the Fifth DCA case, the Attorney General opined that the surveillance tapes at issue constituted information that would reveal the existence of a security system and were therefore confidential and exempt from public record requirements pursuant to the exemptions.¹⁷

As a result of these interpretations, agencies are limited in the circumstances under which they may release security and surveillance videos.

Effect of the Bill

The bill amends s. 119.071(3)(a), F.S., which provides a public record exemption for security system plans held by an agency, to expand the list of authorized releases as follows:

- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

It removes the provision authorizing release to a state or federal agency for purposes of preventing, detecting, or guarding against an attempted or actual act of terrorism because release for such purposes is encompassed in the newly added, more broad exceptions to the exemption.

The bill also amends s. 281.301, F.S., which provides public record and public meeting exemptions related to security systems, to provide that the confidential and exempt information may be disclosed:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency’s duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

¹⁶ 157 So. 3d 401 (Fla. 5th DCA 2015).

¹⁷ 15-06 Fla. Op. Att’y Gen 1 (2015).

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 amends s. 281.301, F.S., relating to security systems; records and meetings exempt from public access or disclosure.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Government Operations Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute:

- Removed the public record exemptions for video or audio recordings from a security system camera for any property owned by or leased to the state or any of its political subdivisions, and for any privately owned or leased property that is in the possession of any agency;
- Removed the repeal of s. 281.301, F.S., which provides public record and public meeting exemptions related to security systems;
- Removed the public necessity statement; and
- Provided exceptions to the public records requirements for information relating to security systems in s. 281.301, F.S.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; revising exceptions to a public records
4 exemption for security system plans; amending s.
5 281.301, F.S.; providing exceptions to the public
6 records exemption for information relating to certain
7 security systems; providing an effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

11 Section 1. Paragraph (a) of subsection (3) of section
12 119.071, Florida Statutes, is amended to read:

13 119.071 General exemptions from inspection or copying of
14 public records.—

15 (3) SECURITY.—

16 (a)1. As used in this paragraph, the term "security system
17 plan" includes all:

18 a. Records, information, photographs, audio and visual
19 presentations, schematic diagrams, surveys, recommendations, or
20 consultations or portions thereof relating directly to the
21 physical security of the facility or revealing security systems;

22 b. Threat assessments conducted by any agency or any
23 private entity;

24 c. Threat response plans;

25 d. Emergency evacuation plans;

26 e. Sheltering arrangements; or

27 | f. Manuals for security personnel, emergency equipment, or
 28 | security training.

29 | 2. A security system plan or portion thereof for:

30 | a. Any property owned by or leased to the state or any of
 31 | its political subdivisions; or

32 | b. Any privately owned or leased property

33 |
 34 | held by an agency is confidential and exempt from s. 119.07(1)
 35 | and s. 24(a), Art. I of the State Constitution. This exemption
 36 | is remedial in nature, and it is the intent of the Legislature
 37 | that this exemption apply to security system plans held by an
 38 | agency before, on, or after the effective date of this
 39 | paragraph.

40 | 3. Information made confidential and exempt by this
 41 | paragraph may be disclosed ~~by the custodian of public records~~
 42 | ~~to:~~

43 | a. To the property owner or leaseholder; ~~or~~

44 | b. In furtherance of the official duties and
 45 | responsibilities of the agency holding the information;

46 | c. To another local, state, or federal agency in
 47 | furtherance of that agency's official duties and
 48 | responsibilities; or

49 | d. Upon a showing of good cause before a court of
 50 | competent jurisdiction. Another state or federal agency to
 51 | ~~prevent, detect, guard against, respond to, investigate, or~~
 52 | ~~manage the consequences of any attempted or actual act of~~

53 | ~~terrorism, or to prosecute those persons who are responsible for~~
 54 | ~~such attempts or acts.~~

55 | Section 2. Section 281.301, Florida Statutes, is amended
 56 | to read:

57 | 281.301 Security systems; public records and meetings
 58 | exemptions; exceptions ~~exempt from public access or disclosure.~~

59 | (1) Information relating to the security systems for any
 60 | property owned by or leased to the state or any of its political
 61 | subdivisions, and information relating to the security systems
 62 | for any privately owned or leased property which is in the
 63 | possession of any agency as defined in s. 119.011(2), including
 64 | all records, information, photographs, audio and visual
 65 | presentations, schematic diagrams, surveys, recommendations, or
 66 | consultations or portions thereof relating directly to or
 67 | revealing such systems or information, and all meetings relating
 68 | directly to or that would reveal such systems or information are
 69 | confidential and exempt from ss. 119.07(1) and 286.011 and other
 70 | laws and rules requiring public access or disclosure.

71 | (2) Such confidential and exempt information may be
 72 | disclosed:

- 73 | a. To the property owner or leaseholder;
- 74 | b. In furtherance of the official duties and
 75 | responsibilities of the agency holding the information;
- 76 | c. To another local, state, or federal agency in
 77 | furtherance of that agency's official duties and
 78 | responsibilities; or

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79 d. Upon a showing of good cause before a court of
80 competent jurisdiction.

81 Section 3. This act shall take effect upon becoming a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Harrison offered the following:

3
4 **Amendment**

5 Remove lines 71-72 and insert:

6 (2) Information made confidential and exempt by this
7 section may be disclosed:

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1025 Public Records/Security of Utility Agency Technology
SPONSOR(S): Energy & Utilities Subcommittee; Antone and Cortes, B.
TIED BILLS: IDEN./SIM. **BILLS:** SB 776

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 0 N, As CS	Whittier	Keating
2) State Affairs Committee		Williamson	Camechis
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill creates a public record exemption for the following information held by a local government utility:

- Information related to the security of the utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of the utility's existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The bill provides for retroactive application of the public record exemption. The bill provides that this public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

For purposes of the Public Records Act, the bill defines the term "utility" to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill does not appear to have a fiscal impact on the state; however, it may have a minimal fiscal impact on local government utilities.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1)(a), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.³

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Local Government Utilities

Pursuant to article VIII, section 2(b) of the Florida Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Municipalities are authorized by general law to provide water and sewer utility services.⁵ According to a 2014 staff analysis, 254 municipalities provide water services and 222 municipalities provide wastewater service.⁶

¹ FLA. CONST. art. I, s. 24(c).

² s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

⁵ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁶ Florida House of Representatives Staff Analysis of HB 813 (2014), p. 3 (Mar. 18, 2014).

Public power utilities in the state are composed of 34 municipally owned electric utilities⁷ that serve approximately 15 percent of the state's population (3.0 million consumers).⁸ Collectively, they are the third largest source of power in the state.⁹

The Florida Municipal Electric Association reports that, "[e]ach month, the Orlando Utilities Commission sees about 2 million 'hits' from foreign countries, mostly from the Middle East and Asia. These 'hits' are described as an attempt to connect to any resource on the utility's cyber network."¹⁰ The chief information officer for the Orlando Utilities Commission states that, "[a]ttacks are daily, they are unrelenting and they are evolving... [There are] a bunch of rogue nations that are attacking our system on a daily basis in what used to be in the neighborhood of 30,000 probes into our firewalls and now has gone into the millions."¹¹

Recent events have illuminated the threat to the electric power grid. For example:

- In December 2015, cyber hackers remotely attacked the power grid in western Ukraine and caused a blackout that left over 80,000 customers without power for six hours.¹²
- In October 2015, CNN Money reported that ISIS hackers had been attempting to penetrate the U.S. energy grid through cyberattacks to take down parts of the country's energy supply.¹³
- In October 2015, Iranian attackers hacked into a University of California housing system and opened a pathway into the utility networks that run into the U.S. power grid. The hackers stole passwords and engineering drawings of dozens of power plants that could have been used to knock out electricity flowing to millions of homes.¹⁴

Public Record and Public Meeting Exemptions Related to Security Systems

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Security System Plans

Section 119.071(3)(a)1., F.S., defines "security system plan" to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or

⁷ Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, p.1 (Mar. 2015)

⁸ Florida Municipal Electric Association, *Who is FMEA?*, <http://publicpower.com/who-is-fmea/> (last visited Feb. 3, 2016).

⁹ *Id.*

¹⁰ Email from Joseph Salzverg, representative of the Florida Municipal Electric Association, RE: the public records exemption for cyber security systems of municipal utilities (Jan. 21, 2016).

¹¹ Orlando Sentinel, *Orlando's electric utility fights cyber war*, <http://www.orlandosentinel.com/news/os-cyber-war-ouc-20140927-story.html> (last visited Jan. 23, 2016).

¹² CBCnews, *Cyberattack that crippled Ukrainian power grid was highly coordinated*, <http://www.cbc.ca/news/technology/ukraine-cyberattack-1.3398492> (last visited Jan. 23, 2016).

¹³ CNN Money, *ISIS is attacking the U.S. energy grid (and failing)*, <http://money.cnn.com/2015/10/15/technology/isis-energy-grid/index.html> (last visited Jan. 23, 2016).

¹⁴ The Journal, *Investigation finds U.S. power grid vulnerable to foreign hacks*, <http://journal-news.net/page/content.detail/id/648485/Investigation-finds-US-power-grid-vulnerable-to-foreign-hacks.html?nav=5006> (last visited Jan. 23, 2016).

- Manuals for security personnel, emergency equipment, or security training.

A security system plan or any portion thereof that is held by an agency¹⁵ is confidential and exempt¹⁶ from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.¹⁷

An agency's custodian of public records¹⁸ may disclose the confidential and exempt information to:

- The property owner or leaseholder; or
- Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.¹⁹

Other Information Related to Security Systems

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency and all meetings relating directly to or that would reveal such security systems or information are confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information. There are no exceptions provided to authorize an agency to disclose the information under certain circumstances.

Effect of Proposed Changes

The bill creates a public record exemption for the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.

¹⁵ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁷ Section 119.071(3)(a)2., F.S.

¹⁸ Section 119.011(5), F.S., defines "custodian of public records" as the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

¹⁹ Section 119.071(3)(a)3., F.S.

- Information related to the security of a local government utility’s existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility.

The bill provides that the public record exemption applies to information related to the security of certain existing or proposed information technology systems or industrial control technology systems whether in physical or virtual form. Reference to “physical or virtual form” is unnecessary, because a public record includes information “regardless of the physical form” or characteristics.

The bill provides that the exemption applies to such information *obtained* by a local government utility before, on, or after the effective date of the exemption.²⁰ However, the public record exemption applies to such information *held* by a local government utility. As such, the retroactive provision might not apply to all information made exempt by the public record exemption.

For purposes of the Public Records Act,²¹ the bill defines the term “utility” to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill provides a statement of public necessity as required by the Florida Constitution, which provides the following legislative findings:

- The increased interconnection and integration of utility system infrastructure exposes such systems to attacks that may result in the disruption of utility services and damage to utility systems.
- Maintaining safe and reliable utility systems is vital to protecting the public health and welfare and ensuring the economic well-being of the state.
- Disclosure of sensitive information related to the measures undertaken by utilities to secure their data, information technology systems, and industrial control technology systems could allow a security breach that damages utility systems and disrupts the safe and reliable operations of such systems, adversely impacting the public health and safety and the economic well-being of the state and potentially impacting national security concerns.
- The public and private harm in disclosing information related to such security measures outweighs any public benefit derived from disclosure of the information.

In accordance with s. 119.15, F.S, the exemption is subject to the Open Government Sunset Review Act and it stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.011, F.S., to define the term “utility.”

Section 2. Amends s. 119.0713, F.S., relating to local government agency public records exemptions.

Section 3. Provides a statement of public necessity.

Section 4. Provides that the act takes effect upon becoming a law.

²⁰ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

²¹ Chapter 119, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal fiscal impact on local government utilities because staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, local government utilities could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the local government utility.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption, and it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information related to the security of a local government utility's technology, processes, and practices designed to protect data and information technology resources from attack, damage, or unauthorized access. It also protects information related to the security of its existing or proposed information technology systems or industrial control technology systems, if the disclosure of such information would facilitate unauthorized access to, and alteration or destruction of, data, information technology systems, and industrial control technology systems. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

A public necessity statement begins with the phrase “[t]he Legislature finds that it is a public necessity that ...” Next, it lists the information that the legislature is protecting in the public record exemption. Finally, the public necessity statement provides the justification for the public record exemption. However, the public necessity statement for this bill is provided in the opposite order. It is recommended that the sponsor consider an amendment to restructure the public necessity statement to mirror the standard format of public necessity statements.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Energy & Utilities Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed a provision of the bill that created a public record exemption for the identity of security firms used by a utility to secure and store data or provide information technology to the utility.
- Provided a definition for the term “utility” and replaced references to “utility agency” with the phrase “utility owned or operated by a local government unit.”
- Identified the specific harm that the bill intends to prevent – unauthorized access to utility systems that could adversely affect safe and reliable utility operations – and made corresponding changes to the public necessity statement included in the bill.

This analysis is drafted to the committee substitute as approved by the Energy & Utilities Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 119.011, F.S.; defining the term "utility"; amending s. 119.0713, F.S.; providing an exemption from public records requirements for information related to the security of information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (15) is added to section 119.011, Florida Statutes, to read:

119.011 Definitions.—As used in this chapter, the term:
(15) "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

Section 2. Subsection (5) is added to section 119.0713, Florida Statutes, to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(5) (a) The following information held by a utility owned

27 or operated by a unit of local government is exempt from s.
 28 119.07(1) and s. 24(a), Art. I of the State Constitution:

29 1. Information related to the security of the technology,
 30 processes, or practices of a utility owned or operated by a unit
 31 of local government that are designed to protect the utility's
 32 networks, computers, programs, and data from attack, damage, or
 33 unauthorized access, which information, if disclosed, would
 34 facilitate the alteration, disclosure, or destruction of such
 35 data or information technology resources.

36 2. Information, whether in physical or virtual form,
 37 related to the security of existing or proposed information
 38 technology systems or industrial control technology systems of a
 39 utility owned or operated by a unit of local government, which,
 40 if disclosed, would facilitate unauthorized access to, and
 41 alteration or destruction of, such systems in a manner that
 42 would adversely impact the safe and reliable operation of the
 43 systems and the utility.

44 (b) This exemption applies to such information obtained
 45 before, on, or after the effective date of this exemption.

46 (c) This subsection is subject to the Open Government
 47 Sunset Review Act in accordance with s. 119.15 and shall stand
 48 repealed on October 2, 2021, unless reviewed and saved from
 49 repeal through reenactment by the Legislature.

50 Section 3. (1) The Legislature finds that, as utility
 51 system infrastructure becomes more connected and integrated
 52 through information and communications technology, the exposure

53 to damage from attacks through such technology continues to
54 grow. These attacks may result in the disruption of utility
55 services and damage to utility systems. Maintaining safe and
56 reliable utility systems is vital to protecting the public
57 health and safety and ensuring the economic well-being of the
58 state. Accordingly, many utilities have adopted technologies,
59 processes, and practices designed to secure data, information
60 technology systems, and industrial control technology systems.
61 Disclosure of sensitive information related to these security
62 measures could result in the identification of vulnerabilities
63 that allow a security breach that damages utility systems and
64 disrupts the safe and reliable operation of such systems,
65 adversely impacting the public health and safety and the
66 economic well-being of the state. Because of the interconnected
67 nature of utility systems, a security breach may also impact
68 national security concerns. As a result, the Legislature finds
69 that the public and private harm in disclosing the information
70 made exempt by this act outweighs any public benefit derived
71 from disclosure of such information. The protection of
72 information made exempt by this act will ensure that utilities
73 have greater safeguards to protect against security threats and
74 will bolster efforts to develop more resilient information
75 technology systems and industrial control technology systems.
76 (2) The Legislature finds that it is a public necessity
77 that the following information relating to a utility owned or
78 operated by a unit of local government be exempt from s.

79 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 80 State Constitution:

81 (a) Information related to the security of the technology,
 82 processes, or practices of a utility owned or operated by a unit
 83 of local government which are designed to protect the utility's
 84 networks, computers, programs, and data from attack, damage, or
 85 unauthorized access, which information, if disclosed, would
 86 facilitate the alteration, disclosure, or destruction of such
 87 data or information technology resources.

88 (b) Information, whether in physical or virtual form,
 89 related to the security of existing or proposed information
 90 technology systems or industrial control technology systems of a
 91 utility owned or operated by a unit of local government, which,
 92 if disclosed, would facilitate unauthorized access to, and
 93 alteration or destruction of, such systems in a manner that
 94 would adversely impact the safe and reliable operation of the
 95 systems and the utility.

96 Section 4. This act shall take effect upon becoming a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Antone offered the following:

Amendment

5 Remove lines 36-95 and insert:

6 2. Information related to the security of existing or
 7 proposed information technology systems or industrial control
 8 technology systems of a utility owned or operated by a unit of
 9 local government, which, if disclosed, would facilitate
 10 unauthorized access to, and alteration or destruction of, such
 11 systems in a manner that would adversely impact the safe and
 12 reliable operation of the systems and the utility.

13 (b) This exemption applies to such information held by a
 14 utility owned or operated by a unit of local government before,
 15 on, or after the effective date of this exemption.

16 (c) This subsection is subject to the Open Government
 17 Sunset Review Act in accordance with s. 119.15 and shall stand



Amendment No.

18 repealed on October 2, 2021, unless reviewed and saved from
19 repeal through reenactment by the Legislature.

20 Section 3. (1) The Legislature finds that it is a public
21 necessity that the following information held by a utility owned
22 or operated by a unit of local government be exempt from s.
23 119.07(1), Florida Statutes, and s. 24(a), Article I of the
24 State Constitution:

25 (a) Information related to the security of the technology,
26 processes, or practices of a utility owned or operated by a unit
27 of local government that are designed to protect the utility's
28 networks, computers, programs, and data from attack, damage, or
29 unauthorized access, which information, if disclosed, would
30 facilitate the alteration, disclosure, or destruction of such
31 data or information technology resources.

32 (b) Information related to the security of existing or
33 proposed information technology systems or industrial control
34 technology systems of a utility owned or operated by a unit of
35 local government, which, if disclosed, would facilitate
36 unauthorized access to, and alteration or destruction of, such
37 systems in a manner that would adversely impact the safe and
38 reliable operation of the systems and the utility.

39 (2) The Legislature finds that, as utility system
40 infrastructure becomes more connected and integrated through
41 information and communications technology, the exposure to
42 damage from attacks through such technology continues to grow.
43 These attacks may result in the disruption of utility services

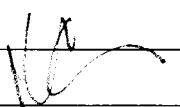

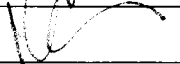


Amendment No.

44 and damage to utility systems. Maintaining safe and reliable
45 utility systems is vital to protecting the public health and
46 safety and ensuring the economic well-being of the state.
47 Accordingly, many utilities have adopted technologies,
48 processes, and practices designed to secure data, information
49 technology systems, and industrial control technology systems.
50 Disclosure of sensitive information related to these security
51 measures could result in the identification of vulnerabilities
52 that allow a security breach that damages utility systems and
53 disrupts the safe and reliable operation of such systems,
54 adversely impacting the public health and safety and the
55 economic well-being of the state. Because of the interconnected
56 nature of utility systems, a security breach may also impact
57 national security concerns. As a result, the Legislature finds
58 that the public and private harm in disclosing the information
59 made exempt by this act outweighs any public benefit derived
60 from disclosure of such information. The protection of
61 information made exempt by this act will ensure that utilities
62 have greater safeguards to protect against security threats and
63 will bolster efforts to develop more resilient information
64 technology systems and industrial control technology systems.
65 For these reasons, the Legislature finds that is a public
66 necessity to make such information exempt from public records
67 requirements, and to provide for retroactive application of the
68 public records exemption.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1297 Discretionary Sales Surtaxes
SPONSOR(S): Cummings and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	15 Y, 1 N	Aldridge	Langston 
2) State Affairs Committee		Moore 	Camechis 

SUMMARY ANALYSIS

The bill provides that a county, upon approval by a majority vote of the electors of the county, may levy a pension liability discretionary sales surtax, at a rate not to exceed 0.5 percent, to fund underfunded defined benefit plans or systems. A county may not impose a Pension Liability Surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The surtax may be imposed only if:

- The employees, including police officers and firefighters, who enter employment on or after the date that the local government meets the requirements for enacting the Pension Liability Surtax, are prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds.
- The county currently levies a Local Government Infrastructure Surtax that is scheduled to terminate and is not subject to renewal.
- The Pension Liability Surtax does not take effect until the Local Government Infrastructure Surtax is terminated.

The Revenue Estimating Conference has not estimated the potential revenue impact of the bill on state and local government. However, staff estimates the revenue impact of the bill is zero on state government and positive indeterminate on local governments. The impact is indeterminate because it requires future county governing board action and voter approval.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Discretionary Sales Surtaxes

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.¹ A discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax does not apply to the sales price above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

The eight authorized discretionary sales surtaxes and their maximum rates are:

- Charter County and Regional Transportation System Surtax, 1 percent
- Emergency Fire Rescue Services and Facilities Surtax, 1 percent
- Local Government Infrastructure Surtax, 1 percent
- Small County Surtax, 1 percent
- Indigent Care and Trauma Center Surtax, 0.5 percent
- County Public Hospital Surtax, 0.5 percent
- School Capital Outlay Surtax, 0.5 percent
- Voter-Approved Indigent Care Surtax, 1 percent

Every county is eligible to levy the School Capital Outlay Surtax and Local Government Infrastructure Surtax; the other surtaxes have varying requirements. Section 212.055, F.S., further provides caps on the combined rates. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility. Several counties have imposed a combined surtax rate of 1.5 percent, which is currently the highest combined rate.² However, the theoretical maximum combined rate ranges from 1.5 percent to 3.5 percent, depending on the specifics of each individual county.³

Section 212.054, F.S., requires any increase or decrease in a discretionary sales surtax to take effect on January 1.

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax is one of the surtaxes authorized by s. 212.055, F.S., and may be levied by the governing authority in each county after a favorable vote of the electorate through a local referendum.⁴ The rate imposed may be 0.5 percent or 1.0 percent.⁵ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the

¹ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

² See Department of Revenue Form DR-15 DSS, "Discretionary Sales Surtax Information," available at http://dor.myflorida.com/Forms_library/current/dr15dssr15.pdf (last visited Feb. 4, 2016).

³ See Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 158-59 (2016), available at <http://edr.state.fl.us/Content/local-government/reports/lgfi15.pdf>.

⁴ Section 212.055(2)(a)1., F.S.

⁵ However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent.

county's governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population.⁶

Proceeds and accrued interest may be expended for any of the following purposes:⁷

- By school districts to finance, plan, and construct infrastructure;⁸
- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to commercial or residential property owners who make energy efficiency improvements, provided a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county or municipal solid waste landfills.

Eighteen counties currently levy the surtax. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Sixteen counties levy the surtax at the rate of 1 percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, Seminole, and Wakulla. During the 2016-17 fiscal year, these counties are expected to receive combined county revenues of \$748,024,282.⁹ Counties are not allowed to levy a combination of the Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax in excess of a combined rate of 1 percent.

Retirement Plans

Retirement plans are classified as either defined benefit or defined contribution plans. A defined benefit plan promises a specified monthly benefit at retirement. The plan may state this promised benefit as an exact dollar amount, such as \$100 per month at retirement. Alternatively, it may calculate a benefit through a plan formula that considers such factors as salary and service; for example, 1 percent of average salary for the last 5 years of employment for every year of service with an employer.¹⁰

A defined contribution plan does not promise a specific amount of benefits at retirement. In these plans, the employee or the employer (or both) contribute to the employee's individual account under the plan, sometimes at a set rate, such as 5 percent of earnings annually. These contributions generally are invested on the employee's behalf. The employee will ultimately receive the balance in his or her account, which is based on contributions plus or minus investment gains or losses. The value of the account will fluctuate due to the changes in the value of the investments. Examples of defined contribution plans include 401(k) plans, 403(b) plans, employee stock ownership plans, and profit-sharing plans.¹¹

Actuarial Soundness of Retirement Systems

Part VII of Chapter 112, F.S., governs the actuarial soundness of governmental retirement systems.¹² The intent of this part is to ensure that governmental retirement systems or plans are "managed,

⁶ Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county's governing authority and the governing bodies of the municipalities.

⁷ Section 212.055(2)(d), F.S.

⁸ Infrastructure is defined in ss. 212.055(2)(d)1.a-e, F.S.

⁹ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (2016), available at <http://edr.state.fl.us/Content/local-government/reports/lgfih15.pdf>.

¹⁰ United States Department of Labor, *Types of Retirement Plans*, <http://www.dol.gov/general/topic/retirement/typesofplans> (last visited Feb. 5, 2016).

¹¹ *Id.*

¹² Section 112.625(1), F.S., defines a "retirement system or plan" as any employee pension benefit plan supported in whole or in part by public funds, provided such plan is not:

(a) An employee benefit plan described in s. 4(a) of the Employee Retirement Income Security Act of 1974, which is not exempt under s. 4(b)(1) of such act;

(b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(c) A coverage agreement entered into pursuant to s. 218 of the Social Security Act;

administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits.”¹³ The part establishes minimum standards for the operation and funding of public employee retirement systems and plans.¹⁴ The provisions of part VII are applicable to “any and all units, agencies, branches, departments, boards, and institutions of state, county, special district, and municipal governments which participate in, operate, or administer a retirement system or plan for public employees, funded in whole or in part by public funds.”¹⁵ Each retirement system or plan under part VII must have regularly scheduled actuarial reports prepared and certified by an enrolled actuary.¹⁶ The actuarial report must include, but is not limited to, the following:¹⁷

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system, which must include a valuation of present assets, based on statement value, and prospective assets and liabilities of the system and the extent of unfunded accrued liabilities, if any.
- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability.
- A description and explanation of actuarial assumptions.
- A schedule illustrating the amortization of unfunded liabilities, if any.
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports.
- The mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System, including the projection scale for mortality improvement. Appropriate risk and collar adjustments must be made based on plan demographics. The tables must be used for assumptions for preretirement and postretirement mortality.
- A statement by the enrolled actuary that the report is complete and accurate and that in his or her opinion the techniques and assumptions used are reasonable and meet the requirements and intent of the act.

Section 112.64, F.S., governs the amortization of unfunded liability for such retirement systems or plans. For those plans in existence on October 1, 1980, the total contributions to the retirement system or plan must be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, this requirement does not permit a retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.¹⁸ For a retirement system or plan that comes into existence after October 1, 1980, the unfunded liability, if any, must be amortized within 40 years of the first plan year.¹⁹ The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses must be amortized within 30 plan years.²⁰

(d) An individual retirement account or an individual retirement annuity within the meaning of s. 408, or a retirement bond within the meaning of s. 409, of the Internal Revenue Code of 1954;

(e) A plan described in s. 401(d) of the Internal Revenue Code of 1954; or

(f) An individual account consisting of an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954.

¹³ Section 112.61, F.S.

¹⁴ *Id.*

¹⁵ Section 112.62, F.S.

¹⁶ Section 112.63(1), F.S.

¹⁷ *Id.*

¹⁸ Section 112.62, F.S.

¹⁹ Section 112.63, F.S.

²⁰ Section 112.64, F.S.

Effect of the Proposed Changes

Local Discretionary Sales Surtaxes

The bill amends s. 212.055, F.S., authorizing the governing body of a county to levy a Pension Liability Surtax, at a rate that may not exceed 0.5 percent, to fund underfunded defined benefit retirement plans or systems, pursuant to an ordinance conditioned to take effect upon approval by a majority vote of the electors of the county voting in a referendum. The county may not impose a Pension Liability Surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63, F.S., must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may only impose the surtax if:

- The employees, including police officers and firefighters, who enter employment on or after the date that the local government meets the requirements for enacting the Pension Liability Surtax, are prohibited from enrolling in a defined benefit retirement plan or system that will receive the surtax proceeds.
- The county currently levies a Local Government Infrastructure Surtax pursuant to s. 212.055(2), F.S., which is scheduled to terminate and is not subject to renewal.
- The Pension Liability Surtax does not take effect until the Local Government Infrastructure Surtax is terminated.

The bill specifies that a referendum to adopt a Pension Liability Surtax must meet the requirements of s. 101.161, F.S., and must include a brief and general description of the purposes for which the surtax proceeds will be used. Section 101.161, F.S., requires the public measure to include a ballot summary that is printed in clear and unambiguous language on the ballot. The ballot summary must be an explanatory statement of the chief purpose of the measure and may not exceed 75 words in length.

The bill provides that pursuant to s. 212.054(4), F.S., the proceeds of the surtax collected under the newly created s. 212.055(9), F.S., less an administrative fee that may be retained by the Department of Revenue (DOR), must be distributed by the DOR to the local government. The local government must distribute the proceeds it receives from the DOR, less an administrative fee not to exceed 2 percent of the surtax collected, to an eligible defined benefit retirement plan or system, except the Florida Retirement System. The ordinance providing for the imposition of the Pension Liability Surtax must specify the method of determining the percentage of the proceeds, and the frequency of such payments, distributed to each eligible defined benefit retirement plan or system. The Pension Liability Surtax proceeds may only be used to reduce or amortize the unfunded actuarial liability of the defined benefit retirement plan or system. If the local government makes advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system that are secured by future revenues associated with the surtax, the local government may fully reimburse itself from the surtax proceeds for such payments.

The bill specifies that, notwithstanding s. 212.054(5), F.S., a Pension Liability Surtax imposed pursuant to this subsection must terminate for any defined benefit retirement plan or system when the actuarial funding level of that plan or system reaches or exceeds 100 percent.

Actuarial Soundness of Retirement Systems

The bill amends s. 112.64, F.S., to provide that the proceeds of a Pension Liability Surtax imposed by a county pursuant to s. 212.055, F.S., which is levied for the purpose of funding or amortizing the unfunded liability of a defined benefit retirement plan or system, excluding the Florida Retirement System, must be actuarially recognized. The bill specifies that the county must apply the present value of the total projected proceeds of the surtax to reduce the unfunded liability or to amortize it as part of the county's annual required contribution, beginning with the fiscal year immediately following approval of the Pension Liability Surtax. The unfunded liability amortization schedule must be adjusted beginning

with the fiscal year immediately following approval of the Pension Liability Surtax and amortized over a period of 30 years.

The bill also amends s. 112.64, F.S., to provide that the payroll of all employees in classifications covered by a closed retirement plan or system that receives funds from the Pension Liability Surtax must be included in determining the unfunded liability amortization schedule for the closed plan, regardless of the plan in which the employees currently participate, and the payroll growth assumption must be adjusted to reflect the payroll of those employees when calculating the amortization of the unfunded liability.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.64, F.S., specifying how the proceeds of the newly created Pension Liability Surtax must be recognized and amending how the unfunded liability amortization schedule must be adjusted.

Section 2. Creates s. 212.055(9), F.S., allowing a pension liability discretionary sales surtax under specified conditions.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the potential revenue impact of the bill on local government. However, staff estimates the revenue impact of the bill is positive indeterminate. The impact is indeterminate because imposing the surtax requires future county governing board action and voter approval.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled

2 An act relating to discretionary sales surtaxes;
3 amending s. 112.64, F.S.; authorizing a county to
4 apply proceeds of a pension liability surtax toward
5 reducing the unfunded liability of a defined benefit
6 retirement plan or system; specifying the method of
7 determining the amortization schedule if a surtax is
8 approved; amending s. 212.055, F.S.; authorizing a
9 county to levy a pension liability surtax by ordinance
10 if certain conditions are met; prescribing the form of
11 the ballot statement if the ordinance is conditioned
12 on a referendum; requiring the Department of Revenue
13 and participating local governments to distribute the
14 surtax proceeds, less administrative fees; requiring
15 the ordinance to specify the method and frequency of
16 distributing proceeds; prohibiting a defined benefit
17 retirement plan or system from receiving surtax
18 proceeds after a certain level of actuarial funding is
19 reached; requiring that surtax proceeds be used to
20 reduce or amortize the unfunded liability of the
21 system or plan; specifying conditions under which the
22 surtax terminates; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (6) of section 112.64, Florida

27 Statutes, is renumbered as subsection (7), and a new subsection
 28 (6) is added to that section, to read:

29 112.64 Administration of funds; amortization of unfunded
 30 liability.—

31 (6)(a) Notwithstanding any other provision of this part,
 32 the proceeds of a pension liability surtax imposed by a county
 33 pursuant to s. 212.055, which is levied for the purpose of
 34 funding or amortizing the unfunded liability of a defined
 35 benefit retirement plan or system, excluding the Florida
 36 Retirement System, shall be actuarially recognized, and the
 37 county shall apply the present value of the total projected
 38 proceeds of the surtax to reduce the unfunded liability or to
 39 amortize it as part of the county's annual required
 40 contribution, beginning with the fiscal year immediately
 41 following approval of the pension liability surtax. The unfunded
 42 liability amortization schedule must be adjusted beginning with
 43 the fiscal year immediately following approval of the pension
 44 liability surtax and amortized over a period of 30 years.

45 (b) The payroll of all employees in classifications
 46 covered by a closed retirement plan or system that receives
 47 funds from the pension liability surtax must be included in
 48 determining the unfunded liability amortization schedule for the
 49 closed plan, regardless of the plan in which the employees
 50 currently participate, and the payroll growth assumption must be
 51 adjusted to reflect the payroll of those employees when
 52 calculating the amortization of the unfunded liability.

53 Section 2. Subsection (9) is added to section 212.055,
 54 Florida Statutes, to read:

55 212.055 Discretionary sales surtaxes; legislative intent;
 56 authorization and use of proceeds.—It is the legislative intent
 57 that any authorization for imposition of a discretionary sales
 58 surtax shall be published in the Florida Statutes as a
 59 subsection of this section, irrespective of the duration of the
 60 levy. Each enactment shall specify the types of counties
 61 authorized to levy; the rate or rates which may be imposed; the
 62 maximum length of time the surtax may be imposed, if any; the
 63 procedure which must be followed to secure voter approval, if
 64 required; the purpose for which the proceeds may be expended;
 65 and such other requirements as the Legislature may provide.
 66 Taxable transactions and administrative procedures shall be as
 67 provided in s. 212.054.

68 (9) PENSION LIABILITY SURTAX.—

69 (a) The governing body of a county may levy a pension
 70 liability surtax to fund underfunded defined benefit retirement
 71 plans or systems, pursuant to an ordinance conditioned to take
 72 effect upon approval by a majority vote of the electors of the
 73 county voting in a referendum, at a rate that may not exceed 0.5
 74 percent. The county may not impose a pension liability surtax
 75 unless the underfunded defined benefit retirement plan or system
 76 is below 80 percent of actuarial funding at the time the
 77 ordinance or referendum is passed. The most recent actuarial
 78 report submitted to the Department of Management Services

79 pursuant to s. 112.63 must be used to establish the level of
 80 actuarial funding for purposes of determining eligibility to
 81 impose the surtax. The governing body of a county may only
 82 impose the surtax if:

83 1. The employees, including police officers and
 84 firefighters, who enter employment on or after the date that the
 85 local government meets the requirements for enacting the pension
 86 liability surtax, may not enroll in a defined benefit retirement
 87 plan or system that will receive the surtax proceeds.

88 2. The county currently levies a local government
 89 infrastructure surtax pursuant to subsection (2) which is
 90 scheduled to terminate and is not subject to renewal.

91 3. The pension liability surtax does not take effect until
 92 the local government infrastructure surtax described in
 93 subparagraph 2. is terminated.

94 (b) A referendum to adopt a pension liability surtax must
 95 meet the requirements of s. 101.161 and must include a brief and
 96 general description of the purposes for which the surtax
 97 proceeds will be used.

98 (c) Pursuant to s. 212.054(4), the proceeds of the surtax
 99 collected under this subsection, less an administrative fee that
 100 may be retained by the department, shall be distributed by the
 101 department to the local government. The local government shall
 102 distribute the proceeds it receives from the department, less an
 103 administrative fee not to exceed 2 percent of the surtax
 104 collected, to an eligible defined benefit retirement plan or

105 system, except the Florida Retirement System. The ordinance
 106 providing for the imposition of the pension liability surtax
 107 must specify the method of determining the percentage of the
 108 proceeds, and the frequency of such payments, distributed to
 109 each eligible defined benefit retirement plan or system. The
 110 pension liability surtax proceeds may be used only to reduce or
 111 amortize the unfunded actuarial liability of the defined benefit
 112 retirement plan or system. A defined benefit retirement plan or
 113 system may no longer receive the surtax proceeds once the plan
 114 or system reaches or exceeds 100 percent of actuarial funding.
 115 If the local government makes advanced payments toward the
 116 unfunded liability of an underfunded defined benefit retirement
 117 plan or system which are secured by future revenues associated
 118 with the surtax, the local government may fully reimburse itself
 119 from the surtax proceeds for such payments.

120 (d) Notwithstanding s. 212.054(5), a pension liability
 121 surtax imposed pursuant to this subsection shall terminate for
 122 any defined benefit retirement plan or system when the actuarial
 123 funding level of that plan or system reaches or exceeds 100
 124 percent.

125 Section 3. This act shall take effect July 1, 2016.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Cummings offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (6) of section 112.64, Florida
 7 Statutes, is renumbered as subsection (7), and a new subsection
 8 (6) is added to that section, to read:

9 112.64 Administration of funds; amortization of unfunded
 10 liability.-

11 (6) (a) Notwithstanding any other provision of this part,
 12 the proceeds of a pension liability surtax imposed by a county
 13 pursuant to s. 212.055, which is levied for the purpose of
 14 funding or amortizing the unfunded liability of a defined
 15 benefit retirement plan or system, excluding the Florida
 16 Retirement System, shall be actuarially recognized, and the
 17 county shall apply the present value of the total projected



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18 proceeds of the surtax to reduce the unfunded liability or to
19 amortize it as part of the county's annual required
20 contribution, beginning with the fiscal year immediately
21 following approval of the pension liability surtax. The unfunded
22 liability amortization schedule must be adjusted beginning with
23 the fiscal year immediately following approval of the pension
24 liability surtax and amortized over a period of 30 years.

25 (b) The payroll of all employees covered by a closed
26 retirement plan or system that receives funds from the pension
27 liability surtax must be included in determining the unfunded
28 liability amortization schedule for the closed plan, regardless
29 of the plan in which the employees currently participate, and
30 the payroll growth assumption must be adjusted to reflect the
31 payroll of those employees when calculating the amortization of
32 the unfunded liability.

33 Section 2. Subsection (9) is added to section 212.055,
34 Florida Statutes, to read:

35 212.055 Discretionary sales surtaxes; legislative intent;
36 authorization and use of proceeds.—It is the legislative intent
37 that any authorization for imposition of a discretionary sales
38 surtax shall be published in the Florida Statutes as a
39 subsection of this section, irrespective of the duration of the
40 levy. Each enactment shall specify the types of counties
41 authorized to levy; the rate or rates which may be imposed; the
42 maximum length of time the surtax may be imposed, if any; the
43 procedure which must be followed to secure voter approval, if

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44 required; the purpose for which the proceeds may be expended;
45 and such other requirements as the Legislature may provide.
46 Taxable transactions and administrative procedures shall be as
47 provided in s. 212.054.

48 (9) PENSION LIABILITY SURTAX.-

49 (a) The governing body of a county may levy a pension
50 liability surtax to fund underfunded defined benefit retirement
51 plans or systems, pursuant to an ordinance conditioned to take
52 effect upon approval by a majority vote of the electors of the
53 county voting in a referendum, at a rate that may not exceed 0.5
54 percent. The county may not impose a pension liability surtax
55 unless the underfunded defined benefit retirement plan or system
56 is below 80 percent of actuarial funding at the time the
57 ordinance or referendum is passed. The most recent actuarial
58 report submitted to the Department of Management Services
59 pursuant to s. 112.63 must be used to establish the level of
60 actuarial funding for purposes of determining eligibility to
61 impose the surtax. The governing body of a county may only
62 impose the surtax if:

63 1. An employee, including a police officer or firefighter,
64 who enters employment on or after the date when the local
65 government certifies that the defined benefit retirement plan or
66 system formerly available to such an employee has been closed
67 may not enroll in a defined benefit retirement plan or system
68 that will receive surtax proceeds.



Amendment No.

69 2. The county currently levies a local government
70 infrastructure surtax pursuant to subsection (2) which is
71 scheduled to terminate and is not subject to renewal.

72 3. The pension liability surtax does not take effect until
73 the local government infrastructure surtax described in
74 subparagraph 2. is terminated.

75 (b) A referendum to adopt a pension liability surtax must
76 meet the requirements of s. 101.161 and must include a brief and
77 general description of the purposes for which the surtax
78 proceeds will be used.

79 (c) Pursuant to s. 212.054(4), the proceeds of the surtax
80 collected under this subsection, less an administrative fee that
81 may be retained by the department, shall be distributed by the
82 department to the local government.

83 (d) The local government may use the pension liability
84 surtax proceeds in the following manner:

85 1. If the proceeds of the pension liability surtax have
86 been actuarially recognized as provided for in s. 112.64(6), the
87 local government must distribute the proceeds to an eligible
88 defined benefit retirement plan or system, not including the
89 Florida Retirement System.

90 2. If the proceeds of the pension liability surtax have
91 not been actuarially recognized, the local government is
92 authorized to distribute the proceeds to an eligible defined
93 benefit retirement plan or system, not including the Florida
94 Retirement System, to pledge the proceeds of the surtax to repay



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105 | debts incurred for the purpose of making advanced payments
106 | toward the unfunded liability of an underfunded defined benefit
107 | retirement plan or system, and to reimburse itself from the
108 | proceeds of the surtax for any borrowing costs associated with
109 | such debts.

110 | (e) The ordinance providing for the imposition of the
111 | pension liability surtax must specify how the proceeds will be
112 | used:

113 | 1. The ordinance must specify the method of determining
114 | the percentage of the proceeds, and the frequency of such
115 | payments, distributed to each eligible defined benefit
116 | retirement plan or system if the proceeds of the pension
117 | liability surtax are actuarially recognized as provided for in
118 | s. 112.64(6).

119 | 2. The ordinance must specify the local government's
120 | intention to incur debt for the purpose of making advanced
121 | payments toward the unfunded liability of an underfunded defined
122 | benefit retirement plan or system if the proceeds of the pension
123 | liability surtax are not actuarially recognized as provided for
124 | in s. 112.64(6).

125 | (f) A pension liability surtax imposed pursuant to this
126 | subsection shall terminate on December 31 of the year in which
127 | the actuarial funding level is expected to reach or exceed 100
128 | percent for the defined benefit retirement plan or system for
129 | which the surtax was levied or December 31, 2060, whichever
130 | occurs first. The most recent actuarial report submitted to the



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121 Department of Management Services pursuant to s. 112.63 must be
122 used to establish the level of actuarial funding.

123 (g) Notwithstanding any other provision of this section, a
124 county may not levy local option sales surtaxes authorized in
125 this subsection and subsections (2), (3), (4), and (5) in excess
126 of a combined rate of 1 percent.

127 Section 3. This act shall take effect July 1, 2016.

128

129 -----

130 **T I T L E A M E N D M E N T**

131 Remove everything before the enacting clause and insert:
132 An act relating to discretionary sales surtaxes; amending
133 s. 112.64, F.S.; authorizing a county to apply proceeds of
134 a pension liability surtax toward reducing the unfunded
135 liability of a defined benefit retirement plan or system;
136 specifying the method of determining the amortization
137 schedule if a surtax is approved; amending s. 212.055,
138 F.S.; authorizing a county to levy a pension liability
139 surtax by ordinance if certain conditions are met;
140 prescribing the form of the ballot statement; requiring the
141 Department of Revenue to distribute the surtax proceeds,
142 less administrative fees; specifying the manner in which a
143 local government may use the surtax proceeds; prescribing
144 requirements for the ordinance that provides for the
145 imposition of the surtax; specifying conditions under which
146 the surtax terminates; limiting the combined rate of



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147 | specified discretionary sales surtaxes; providing an
148 | effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 16-03 Public Employees
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Moore <i>AM</i>	Camechis <i>[Signature]</i>

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits to 622,089 active members, 363,034 retired members and beneficiaries, and 38,058 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, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 189 cities and 273 independent hospitals and special districts 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. 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 (SMSOAP), the State Community College System Optional Retirement Program (SCCSORP), and the State University System Optional Retirement Program (SUSORP).

Effective July 1, 2016, the bill authorizes renewed membership in the investment plan for retirees of the investment plan, the SMSOAP, the SUSORP, or the SCCSORP. Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the applicable optional retirement program.

Effective July 1, 2016, the bill establishes new survivor benefits for members of the investment plan who are killed in the line of duty. It provides the same survivor benefits to the spouse and children of such member as those currently provided for pension plan members who are killed in the line of duty. The bill also provides the survivor benefits for any member of the investment plan who has been killed in the line of duty since 2002, when members were first allowed to participate in the investment plan. It also provides a process for calculating the retroactive benefit.

Effective July 1, 2017, the bill changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan. The bill also extends the plan election period to the last business day of the eighth month of hire.

The bill 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. It also provides allocations for the survivor benefits authorized by the act and provides for adjustments to employer contribution rates in order to fund the proposed changes.

For the 2016-17 fiscal year (FY), the bill appropriates a recurring sum of \$4,249,000 from the General Revenue Fund and a recurring sum of \$564,000 from trust funds to Administered Funds in order to fund the increased employer contribution rates to be paid by state agencies, state universities, state colleges, and school districts. For FY 2016-17, the bill has a \$3.7 million fiscal impact on counties and municipalities. 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 multiple-employer, contributory plan² governed by the Florida Retirement System Act.³ As of June 30, 2014, the FRS provides retirement income benefits to 622,089 active members,⁴ 363,034 retired members and beneficiaries, and 38,058 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, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 189 cities and 273 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 543,434 members (87.35 percent of the membership);
- Special Risk Class⁹ includes 68,593 members (11.02 percent);
- Special Risk Administrative Support Class¹⁰ has 84 members (.01 percent);
- Elected Officers' Class¹¹ has 2,187 members (0.35 percent); and
- Senior Management Service Class¹² has 7,791 members (1.25 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

¹ *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014*, at 29. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited February 6, 2016) [hereinafter *Annual Report*].

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.

³ Chapter 121, F.S.

⁴ As of June 30, 2014, the FRS Pension Plan, which is a defined benefit plan, had 512,364 members, and the investment plan, which is a defined contribution plan, had 109,725 members. *Annual Report, supra* note 1, at 112.

⁵ *Id.*

⁶ Florida Retirement System Participating Employers for Plan Year 2015-16, prepared by the Department of Management Services, Division of Retirement, Revised November 2015, at 8. A copy of the document can be found online at: <https://www.rol.frs.state.fl.us/forms/part-emp.pdf> (last visited February 6, 2016).

⁷ Email from staff of the Division of Retirement dated February 12, 2015 (on file with the State Affairs Committee).

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 FRS. 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.

Members of the FRS have two primary plan options available for participation:

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

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 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.¹³ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁴

A member vests immediately in all employee contributions paid to the investment plan.¹⁵ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁶ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁷

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:

Membership Class	Percentage of Gross Compensation
Regular Class	6.30%
Special Risk Class	14.00%
Special Risk Administrative Support Class	7.95%
Elected Officers' Class	
• Justices and Judges	13.23%
• County Elected Officers	11.34%
• Others	9.38%
Senior Management Service Class	7.67%

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).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 initially enrolled on or after July

¹³ Section 121.4501(8), F.S.

¹⁴ Section 4(e), Art. IV, Fla. Const.

¹⁵ Section 121.4501(6)(a), F.S.

¹⁶ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the State Board of Administration (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.

¹⁷ Section 121.591, F.S.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

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 as follows:

Membership Class	Accrual Rate
Regular Class	1.60%, 1.63%, 1.65%, 1.68% ²²
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%, 1.63%, 1.65%, 1.68% ²³
Elected Officers' Class	
• Justices and Judges	3.33%
• Others	3.00%
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²⁴ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²⁵ 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 60.²⁶

Default and Second Election

A new member has until the last business day of the fifth month following the member'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.²⁷

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.²⁸

Disability Benefits

Disability retirement benefits are provided for both in-line-of-duty disability and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,²⁹ compensate a member who is disabled in the line of duty 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. A 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.³⁰

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.091(1)(a)1., F.S.

²³ Section 121.0515(8)(a), F.S.

²⁴ Section 121.021(29)(a)1., F.S.

²⁵ Section 121.021(29)(b)1., F.S.

²⁶ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁷ Section 121.4501(4), F.S.

²⁸ Section 121.4501(4)(g), F.S.

²⁹ See s. 121.4501(16), F.S.

³⁰ Section 121.091(4)(f), F.S.

Death or Survivor Benefits

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.³¹ Under the pension plan, if the member has vested at the time of his or her death, the member's joint annuitant³² is entitled to receive the optional form³³ of payment for the annuitant's lifetime.³⁴ 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.³⁵ If the member 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.³⁶ Members in the investment plan are not entitled to these death benefits; instead, the member's beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.³⁷

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.³⁸ While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.³⁹

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.⁴⁰

Employment after Retirement

Section 121.091, F.S., governs the payment of benefits under the FRS. It requires a member of the FRS to terminate employment to begin receiving benefits, or begin participation in DROP to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with her or his FRS employer.⁴¹ Termination is void if any FRS-participating employer reemploys a member during a specified period of time.⁴²

Subsection 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and authorizes those retirees to continue receiving retirement benefits.⁴³

An FRS retiree may be reemployed by an FRS employer provided certain requirements are met. A member who retired before July 1, 2010, may be reemployed by an FRS employer one calendar month

³¹ For purposes of disbursement of benefits, a member is considered retired as of the date of the death.

³² 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.

³³ 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.

³⁴ Section 121.091(7)(b)1., F.S.

³⁵ Section 121.091(7)(b)2., F.S.

³⁶ 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.

³⁷ See s. 121.591(3)(b), F.S.

³⁸ Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

³⁹ 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 is 1.3 percent.

⁴⁰ See s. 121.4501(2)(k) and (4)(f), F.S.

⁴¹ Section 121.021(39)(a), F.S.

⁴² *Id.*

⁴³ Section 121.091(9)(a), F.S.

after retiring or after the member's DROP termination date. If the retiree is reemployed during months two through 12 after retiring or terminating DROP, the retiree may not receive her or his pension benefit until month 13. However, a retiree who retired before July 1, 2010, may be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.⁴⁴

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12 after retiring or terminating DROP, the retiree may not receive her or his pension benefit until month 13.⁴⁵ The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire on or after July 1, 2010.

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (the member could choose to participate in either the pension plan or the investment plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent child of a renewed member may qualify for survivor benefits.⁴⁶

Currently, retirees initially reemployed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and will not earn creditable service toward a subsequent retirement benefit.⁴⁷ This restriction from renewed membership includes retirees of the FRS Pension Plan and the FRS Investment Plan, as well as members of an optional retirement program.

Health Insurance Subsidy

Upon the conclusion of DROP, or upon service 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.⁴⁸ 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.⁴⁹

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;⁵⁰
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;⁵¹ and
- Members of a Florida College System institution may elect to enroll in the State Community College System Optional Retirement Program.⁵²

⁴⁴ Section 121.091(9)(b), F.S.

⁴⁵ Section 121.091(9)(c), F.S.

⁴⁶ Section 121.122(1), F.S.

⁴⁷ Section 121.122(2), F.S.

⁴⁸ Sections 112.363(1) and (2), F.S.

⁴⁹ Section 112.363(3)(e), F.S.

⁵⁰ 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.

⁵¹ 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.

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.⁵³ 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:⁵⁴

Membership Class	Effective July 1, 2015
Regular Class	2.91%
Special Risk Class	11.35%
Special Risk Administrative Support Class	3.71%
Elected Officers' Class	
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.48%
• Justices and Judges	11.39%
• County Officers	8.48%
Senior Management Service Class	4.32%

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.⁵⁵

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.⁵⁶

Effect of the Bill

Renewed Membership

Effective July 1, 2016, the bill allows for renewed membership for certain former participants of the investment plan, the Senior Management Service Optional Annuity Program, the State University System Optional Retirement Program (SUSORP), or the State Community College System Optional Retirement Program (SCCSORP). Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSORP or the SCCSORP, as applicable. To be eligible for renewed membership, the member must have retired from one of the four specified plans and must be employed in a regularly established position with a covered employer on or after July 1, 2016.

Such renewed member may not qualify for disability retirement benefits and must satisfy the vesting requirements of the specific plan. The bill prohibits certain funds from being paid into the renewed member's account for any employment in a regularly established position with a covered employer from

⁵² 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.

⁵³ Section 121.70(1), F.S.

⁵⁴ Section 121.71(4), F.S.

⁵⁵ Section 121.71(3), F.S.

⁵⁶ See ss. 121.4503 and 121.72(1), F.S.

July 1, 2010, through June 30, 2016. A renewed member who is not receiving the maximum health insurance subsidy is entitled to earn additional credit toward the subsidy.

Line-of-Duty Death Benefits

The bill establishes line-of-duty death benefits for the investment plan. It provides survivor benefits to the spouse and children of members in the investment plan who are killed in the line of duty. The survivor benefits are the same as those currently provided for pension plan members who are killed in the line of duty, which is a monthly payment equal to one-half of the member's salary at the time of death. To receive the benefit, the spouse and children must elect to transfer the balance of the member's investment plan account to the survivor benefit account of the FRS Trust Fund. The line-of-duty death benefits supersede any other distribution that may have been provided by the member's designation of beneficiary.

The bill also provides survivor benefits for any member of the investment plan who has been killed in the line of duty since 2002, when members were first allowed to participate in the investment plan. For a member killed in the line of duty on or after July 1, 2002, but before July 1, 2016, the initial monthly benefit payable on or after July 1, 2016, will be equal to one-half the member's salary at the time of death, except that it will be:

- Actuarially reduced by the amount of the investment plan payout, if a payout was issued; and
- After the actuarial reduction, increased by the applicable cost-of-living adjustment that would have been payable if the survivor benefit payment had begun the month following the member's death. On each July 1 after the initial payment, the benefit will be increased by the applicable cost-of-living adjustment.

For Fiscal Year 2016-2017, upon notification from DMS that sufficient funds are not available to pay the survivor benefits, the bill directs the SBA to transfer funds from the Administrative Trust Fund to the survivor benefits account to ensure the timely payment of the benefits.

Default

For members initially enrolled in the FRS on or after July 1, 2017, the bill extends the plan election period from the last business day of the fifth month after hire to the last business day of the eighth month after hire to choose between participation in the investment plan or pension plan. If the member does not make a selection, the member will default to the investment plan instead of the pension plan. The bill maintains the member's second election option.

Important State Interest

The bill provides a statement of 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.

B. SECTION DIRECTORY:

Section 1 amends s. 121.053, F.S., relating to participation in the Elected Officers' Class for retired members.

Section 2 amends s. 121.055, F.S., relating to the Senior Management Service Class.

Section 3 amends s. 121.091, F.S., relating to benefits payable under the FRS.

Section 4 amends s. 121.122, F.S., relating to renewed membership in the FRS.

Section 5 amends s. 121.4501, F.S., relating to the FRS Investment Plan.

Section 6 amends s. 121.571, F.S., relating to contributions.

Section 7 amends s. 121.591, F.S., relating to payment of benefits.

Section 8 creates s. 121.5912, F.S., relating to the survivor benefit retirement program.

Section 9 amends s. 121.71, F.S., relating to uniform rates.

Section 10 creates s. 121.735, F.S., relating to allocations for member line-of-duty death benefits.

Section 11 amends s. 121.74, F.S., relating to administrative and educational expenses.

Section 12 amends s. 121.75, F.S., relating to allocation for the pension plan.

Section 13 provides a mechanism to fund the survivor benefits account for Fiscal Year 2016-2017.

Section 14 requires employer contribution rates to be adjusted to fund changes made by the act.

Section 15 provides that the act fulfills an important state interest.

Section 16 provides an appropriation.

Section 17 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

For the 2016-17 fiscal year (FY), the bill appropriates a recurring sum of \$4,249,000 from the General Revenue Fund and a recurring sum of \$564,000 from trust funds to Administered Funds in order to fund the increased employer contribution rates to be paid by state agencies, state universities, state colleges, and school districts. See Fiscal Comments for further discussion.

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:

Death Benefits and Renewed Membership

The following table provides the projected (costs)/savings for FY 2016-17 (in millions):

Employers Funded by State	Death Benefits ⁵⁷		Renewed Membership	
	GR	TF	GR	TF
State	(0.5)	(0.6)	(0.3)	(0.3)
School Boards	(1.2)		(1.6)	
Universities	(0.1)		(.3)	
State Colleges	(0.1)		(.2)	
Total	(1.9)	(0.6)	(2.4)	(0.3)
Employers Not Funded by State				
Counties	(2.6)		(0.6)	
Cities/Other	(.3)		(0.2)	
Grand Total	(4.8)	(0.6)	(3.2)	(0.3)

Default

The fiscal impact associated with changing the default from the pension plan to the investment plan is as follows:

- FY 2016-17 - No fiscal impact to the state or local governments
- FY 2017-18 - \$50,000 impact to the General Revenue Fund, and \$25,000 impact to local governments
- FY 2018-19 - \$3,900,000 impact to the General Revenue Fund, and \$1,500,000 impact to local governments⁵⁸

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 an 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

⁵⁷ The Milliman actuarial and consulting firm conducted an actuarial study to determine the cost of providing the line-of-duty death benefits created by the bill. The study was completed on January 19, 2016. A copy of the study is on file with the State Affairs Committee.

⁵⁸ The Milliman actuarial and consulting firm conducted an actuarial study to determine the cost associated with changing the default from the pension plan to the investment plan. The study was completed on March 6, 2015. A copy of the study is on file with the State Affairs Committee.

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.⁵⁹ This “preservation of rights” provision⁶⁰ 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.⁶¹ 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.⁶²

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.⁶³ 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.⁶⁴

This bill does not change any benefits that a member earned prior to July 1, 2016.

B. RULE-MAKING AUTHORITY:

The bill authorizes the SBA and DMS to adopt any rules necessary to maintain the qualified status of the survivor benefit retirement program in the event that the Internal Revenue Service notifies them that the program will cause the FRS to be disqualified for tax purposes under the Internal Revenue Code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁵⁹ Section 121.011(3)(d), F.S.

⁶⁰ 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).

⁶¹ *Id.* at 1035.

⁶² *Id.* at 1036.

⁶³ *Id.* at 1037.

⁶⁴ *Rick Scott, et al. v. George Williams, et al.*, 107 So. 3d 379 (Fla. 2013).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public employees; amending s.
 3 121.053, F.S.; authorizing renewed membership in the
 4 Florida Retirement System for retirees who are
 5 reemployed in a position eligible for the Elected
 6 Officers' Class under certain circumstances; amending
 7 s. 121.055, F.S.; providing for renewed membership in
 8 the retirement system for retirees of the Senior
 9 Management Service Optional Annuity Program who are
 10 employed on or after a specified date; amending s.
 11 121.091, F.S.; conforming a provision to changes made
 12 by the act; amending s. 121.122, F.S.; requiring that
 13 certain retirees who are employed on or after a
 14 specified date be renewed members in the investment
 15 plan; providing exceptions; specifying that creditable
 16 service does not accrue for employment during a
 17 specified period; prohibiting certain funds from being
 18 paid into a renewed member's investment plan account
 19 for a specified period of employment; requiring the
 20 renewed member to satisfy vesting requirements;
 21 prohibiting a renewed member from receiving specified
 22 disability benefits; specifying limitations and
 23 requirements; requiring the employer and the retiree
 24 to make applicable contributions to the renewed
 25 member's investment plan account; providing for the
 26 transfer of contributions; authorizing a renewed

27 member to receive additional credit toward the health
 28 insurance subsidy under certain circumstances;
 29 prohibiting participation in the pension plan;
 30 providing that a retiree employed on or after a
 31 specified date in a regularly established position
 32 eligible for the State University System Optional
 33 Retirement Program or State Community College System
 34 Optional Retirement Program is a renewed member of
 35 that program; specifying limitations and requirements;
 36 requiring the employer and the retiree to make
 37 applicable contributions; amending s. 121.4501, F.S.;
 38 revising definitions; revising a provision relating to
 39 acknowledgement of an employee's election to
 40 participate in the investment plan; enrolling certain
 41 employees in the pension plan from their date of hire
 42 until they are automatically enrolled in the
 43 investment plan or timely elect enrollment in the
 44 pension plan; providing certain members with a
 45 specified time to choose participation in the pension
 46 plan or the investment plan; conforming provisions to
 47 changes made by the act; amending s. 121.571, F.S.;
 48 conforming provisions to changes made by the act;
 49 amending s. 121.591, F.S.; authorizing payment of
 50 death benefits to the surviving spouse or surviving
 51 children of a member in the investment plan;
 52 establishing qualifications and eligibility

53 requirements for receipt of such benefits; prescribing
 54 the method of calculating the benefit; specifying
 55 circumstances under which benefit payments are
 56 terminated; creating s. 121.5912, F.S.; providing
 57 legislative intent; requiring the State Board of
 58 Administration or the Division of Retirement of the
 59 Department of Management Services to take certain
 60 action upon receipt of notification of
 61 disqualification from the Internal Revenue Service;
 62 authorizing the state board and the department to
 63 adopt rules; amending s. 121.71, F.S.; conforming
 64 provisions to changes made by the act; creating s.
 65 121.735, F.S.; providing for allocations for death
 66 benefits authorized by the act; amending ss. 121.74
 67 and 121.75, F.S.; conforming provisions to changes
 68 made by the act; requiring the State Board of
 69 Administration to transfer moneys to fund survivor
 70 benefit payments under specified circumstances;
 71 adjusting employer contribution rates in order to fund
 72 changes made by the act; providing a directive to the
 73 Division of Law Revision and Information; declaring
 74 that the act fulfills an important state interest;
 75 providing an appropriation; providing an effective
 76 date.

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78 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (a) of subsection (3) and subsection (5) of section 121.053, Florida Statutes, are amended to read:

121.053 Participation in the Elected Officers' Class for retired members.—

(3) On or after July 1, 2010:

(a) A retiree of a state-administered retirement system who is initially reemployed in ~~elected or appointed for the first time to~~ an elective office in a regularly established position with a covered employer may not reenroll in the Florida Retirement System, except as provided in s. 121.122.

(5) Any renewed member, as described in s. 121.122(1), (3), (4), or (5) ~~subsection (1) or subsection (2)~~, who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

Section 2. Paragraph (f) of subsection (1) and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service

105 Class," which shall become effective February 1, 1987.

106 (1)

107 (f) Effective July 1, 1997:

108 1. Except as provided in subparagraph 3., an elected state
 109 officer eligible for membership in the Elected Officers' Class
 110 under s. 121.052(2)(a), (b), or (c) who elects membership in the
 111 Senior Management Service Class under s. 121.052(3)(c) may,
 112 within 6 months after assuming office or within 6 months after
 113 this act becomes a law for serving elected state officers, elect
 114 to participate in the Senior Management Service Optional Annuity
 115 Program, as provided in subsection (6), in lieu of membership in
 116 the Senior Management Service Class.

117 2. Except as provided in subparagraph 3., an elected
 118 officer of a local agency employer eligible for membership in
 119 the Elected Officers' Class under s. 121.052(2)(d) who elects
 120 membership in the Senior Management Service Class under s.
 121 121.052(3)(c) may, within 6 months after assuming office, or
 122 within 6 months after this act becomes a law for serving elected
 123 officers of a local agency employer, elect to withdraw from the
 124 Florida Retirement System, as provided in subparagraph (b)2., in
 125 lieu of membership in the Senior Management Service Class.

126 3. A retiree of a state-administered retirement system who
 127 is initially reemployed in a regularly established position on
 128 or after July 1, 2010, through June 30, 2016, as an elected
 129 official eligible for the Elected Officers' Class may not be
 130 enrolled in renewed membership in the Senior Management Service

131 Class or in the Senior Management Service Optional Annuity
 132 Program as provided in subsection (6), and may not withdraw from
 133 the Florida Retirement System as a renewed member as provided in
 134 subparagraph (b)2., as applicable, in lieu of membership in the
 135 Senior Management Service Class. Effective July 1, 2016, a
 136 retiree of the Senior Management Service Optional Annuity
 137 Program who is reemployed in a regularly established position
 138 with a covered employer shall be enrolled as a renewed member as
 139 provided in s. 121.122.

140 (6)

141 (c) Participation.—

142 1. An eligible employee who is employed on or before
 143 February 1, 1987, may elect to participate in the optional
 144 annuity program in lieu of participating in the Senior
 145 Management Service Class. Such election shall ~~must~~ be made in
 146 writing and filed with the department and the personnel officer
 147 of the employer on or before May 1, 1987. An eligible employee
 148 who is employed on or before February 1, 1987, and who fails to
 149 make an election to participate in the optional annuity program
 150 by May 1, 1987, is ~~shall be~~ deemed to have elected membership in
 151 the Senior Management Service Class.

152 2. Except as provided in subparagraph 6., an employee who
 153 becomes eligible to participate in the optional annuity program
 154 by reason of initial employment commencing after February 1,
 155 1987, may, within 90 days after the date of commencing
 156 employment, elect to participate in the optional annuity

157 | program. Such election shall ~~must~~ be made in writing and filed
 158 | with the personnel officer of the employer. An eligible employee
 159 | who does not within 90 days after commencing employment elect to
 160 | participate in the optional annuity program is ~~shall be~~ deemed
 161 | to have elected membership in the Senior Management Service
 162 | Class.

163 | 3. A person who is appointed to a position in the Senior
 164 | Management Service Class and who is a member of an existing
 165 | retirement system or the Special Risk or Special Risk
 166 | Administrative Support Classes of the Florida Retirement System
 167 | may elect to remain in such system or class in lieu of
 168 | participating in the Senior Management Service Class or optional
 169 | annuity program. Such election shall ~~must~~ be made in writing and
 170 | filed with the department and the personnel officer of the
 171 | employer within 90 days after such appointment. An eligible
 172 | employee who fails to make an election to participate in the
 173 | existing system, the Special Risk Class of the Florida
 174 | Retirement System, the Special Risk Administrative Support Class
 175 | of the Florida Retirement System, or the optional annuity
 176 | program is ~~shall be~~ deemed to have elected membership in the
 177 | Senior Management Service Class.

178 | 4. Except as provided in subparagraph 5., an employee's
 179 | election to participate in the optional annuity program is
 180 | irrevocable if the employee continues to be employed in an
 181 | eligible position and continues to meet the eligibility
 182 | requirements set forth in this paragraph.

183 5. Effective from July 1, 2002, through September 30,
 184 2002, an active employee in a regularly established position who
 185 has elected to participate in the Senior Management Service
 186 Optional Annuity Program has one opportunity to choose to move
 187 from the Senior Management Service Optional Annuity Program to
 188 the Florida Retirement System Pension Plan.

189 a. The election shall ~~must~~ be made in writing and ~~must be~~
 190 filed with the department and the personnel officer of the
 191 employer before October 1, 2002, or, in the case of an active
 192 employee who is on a leave of absence on July 1, 2002, within 90
 193 days after the conclusion of the leave of absence. This election
 194 is irrevocable.

195 b. The employee shall receive service credit under the
 196 pension plan equal to his or her years of service under the
 197 Senior Management Service Optional Annuity Program. The cost for
 198 such credit is the amount representing the present value of that
 199 employee's accumulated benefit obligation for the affected
 200 period of service.

201 c. The employee shall ~~must~~ transfer the total accumulated
 202 employer contributions and earnings on deposit in his or her
 203 Senior Management Service Optional Annuity Program account. If
 204 the transferred amount is not sufficient to pay the amount due,
 205 the employee shall ~~must~~ pay a sum representing the remainder of
 206 the amount due. The employee may not retain any employer
 207 contributions or earnings from the Senior Management Service
 208 Optional Annuity Program account.

209 6. A retiree of a state-administered retirement system who
 210 is initially reemployed on or after July 1, 2010, may not renew
 211 membership in the Senior Management Service Optional Annuity
 212 Program. Effective July 1, 2016, a retiree of the Senior
 213 Management Service Optional Annuity Program who is reemployed in
 214 a regularly established position with a covered employer shall
 215 be enrolled as a renewed member as provided in s. 121.122.

216 Section 3. Paragraph (c) of subsection (9) of section
 217 121.091, Florida Statutes, is amended to read:

218 121.091 Benefits payable under the system.—Benefits may
 219 not be paid under this section unless the member has terminated
 220 employment as provided in s. 121.021(39)(a) or begun
 221 participation in the Deferred Retirement Option Program as
 222 provided in subsection (13), and a proper application has been
 223 filed in the manner prescribed by the department. The department
 224 may cancel an application for retirement benefits when the
 225 member or beneficiary fails to timely provide the information
 226 and documents required by this chapter and the department's
 227 rules. The department shall adopt rules establishing procedures
 228 for application for retirement benefits and for the cancellation
 229 of such application when the required information or documents
 230 are not received.

231 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

232 (c) Any person whose retirement is effective on or after
 233 July 1, 2010, or whose participation in the Deferred Retirement
 234 Option Program terminates on or after July 1, 2010, who is

235 retired under this chapter, except under the disability
 236 retirement provisions of subsection (4) or as provided in s.
 237 121.053, may be reemployed by an employer that participates in a
 238 state-administered retirement system and receive retirement
 239 benefits and compensation from that employer. However, a person
 240 may not be reemployed by an employer participating in the
 241 Florida Retirement System before meeting the definition of
 242 termination in s. 121.021 and may not receive both a salary from
 243 the employer and retirement benefits for 6 calendar months after
 244 meeting the definition of termination. However, a DROP
 245 participant shall continue employment and receive a salary
 246 during the period of participation in the Deferred Retirement
 247 Option Program, as provided in subsection (13).

248 1. The reemployed retiree may not renew membership in the
 249 Florida Retirement System, except as provided in s. 121.122.

250 2. The employer shall pay retirement contributions in an
 251 amount equal to the unfunded actuarial liability portion of the
 252 employer contribution that would be required for active members
 253 of the Florida Retirement System in addition to the
 254 contributions required by s. 121.76.

255 3. A retiree initially reemployed in violation of this
 256 paragraph and an employer that employs or appoints such person
 257 are jointly and severally liable for reimbursement of any
 258 retirement benefits paid to the retirement trust fund from which
 259 the benefits were paid, including the Florida Retirement System
 260 Trust Fund and the Public Employee Optional Retirement Program

261 Trust Fund, as appropriate. The employer must have a written
 262 statement from the employee that he or she is not retired from a
 263 state-administered retirement system. Retirement benefits shall
 264 remain suspended until repayment is made. Benefits suspended
 265 beyond the end of the retiree's 6-month reemployment limitation
 266 period shall apply toward the repayment of benefits received in
 267 violation of this paragraph.

268 Section 4. Subsection (2) of section 121.122, Florida
 269 Statutes, is amended, and subsections (3) through (5) are added
 270 to that section, to read:

271 121.122 Renewed membership in system.—

272 (2) Except as otherwise provided in subsections (3)-(5), a
 273 retiree of a state-administered retirement system who is
 274 initially reemployed in a regularly established position on or
 275 after July 1, 2010, may not be enrolled as a renewed member.

276 (3) A retiree of the investment plan, the State University
 277 System Optional Retirement Program, the Senior Management
 278 Service Optional Annuity Program, or the State Community College
 279 System Optional Retirement Program who is reemployed with a
 280 covered employer in a regularly established position on or after
 281 July 1, 2016, shall be enrolled as a renewed member of the
 282 investment plan, unless employed in a position eligible for
 283 participation in the State University System Optional Retirement
 284 Program as provided in subsection (4) or the State Community
 285 College System Optional Retirement Program as provided in
 286 subsection (5). The renewed member must satisfy the vesting

287 requirements and other provisions of this chapter.

288 (a) A renewed member of the investment plan shall be
 289 enrolled in one of the following membership classes:

290 1. In the Regular Class if the position does not meet the
 291 requirements for membership under s. 121.0515, s. 121.053, or s.
 292 121.055.

293 2. In the Special Risk Class if the position meets the
 294 requirements of s. 121.0515.

295 3. In the Elected Officers' Class if the position meets
 296 the requirements of s. 121.053.

297 4. In the Senior Management Service Class if the position
 298 meets the requirements of s. 121.055.

299 (b) Creditable service, including credit toward the
 300 retiree health insurance subsidy provided in s. 112.363, does
 301 not accrue for a renewed member's employment in a regularly
 302 established position with a covered employer from July 1, 2010,
 303 through June 30, 2016.

304 (c) Employer and employee contributions, interest,
 305 earnings, or any other funds may not be paid into a renewed
 306 member's investment plan account for any employment in a
 307 regularly established position with a covered employer on or
 308 after July 1, 2010, through June 30, 2016, by the renewed member
 309 or the employer on behalf of the renewed member.

310 (d) To be eligible to receive a retirement benefit, the
 311 renewed member must satisfy the vesting requirements in s.
 312 121.4501(6).

313 (e) The renewed member is ineligible to receive disability
 314 benefits as provided in s. 121.091(4) or s. 121.591(2).

315 (f) The renewed member is subject to the limitations on
 316 reemployment after retirement provided in s. 121.091(9), as
 317 applicable.

318 (g) The renewed member must satisfy the requirements for
 319 termination from employment provided in s. 121.021(39).

320 (h) Upon renewed membership or reemployment of a retiree,
 321 the employer and the renewed member shall pay the applicable
 322 employer and employee contributions required under ss. 112.363,
 323 121.71, 121.74, and 121.76. The contributions are payable only
 324 for employment and salary earned in a regularly established
 325 position with a covered employer on or after July 1, 2016. The
 326 employer and employee contributions shall be transferred to the
 327 investment plan and placed in a default fund as designated by
 328 the state board. The renewed member may move the contributions
 329 once an account is activated in the investment plan.

330 (i) A renewed member who earns creditable service under
 331 the investment plan and who is not receiving the maximum health
 332 insurance subsidy provided in s. 112.363 is entitled to earn
 333 additional credit toward the subsidy. Such credit may be earned
 334 only for employment in a regularly established position with a
 335 covered employer on or after July 1, 2016. Any additional
 336 subsidy due because of additional credit may be received only at
 337 the time of paying the second career retirement benefit. The
 338 total health insurance subsidy received by a retiree receiving

339 benefits from initial and renewed membership may not exceed the
 340 maximum allowed under s. 112.363.

341 (j) Notwithstanding s. 121.4501(4)(g), the renewed member
 342 is not eligible to elect membership in the pension plan.

343 (4) A retiree of the investment plan, the State University
 344 System Optional Retirement Program, the Senior Management
 345 Service Optional Annuity Program, or the State Community College
 346 System Optional Retirement Program who is employed on or after
 347 July 1, 2016, in a regularly established position eligible for
 348 participation in the State University System Optional Retirement
 349 Program shall become a renewed member of the optional retirement
 350 program. The renewed member must satisfy the vesting
 351 requirements and other provisions of this chapter. Once
 352 enrolled, a renewed member remains enrolled in the optional
 353 retirement program while employed in an eligible position for
 354 the optional retirement program. If employment in a different
 355 covered position results in the renewed member's enrollment in
 356 the investment plan, the renewed member is no longer eligible to
 357 participate in the optional retirement program, unless employed
 358 in a mandatory position under s. 121.35.

359 (a) The renewed member is subject to the limitations on
 360 reemployment after retirement provided in s. 121.091(9), as
 361 applicable.

362 (b) The renewed member must satisfy the requirements for
 363 termination from employment provided in s. 121.021(39).

364 (c) Upon renewed membership or reemployment of a retiree,

365 the employer and the renewed member shall pay the applicable
 366 employer and employee contributions required under s. 121.35.

367 (d) Employer and employee contributions, interest,
 368 earnings, or any other funds may not be paid into a renewed
 369 member's optional retirement program account for any employment
 370 in a regularly stablished position with a covered employer on or
 371 after July 1, 2010, through June 30, 2016, by the renewed member
 372 or the employer on behalf of the renewed member.

373 (e) Notwithstanding s. 121.4501(4)(g), the renewed member
 374 is not eligible to elect membership in the pension plan.

375 (5) A retiree of the investment plan, the State University
 376 System Optional Retirement Program, the Senior Management
 377 Service Optional Annuity Program, or the State Community College
 378 System Optional Retirement Program who is employed on or after
 379 July 1, 2016, in a regularly established position eligible for
 380 participation in the State Community College System Optional
 381 Retirement Program shall become a renewed member of the optional
 382 retirement program. The renewed member must satisfy the
 383 eligibility requirements of this chapter and s. 1012.875 for the
 384 optional retirement program. Once enrolled, a renewed member
 385 remains enrolled in the optional retirement program while
 386 employed in an eligible position for the optional retirement
 387 program. If employment in a different covered position results
 388 in the renewed member's enrollment in the investment plan, the
 389 renewed member is no longer eligible to participate in the
 390 optional retirement program.

391 (a) The renewed member is subject to the limitations on
 392 reemployment after retirement provided in s. 121.091(9), as
 393 applicable.

394 (b) The renewed member must satisfy the requirements for
 395 termination from employment provided in s. 121.021(39).

396 (c) Upon renewed membership or reemployment of a retiree,
 397 the employer and the renewed member shall pay the applicable
 398 employer and employee contributions required under ss.
 399 121.051(2)(c) and 1012.875.

400 (d) Employer and employee contributions, interest,
 401 earnings, or any other funds may not be paid into a renewed
 402 member's optional retirement program account for any employment
 403 in a regularly established position with a covered employer on
 404 or after July 1, 2010, through June 30, 2016, by the renewed
 405 member or the employer on behalf of the renewed member.

406 (e) Notwithstanding s. 121.4501(4)(g), the renewed member
 407 is not eligible to elect membership in the pension plan.

408 Section 5. Paragraphs (e) and (i) of subsection (2),
 409 paragraph (b) of subsection (3), subsection (4), paragraph (c)
 410 of subsection (5), and paragraphs (a) and (h) of subsection (10)
 411 of section 121.4501, Florida Statutes, are amended to read:

412 121.4501 Florida Retirement System Investment Plan.—

413 (2) DEFINITIONS.—As used in this part, the term:

414 (e) "Eligible employee" means an officer or employee, as
 415 defined in s. 121.021, who:

416 1. Is a member of, or is eligible for membership in, the

417 Florida Retirement System, including any renewed member of the
 418 Florida Retirement System initially enrolled before July 1,
 419 2010; ~~or~~

420 2. Participates in, or is eligible to participate in, the
 421 Senior Management Service Optional Annuity Program as
 422 established under s. 121.055(6), the State Community College
 423 System Optional Retirement Program as established under s.
 424 121.051(2)(c), or the State University System Optional
 425 Retirement Program established under s. 121.35; or

426 3. Is a retired member of the investment plan, the State
 427 University System Optional Retirement Program, the Senior
 428 Management Service Optional Annuity Program, or the State
 429 Community College System Optional Retirement Program who is
 430 employed in a regularly established position on or after July 1,
 431 2016, and enrolled as a renewed member as provided in s.
 432 121.122.

433
 434 The term does not include any member participating in the
 435 Deferred Retirement Option Program established under s.
 436 121.091(13), a retiree of the pension plan who is employed in a
 437 regularly established position on or after July 1, 2010, a
 438 retiree of a state-administered retirement system initially
 439 reemployed in a regularly established position on or after July
 440 1, 2010, through June 30, 2016, or a mandatory participant of
 441 the State University System Optional Retirement Program
 442 established under s. 121.35.

443 (i) "Member" or "employee" means an eligible employee who
 444 enrolls in, or who defaults into, the investment plan as
 445 provided in subsection (4), a terminated Deferred Retirement
 446 Option Program member as described in subsection (21), or a
 447 beneficiary or alternate payee of a member or employee.

448 (3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.-

449 (b) Notwithstanding paragraph (a), an eligible employee
 450 who elects to participate in, or who defaults into, the
 451 investment plan and establishes one or more individual member
 452 accounts may elect to transfer to the investment plan a sum
 453 representing the present value of the employee's accumulated
 454 benefit obligation under the pension plan, except as provided in
 455 paragraph (4)(b). Upon transfer, all service credit earned under
 456 the pension plan is nullified for purposes of entitlement to a
 457 future benefit under the pension plan. A member may not transfer
 458 the accumulated benefit obligation balance from the pension plan
 459 after the time period for enrolling in the investment plan has
 460 expired.

461 1. For purposes of this subsection, the present value of
 462 the member's accumulated benefit obligation is based upon the
 463 member's estimated creditable service and estimated average
 464 final compensation under the pension plan, subject to
 465 recomputation under subparagraph 2. For state employees, initial
 466 estimates shall be based upon creditable service and average
 467 final compensation as of midnight on June 30, 2002; for district
 468 school board employees, initial estimates shall be based upon

469 creditable service and average final compensation as of midnight
 470 on September 30, 2002; and for local government employees,
 471 initial estimates shall be based upon creditable service and
 472 average final compensation as of midnight on December 31, 2002.
 473 The dates specified are the "estimate date" for these employees.
 474 The actuarial present value of the employee's accumulated
 475 benefit obligation shall be based on the following:

476 a. The discount rate and other relevant actuarial
 477 assumptions used to value the Florida Retirement System Trust
 478 Fund at the time the amount to be transferred is determined,
 479 consistent with the factors provided in sub-subparagraphs b. and
 480 c.

481 b. A benefit commencement age, based on the member's
 482 estimated creditable service as of the estimate date.

483 c. Except as provided under sub-subparagraph d., for a
 484 member initially enrolled:

485 (I) Before July 1, 2011, the benefit commencement age is
 486 the younger of the following, but may not be younger than the
 487 member's age as of the estimate date:

488 (A) Age 62; or

489 (B) The age the member would attain if the member
 490 completed 30 years of service with an employer, assuming the
 491 member worked continuously from the estimate date, and
 492 disregarding any vesting requirement that would otherwise apply
 493 under the pension plan.

494 (II) On or after July 1, 2011, the benefit commencement

495 age is the younger of the following, but may not be younger than
 496 the member's age as of the estimate date:

497 (A) Age 65; or

498 (B) The age the member would attain if the member
 499 completed 33 years of service with an employer, assuming the
 500 member worked continuously from the estimate date, and
 501 disregarding any vesting requirement that would otherwise apply
 502 under the pension plan.

503 d. For members of the Special Risk Class and for members
 504 of the Special Risk Administrative Support Class entitled to
 505 retain the special risk normal retirement date:

506 (I) Initially enrolled before July 1, 2011, the benefit
 507 commencement age is the younger of the following, but may not be
 508 younger than the member's age as of the estimate date:

509 (A) Age 55; or

510 (B) The age the member would attain if the member
 511 completed 25 years of service with an employer, assuming the
 512 member worked continuously from the estimate date, and
 513 disregarding any vesting requirement that would otherwise apply
 514 under the pension plan.

515 (II) Initially enrolled on or after July 1, 2011, the
 516 benefit commencement age is the younger of the following, but
 517 may not be younger than the member's age as of the estimate
 518 date:

519 (A) Age 60; or

520 (B) The age the member would attain if the member

521 completed 30 years of service with an employer, assuming the
 522 member worked continuously from the estimate date, and
 523 disregarding any vesting requirement that would otherwise apply
 524 under the pension plan.

525 e. The calculation must disregard vesting requirements and
 526 early retirement reduction factors that would otherwise apply
 527 under the pension plan.

528 2. For each member who elects to transfer moneys from the
 529 pension plan to his or her account in the investment plan, the
 530 division shall recompute the amount transferred under
 531 subparagraph 1. within 60 days after the actual transfer of
 532 funds based upon the member's actual creditable service and
 533 actual final average compensation as of the initial date of
 534 participation in the investment plan. If the recomputed amount
 535 differs from the amount transferred by \$10 or more, the division
 536 shall:

537 a. Transfer, or cause to be transferred, from the Florida
 538 Retirement System Trust Fund to the member's account the excess,
 539 if any, of the recomputed amount over the previously transferred
 540 amount together with interest from the initial date of transfer
 541 to the date of transfer under this subparagraph, based upon the
 542 effective annual interest equal to the assumed return on the
 543 actuarial investment which was used in the most recent actuarial
 544 valuation of the system, compounded annually.

545 b. Transfer, or cause to be transferred, from the member's
 546 account to the Florida Retirement System Trust Fund the excess,

547 if any, of the previously transferred amount over the recomputed
 548 amount, together with interest from the initial date of transfer
 549 to the date of transfer under this subparagraph, based upon 6
 550 percent effective annual interest, compounded annually, pro rata
 551 based on the member's allocation plan.

552 3. If contribution adjustments are made as a result of
 553 employer errors or corrections, including plan corrections,
 554 following recomputation of the amount transferred under
 555 subparagraph 1., the member is entitled to the additional
 556 contributions or is responsible for returning any excess
 557 contributions resulting from the correction. However, a ~~any~~
 558 return of such erroneous excess pretax contribution by the plan
 559 must be made within the period allowed by the Internal Revenue
 560 Service. The present value of the member's accumulated benefit
 561 obligation may ~~shall~~ not be recalculated.

562 4. As directed by the member, the state board shall
 563 transfer or cause to be transferred the appropriate amounts to
 564 the designated accounts within 30 days after the effective date
 565 of the member's participation in the investment plan unless the
 566 major financial markets for securities available for a transfer
 567 are seriously disrupted by an unforeseen event that causes the
 568 suspension of trading on a ~~any~~ national securities exchange in
 569 the country where the securities were issued. In that event, the
 570 30-day period may be extended by a resolution of the state
 571 board. Transfers are not commissionable or subject to other fees
 572 and may be in the form of securities or cash, as determined by

573 the state board. Such securities are valued as of the date of
 574 receipt in the member's account.

575 5. If the state board or the division receives
 576 notification from the United States Internal Revenue Service
 577 that this paragraph or any portion of this paragraph will cause
 578 the retirement system, or a portion thereof, to be disqualified
 579 for tax purposes under the Internal Revenue Code, the portion
 580 that will cause the disqualification does not apply. Upon such
 581 notice, the state board and the division shall notify the
 582 presiding officers of the Legislature.

583 (4) PARTICIPATION; ENROLLMENT.—

584 (a)1. Effective June 1, 2002, through February 28, 2003, a
 585 90-day election period was provided to each eligible employee
 586 participating in the Florida Retirement System, preceded by a
 587 90-day education period, permitting each eligible employee to
 588 elect membership in the investment plan. An employee who failed
 589 to elect the investment plan during the election period remained
 590 in the pension plan. An eligible employee who was employed in a
 591 regularly established position during the election period was
 592 granted the option to make one subsequent election, as provided
 593 in paragraph (f). With respect to an eligible employee who did
 594 not participate in the initial election period or who is
 595 initially employed in a regularly established position after the
 596 close of the initial election period but before July 1, 2017, on
 597 June 1, 2002, by a state employer:

598 ~~a. Any such employee may elect to participate in the~~

599 ~~investment plan in lieu of retaining his or her membership in~~
 600 ~~the pension plan. The election must be made in writing or by~~
 601 ~~electronic means and must be filed with the third party~~
 602 ~~administrator by August 31, 2002, or, in the case of an active~~
 603 ~~employee who is on a leave of absence on April 1, 2002, by the~~
 604 ~~last business day of the 5th month following the month the leave~~
 605 ~~of absence concludes. This election is irrevocable, except as~~
 606 ~~provided in paragraph (g). Upon making such election, the~~
 607 ~~employee shall be enrolled as a member of the investment plan,~~
 608 ~~the employee's membership in the Florida Retirement System is~~
 609 ~~governed by the provisions of this part, and the employee's~~
 610 ~~membership in the pension plan terminates. The employee's~~
 611 ~~enrollment in the investment plan is effective the first day of~~
 612 ~~the month for which a full month's employer contribution is made~~
 613 ~~to the investment plan.~~

614 ~~b. Any such employee who fails to elect to participate in~~
 615 ~~the investment plan within the prescribed time period is deemed~~
 616 ~~to have elected to retain membership in the pension plan, and~~
 617 ~~the employee's option to elect to participate in the investment~~
 618 ~~plan is forfeited.~~

619 ~~2. With respect to employees who become eligible to~~
 620 ~~participate in the investment plan by reason of employment in a~~
 621 ~~regularly established position with a state employer commencing~~
 622 ~~after April 1, 2002:~~

623 ~~a. Any such employee shall, by default, be enrolled in the~~
 624 ~~pension plan at the commencement of employment, and may, by the~~

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625 last business day of the 5th month following the employee's
626 month of hire, elect to participate in the investment plan. The
627 employee's election must be made in writing or by electronic
628 means and must be filed with the third-party administrator. The
629 election to participate in the investment plan is irrevocable,
630 except as provided in paragraph (f) ~~(g)~~.

631 a.b. If the employee files such election within the
632 prescribed time period, enrollment in the investment plan is
633 effective on the first day of employment. The retirement
634 contributions paid through the month of the employee plan change
635 shall be transferred to the investment program, and, effective
636 the first day of the next month, the employer and employee must
637 pay the applicable contributions based on the employee
638 membership class in the program.

639 b.e. An employee who fails to elect to participate in the
640 investment plan within the prescribed time period is deemed to
641 have elected to retain membership in the pension plan, and the
642 employee's option to elect to participate in the investment plan
643 is forfeited.

644 2.3. With respect to employees who become eligible to
645 participate in the investment plan pursuant to s.
646 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to
647 participate in the investment plan in lieu of retaining his or
648 her membership in the State Community College System Optional
649 Retirement Program or the State University System Optional
650 Retirement Program. The election must be made in writing or by

651 electronic means and must be filed with the third-party
 652 administrator. This election is irrevocable, except as provided
 653 in paragraph (f) ~~(g)~~. Upon making such election, the employee
 654 shall be enrolled as a member in the investment plan, the
 655 employee's membership in the Florida Retirement System is
 656 governed by the provisions of this part, and the employee's
 657 participation in the State Community College System Optional
 658 Retirement Program or the State University System Optional
 659 Retirement Program terminates. The employee's enrollment in the
 660 investment plan is effective on the first day of the month for
 661 which a full month's employer and employee contribution is made
 662 to the investment plan.

663 (b)1. With respect to employees who become eligible to
 664 participate in the investment plan by reason of employment in a
 665 regularly established position commencing on or after July 1,
 666 2017, or who did not complete an election window before July 1,
 667 2017, any such employee shall be enrolled in the pension plan at
 668 the commencement of employment and may, by the last business day
 669 of the 8th month following the employee's month of hire, elect
 670 to participate in the pension plan or the investment plan.
 671 Eligible employees may make a plan election only if they are
 672 earning service credit in an employer-employee relationship
 673 consistent with s. 121.021(17)(b), excluding leaves of absence
 674 without pay.

675 2. The employee's election must be made in writing or by
 676 electronic means and must be filed with the third-party

677 administrator. The election to participate in the pension plan
 678 or investment plan is irrevocable, except as provided in
 679 paragraph (f).

680 3. If the employee fails to make an election of the
 681 pension plan or investment plan within 8 months following the
 682 month of hire, the employee is deemed to have elected the
 683 investment plan and will default into the investment plan
 684 retroactively to the employee's date of employment. The
 685 employee's option to participate in the pension plan is
 686 forfeited, except as provided in paragraph (f).

687 4. The amount of the employee and employer contributions
 688 paid through the date of default to the investment plan shall be
 689 transferred to the investment plan and shall be placed in a
 690 default fund as designated by the State Board of Administration.
 691 The employee may move the contributions once an account is
 692 activated in the investment plan.

693 5. Effective the first day of the month after an eligible
 694 employee makes a plan election of the pension plan or investment
 695 plan, or the first day of the month after default to the
 696 investment plan, the employee and employer shall pay the
 697 applicable contributions based on the employee membership class
 698 in the program.

699 ~~4. For purposes of this paragraph, "state employer" means~~
 700 ~~any agency, board, branch, commission, community college,~~
 701 ~~department, institution, institution of higher education, or~~
 702 ~~water management district of the state, which participates in~~

703 ~~the Florida Retirement System for the benefit of certain~~
 704 ~~employees.~~

705 ~~(b)1. With respect to an eligible employee who is employed~~
 706 ~~in a regularly established position on September 1, 2002, by a~~
 707 ~~district school board employer:~~

708 ~~a. Any such employee may elect to participate in the~~
 709 ~~investment plan in lieu of retaining his or her membership in~~
 710 ~~the pension plan. The election must be made in writing or by~~
 711 ~~electronic means and must be filed with the third party~~
 712 ~~administrator by November 30, or, in the case of an active~~
 713 ~~employee who is on a leave of absence on July 1, 2002, by the~~
 714 ~~last business day of the 5th month following the month the leave~~
 715 ~~of absence concludes. This election is irrevocable, except as~~
 716 ~~provided in paragraph (g). Upon making such election, the~~
 717 ~~employee shall be enrolled as a member of the investment plan,~~
 718 ~~the employee's membership in the Florida Retirement System is~~
 719 ~~governed by the provisions of this part, and the employee's~~
 720 ~~membership in the pension plan terminates. The employee's~~
 721 ~~enrollment in the investment plan is effective the first day of~~
 722 ~~the month for which a full month's employer contribution is made~~
 723 ~~to the investment program.~~

724 ~~b. Any such employee who fails to elect to participate in~~
 725 ~~the investment plan within the prescribed time period is deemed~~
 726 ~~to have elected to retain membership in the pension plan, and~~
 727 ~~the employee's option to elect to participate in the investment~~
 728 ~~plan is forfeited.~~

729 ~~2. With respect to employees who become eligible to~~
 730 ~~participate in the investment plan by reason of employment in a~~
 731 ~~regularly established position with a district school board~~
 732 ~~employer commencing after July 1, 2002:~~

733 ~~a. Any such employee shall, by default, be enrolled in the~~
 734 ~~pension plan at the commencement of employment, and may, by the~~
 735 ~~last business day of the 5th month following the employee's~~
 736 ~~month of hire, elect to participate in the investment plan. The~~
 737 ~~employee's election must be made in writing or by electronic~~
 738 ~~means and must be filed with the third-party administrator. The~~
 739 ~~election to participate in the investment plan is irrevocable,~~
 740 ~~except as provided in paragraph (g).~~

741 ~~b. If the employee files such election within the~~
 742 ~~prescribed time period, enrollment in the investment plan is~~
 743 ~~effective on the first day of employment. The employer~~
 744 ~~retirement contributions paid through the month of the employee~~
 745 ~~plan change shall be transferred to the investment plan, and,~~
 746 ~~effective the first day of the next month, the employer shall~~
 747 ~~pay the applicable contributions based on the employee~~
 748 ~~membership class in the investment plan.~~

749 ~~c. Any such employee who fails to elect to participate in~~
 750 ~~the investment plan within the prescribed time period is deemed~~
 751 ~~to have elected to retain membership in the pension plan, and~~
 752 ~~the employee's option to elect to participate in the investment~~
 753 ~~plan is forfeited.~~

754 ~~3. For purposes of this paragraph, "district school board~~

755 ~~employer" means any district school board that participates in~~
 756 ~~the Florida Retirement System for the benefit of certain~~
 757 ~~employees, or a charter school or charter technical career~~
 758 ~~center that participates in the Florida Retirement System as~~
 759 ~~provided in s. 121.051(2)(d).~~

760 ~~(c)1. With respect to an eligible employee who is employed~~
 761 ~~in a regularly established position on December 1, 2002, by a~~
 762 ~~local employer:~~

763 ~~a. Any such employee may elect to participate in the~~
 764 ~~investment plan in lieu of retaining his or her membership in~~
 765 ~~the pension plan. The election must be made in writing or by~~
 766 ~~electronic means and must be filed with the third-party~~
 767 ~~administrator by February 28, 2003, or, in the case of an active~~
 768 ~~employee who is on a leave of absence on October 1, 2002, by the~~
 769 ~~last business day of the 5th month following the month the leave~~
 770 ~~of absence concludes. This election is irrevocable, except as~~
 771 ~~provided in paragraph (g). Upon making such election, the~~
 772 ~~employee shall be enrolled as a participant of the investment~~
 773 ~~plan, the employee's membership in the Florida Retirement System~~
 774 ~~is governed by the provisions of this part, and the employee's~~
 775 ~~membership in the pension plan terminates. The employee's~~
 776 ~~enrollment in the investment plan is effective the first day of~~
 777 ~~the month for which a full month's employer contribution is made~~
 778 ~~to the investment plan.~~

779 ~~b. Any such employee who fails to elect to participate in~~
 780 ~~the investment plan within the prescribed time period is deemed~~

781 ~~to have elected to retain membership in the pension plan, and~~
 782 ~~the employee's option to elect to participate in the investment~~
 783 ~~plan is forfeited.~~

784 ~~2. With respect to employees who become eligible to~~
 785 ~~participate in the investment plan by reason of employment in a~~
 786 ~~regularly established position with a local employer commencing~~
 787 ~~after October 1, 2002:~~

788 ~~a. Any such employee shall, by default, be enrolled in the~~
 789 ~~pension plan at the commencement of employment, and may, by the~~
 790 ~~last business day of the 5th month following the employee's~~
 791 ~~month of hire, elect to participate in the investment plan. The~~
 792 ~~employee's election must be made in writing or by electronic~~
 793 ~~means and must be filed with the third-party administrator. The~~
 794 ~~election to participate in the investment plan is irrevocable,~~
 795 ~~except as provided in paragraph (g).~~

796 ~~b. If the employee files such election within the~~
 797 ~~prescribed time period, enrollment in the investment plan is~~
 798 ~~effective on the first day of employment. The employer~~
 799 ~~retirement contributions paid through the month of the employee~~
 800 ~~plan change shall be transferred to the investment plan, and,~~
 801 ~~effective the first day of the next month, the employer shall~~
 802 ~~pay the applicable contributions based on the employee~~
 803 ~~membership class in the investment plan.~~

804 ~~c. Any such employee who fails to elect to participate in~~
 805 ~~the investment plan within the prescribed time period is deemed~~
 806 ~~to have elected to retain membership in the pension plan, and~~

807 ~~the employee's option to elect to participate in the investment~~
 808 ~~plan is forfeited.~~

809 ~~3. For purposes of this paragraph, "local employer" means~~
 810 ~~any employer not included in paragraph (a) or paragraph (b).~~

811 ~~(c)(d)~~ Contributions available for self-direction by a
 812 member who has not selected one or more specific investment
 813 products shall be allocated as prescribed by the state board.
 814 The third-party administrator shall notify the member at least
 815 quarterly that the member should take an affirmative action to
 816 make an asset allocation among the investment products.

817 ~~(d)(e)~~ On or after July 1, 2011, a member of the pension
 818 plan who obtains a refund of employee contributions retains his
 819 or her prior plan choice upon return to employment in a
 820 regularly established position with a participating employer.

821 ~~(e)1.(f)~~ A member of the investment plan who takes a
 822 distribution of any contributions from his or her investment
 823 plan account is considered a retiree. A retiree who is initially
 824 reemployed in a regularly established position on or after July
 825 1, 2010, but before July 1, 2016, is not eligible for to be
 826 enrolled in renewed membership, except as provided in s.
 827 121.122.

828 2. A retiree who is reemployed on or after July 1, 2016,
 829 shall be enrolled as a renewed member as provided in s. 121.122.

830 ~~(f)(g)~~ After the period during which an eligible employee
 831 had the choice to elect the pension plan or the investment plan,
 832 or the month following the receipt of the eligible employee's

833 plan election, if sooner, the employee shall have one
 834 opportunity, at the employee's discretion, to choose to move
 835 from the pension plan to the investment plan or from the
 836 investment plan to the pension plan. Eligible employees may
 837 elect to move between plans only if they are earning service
 838 credit in an employer-employee relationship consistent with s.
 839 121.021(17)(b), excluding leaves of absence without pay.
 840 Effective July 1, 2005, such elections are effective on the
 841 first day of the month following the receipt of the election by
 842 the third-party administrator and are not subject to the
 843 requirements regarding an employer-employee relationship or
 844 receipt of contributions for the eligible employee in the
 845 effective month, except when the election is received by the
 846 third-party administrator. This paragraph is contingent upon
 847 approval by the Internal Revenue Service.

848 1. If the employee chooses to move to the investment plan,
 849 the provisions of subsection (3) govern the transfer.

850 2. If the employee chooses to move to the pension plan,
 851 the employee must transfer from his or her investment plan
 852 account, and from other employee moneys as necessary, a sum
 853 representing the present value of that employee's accumulated
 854 benefit obligation immediately following the time of such
 855 movement, determined assuming that attained service equals the
 856 sum of service in the pension plan and service in the investment
 857 plan. Benefit commencement occurs on the first date the employee
 858 is eligible for unreduced benefits, using the discount rate and

859 other relevant actuarial assumptions that were used to value the
 860 pension plan liabilities in the most recent actuarial valuation.
 861 For any employee who, at the time of the second election,
 862 already maintains an accrued benefit amount in the pension plan,
 863 the then-present value of the accrued benefit is deemed part of
 864 the required transfer amount. The division must ensure that the
 865 transfer sum is prepared using a formula and methodology
 866 certified by an enrolled actuary. A refund of any employee
 867 contributions or additional member payments made which exceed
 868 the employee contributions that would have accrued had the
 869 member remained in the pension plan and not transferred to the
 870 investment plan is not permitted.

871 3. Notwithstanding subparagraph 2., an employee who
 872 chooses to move to the pension plan and who became eligible to
 873 participate in the investment plan by reason of employment in a
 874 regularly established position with a state employer after June
 875 1, 2002; a district school board employer after September 1,
 876 2002; or a local employer after December 1, 2002, must transfer
 877 from his or her investment plan account, and from other employee
 878 moneys as necessary, a sum representing the employee's actuarial
 879 accrued liability. A refund of any employee contributions or
 880 additional member ~~participant~~ payments made which exceed the
 881 employee contributions that would have accrued had the member
 882 remained in the pension plan and not transferred to the
 883 investment plan is not permitted.

884 4. An employee's ability to transfer from the pension plan

885 to the investment plan pursuant to paragraphs (a) and (b) ~~(a)-~~
 886 ~~(d)~~, and the ability of a current employee to have an option to
 887 later transfer back into the pension plan under subparagraph 2.,
 888 shall be deemed a significant system amendment. Pursuant to s.
 889 121.031(4), any resulting unfunded liability arising from actual
 890 original transfers from the pension plan to the investment plan
 891 must be amortized within 30 plan years as a separate unfunded
 892 actuarial base independent of the reserve stabilization
 893 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
 894 direct amortization payment may not be calculated for this base.
 895 During this 25-year period, the separate base shall be used to
 896 offset the impact of employees exercising their second program
 897 election under this paragraph. The actuarial funded status of
 898 the pension plan will not be affected by such second program
 899 elections in any significant manner, after due recognition of
 900 the separate unfunded actuarial base. Following the initial 25-
 901 year period, any remaining balance of the original separate base
 902 shall be amortized over the remaining 5 years of the required
 903 30-year amortization period.

904 5. If the employee chooses to transfer from the investment
 905 plan to the pension plan and retains an excess account balance
 906 in the investment plan after satisfying the buy-in requirements
 907 under this paragraph, the excess may not be distributed until
 908 the member retires from the pension plan. The excess account
 909 balance may be rolled over to the pension plan and used to
 910 purchase service credit or upgrade creditable service in the

911 pension plan.

912 (5) CONTRIBUTIONS.—

913 (c) The state board, acting as plan fiduciary, must ensure
 914 that all plan assets are held in a trust, pursuant to s. 401 of
 915 the Internal Revenue Code. The fiduciary must ensure that such
 916 contributions are allocated as follows:

917 1. The employer and employee contribution portion
 918 earmarked for member accounts shall be used to purchase
 919 interests in the appropriate investment vehicles as specified by
 920 the member, or in accordance with paragraph (4) (c) ~~(4) (d)~~.

921 2. The employer contribution portion earmarked for
 922 administrative and educational expenses shall be transferred to
 923 the State Board of Administration Administrative Florida
 924 ~~Retirement System Investment Plan~~ Trust Fund.

925 3. The employer contribution portion earmarked for
 926 disability benefits and line-of-duty death benefits shall be
 927 transferred to the Florida Retirement System Trust Fund.

928 (10) EDUCATION COMPONENT.—

929 (a) The state board, in coordination with the department,
 930 shall provide for an education component for eligible employees
 931 ~~system members~~ in a manner consistent with ~~the provisions of~~
 932 this subsection ~~section~~. ~~The education component must be~~
 933 ~~available to eligible employees at least 90 days prior to the~~
 934 ~~beginning date of the election period for the employees of the~~
 935 ~~respective types of employers.~~

936 ~~(h) Pursuant to subsection (8), all Florida Retirement~~

937 ~~System employers have an obligation to regularly communicate the~~
 938 ~~existence of the two Florida Retirement System plans and the~~
 939 ~~plan choice in the natural course of administering their~~
 940 ~~personnel functions, using the educational materials supplied by~~
 941 ~~the state board and the Department of Management Services.~~

942 Section 6. Subsection (2) of section 121.571, Florida
 943 Statutes, is amended to read:

944 121.571 Contributions.—Contributions to the Florida
 945 Retirement System Investment Plan shall be made as follows:

946 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund
 947 the retirement, and disability, and line-of-duty death benefits
 948 provided under this part must be based on the uniform
 949 contribution rates established by s. 121.71 and on the
 950 membership class or subclass of the member. Such contributions
 951 must be allocated as provided in ss. 121.72, and 121.73, and
 952 121.735.

953 Section 7. Subsection (3) of section 121.591, Florida
 954 Statutes, is amended, subsection (4) of that section is
 955 renumbered as subsection (5), and a new subsection (4) is added
 956 to that section, to read:

957 121.591 Payment of benefits.—Benefits may not be paid
 958 under the Florida Retirement System Investment Plan unless the
 959 member has terminated employment as provided in s.
 960 121.021(39)(a) or is deceased and a proper application has been
 961 filed as prescribed by the state board or the department.
 962 Benefits, including employee contributions, are not payable

963 | under the investment plan for employee hardships, unforeseeable
 964 | emergencies, loans, medical expenses, educational expenses,
 965 | purchase of a principal residence, payments necessary to prevent
 966 | eviction or foreclosure on an employee's principal residence, or
 967 | any other reason except a requested distribution for retirement,
 968 | a mandatory de minimis distribution authorized by the
 969 | administrator, or a required minimum distribution provided
 970 | pursuant to the Internal Revenue Code. The state board or
 971 | department, as appropriate, may cancel an application for
 972 | retirement benefits if the member or beneficiary fails to timely
 973 | provide the information and documents required by this chapter
 974 | and the rules of the state board and department. In accordance
 975 | with their respective responsibilities, the state board and the
 976 | department shall adopt rules establishing procedures for
 977 | application for retirement benefits and for the cancellation of
 978 | such application if the required information or documents are
 979 | not received. The state board and the department, as
 980 | appropriate, are authorized to cash out a de minimis account of
 981 | a member who has been terminated from Florida Retirement System
 982 | covered employment for a minimum of 6 calendar months. A de
 983 | minimis account is an account containing employer and employee
 984 | contributions and accumulated earnings of not more than \$5,000
 985 | made under the provisions of this chapter. Such cash-out must be
 986 | a complete lump-sum liquidation of the account balance, subject
 987 | to the provisions of the Internal Revenue Code, or a lump-sum
 988 | direct rollover distribution paid directly to the custodian of

989 an eligible retirement plan, as defined by the Internal Revenue
 990 Code, on behalf of the member. Any nonvested accumulations and
 991 associated service credit, including amounts transferred to the
 992 suspense account of the Florida Retirement System Investment
 993 Plan Trust Fund authorized under s. 121.4501(6), shall be
 994 forfeited upon payment of any vested benefit to a member or
 995 beneficiary, except for de minimis distributions or minimum
 996 required distributions as provided under this section. If any
 997 financial instrument issued for the payment of retirement
 998 benefits under this section is not presented for payment within
 999 180 days after the last day of the month in which it was
 1000 originally issued, the third-party administrator or other duly
 1001 authorized agent of the state board shall cancel the instrument
 1002 and credit the amount of the instrument to the suspense account
 1003 of the Florida Retirement System Investment Plan Trust Fund
 1004 authorized under s. 121.4501(6). Any amounts transferred to the
 1005 suspense account are payable upon a proper application, not to
 1006 include earnings thereon, as provided in this section, within 10
 1007 years after the last day of the month in which the instrument
 1008 was originally issued, after which time such amounts and any
 1009 earnings attributable to employer contributions shall be
 1010 forfeited. Any forfeited amounts are assets of the trust fund
 1011 and are not subject to chapter 717.

1012 (3) DEATH BENEFITS.—Under the Florida Retirement System
 1013 Investment Plan:

1014 (a) Survivor benefits are payable in accordance with the

1015 following terms and conditions, except as provided in subsection
 1016 (4):

1017 1. To the extent vested, benefits are payable only to a
 1018 member's beneficiary or beneficiaries as designated by the
 1019 member as provided in s. 121.4501(20).

1020 2. Benefits shall be paid by the third-party administrator
 1021 or designated approved providers in accordance with the law, the
 1022 contracts, and any applicable state board rule or policy.

1023 3. To receive benefits, the member must be deceased.

1024 (b) Except as provided in subsection (4), in the event of
 1025 a member's death, all vested accumulations as described in s.
 1026 121.4501(6), less withholding taxes remitted to the Internal
 1027 Revenue Service, shall be distributed, as provided in paragraph
 1028 (c) or as described in s. 121.4501(20), as if the member retired
 1029 on the date of death. No other death benefits are available for
 1030 survivors of members, except for benefits, or coverage for
 1031 benefits, as are otherwise provided by law or separately
 1032 provided by the employer, at the employer's discretion.

1033 (c) Except as provided in subsection (4), upon receipt by
 1034 the third-party administrator of a properly executed application
 1035 for distribution of benefits, the total accumulated benefit is
 1036 payable by the third-party administrator to the member's
 1037 surviving beneficiary or beneficiaries, as:

1038 1. A lump-sum distribution payable to the beneficiary or
 1039 beneficiaries, or to the deceased member's estate;

1040 2. An eligible rollover distribution, if permitted, on

1041 | behalf of the surviving spouse of a deceased member, whereby all
 1042 | accrued benefits, plus interest and investment earnings, are
 1043 | paid from the deceased member's account directly to the
 1044 | custodian of an eligible retirement plan, as described in s.
 1045 | 402(c)(8)(B) of the Internal Revenue Code, on behalf of the
 1046 | surviving spouse; or

1047 | 3. A partial lump-sum payment whereby a portion of the
 1048 | accrued benefit is paid to the deceased member's surviving
 1049 | spouse or other designated beneficiaries, less withholding taxes
 1050 | remitted to the Internal Revenue Service, and the remaining
 1051 | amount is transferred directly to the custodian of an eligible
 1052 | retirement plan, if permitted, as described in s. 402(c)(8)(B)
 1053 | of the Internal Revenue Code, on behalf of the surviving spouse.
 1054 | The proportions must be specified by the member or the surviving
 1055 | beneficiary.

1056 |
 1057 | This paragraph does not abrogate other applicable provisions of
 1058 | state or federal law providing for payment of death benefits.

1059 | (4) LINE-OF-DUTY DEATH BENEFITS FOR INVESTMENT PLAN
 1060 | MEMBERS.—Benefits are provided under this subsection to the
 1061 | spouse and child or children of members in the investment plan
 1062 | when such members are killed in the line of duty and are payable
 1063 | in lieu of the benefits that would otherwise be payable under
 1064 | subsection (1) or subsection (3). Benefits provided by this
 1065 | subsection supersede any other distribution that may have been
 1066 | provided by the member's designation of beneficiary. Such

1067 benefits must be funded from employer contributions made under
 1068 s. 121.571, transferred employee contributions and funds
 1069 accumulated pursuant to paragraph (a), and interest and earnings
 1070 thereon.

1071 (a) Transfer of funds.—To qualify to receive monthly
 1072 benefits under this subsection:

1073 1. All moneys accumulated in the member's account,
 1074 including vested and nonvested accumulations as described in s.
 1075 121.4501(6), must be transferred from such individual accounts
 1076 to the division for deposit in the survivor benefit account of
 1077 the Florida Retirement System Trust Fund.

1078 2. Moneys in the survivor benefit account must be
 1079 accounted for separately. Earnings must be credited on an annual
 1080 basis for amounts held in the survivor benefit account of the
 1081 Florida Retirement System Trust Fund based on actual earnings of
 1082 the trust fund.

1083 3. If the member has retained retirement credit earned
 1084 under the pension plan as provided in s. 121.4501(3), a sum
 1085 representing the actuarial present value of such credit within
 1086 the Florida Retirement System Trust Fund shall be transferred by
 1087 the division from the pension plan to the survivor benefit
 1088 retirement program as implemented under this subsection and
 1089 shall be deposited in the survivor benefit account of the trust
 1090 fund.

1091 (b) Survivor retirement; entitlement.—An investment plan
 1092 member who is killed in the line of duty on or after July 1,

1093 2002, regardless of length of creditable service, may receive
 1094 survivor benefits as provided in s. 121.091(7)(d), which must be
 1095 calculated as provided in paragraph (e), to:

- 1096 1. The surviving spouse for the spouse's lifetime; or
- 1097 2. If there is no surviving spouse or the surviving spouse
 1098 dies, the member's child or children under 18 years of age and
 1099 unmarried until the 18th birthday of the member's youngest
 1100 child.

1101 (c) Survivor benefit retirement effective date.—The
 1102 effective retirement date for the surviving spouse or eligible
 1103 child or children of an investment plan member who is killed in
 1104 the line of duty shall be:

- 1105 1. The first day of the month following the member's death
 1106 if the member is killed on or after July 1, 2016.
- 1107 2. July 1, 2016, if the member is killed in the line of
 1108 duty on or after July 1, 2002, but before July 1, 2016, and the
 1109 application is received prior to July 1, 2016, or the first day
 1110 of the month following receipt of the application.

1111 (d) Line-of-duty death benefit.—

- 1112 1. The following individuals are eligible to receive a
 1113 retirement benefit under s. 121.091(7)(d) if the member's
 1114 account balance is surrendered and an application is received
 1115 and approved:
 - 1116 a. The surviving spouse.
 - 1117 b. If there is no surviving spouse or the surviving spouse
 1118 dies, the member's child or children under 18 years of age and

1119 unmarried until the 18th birthday of the member's youngest
 1120 child.

1121 2. Such surviving spouse or such child or children shall
 1122 receive a monthly survivor benefit that begins accruing on the
 1123 first day of the month of survivor benefit retirement, as
 1124 approved by the division, and is payable on the last day of that
 1125 month and each month thereafter during the surviving spouse's
 1126 lifetime or on behalf of the unmarried child or children of the
 1127 member until the 18th birthday of the youngest child. Survivor
 1128 benefits must be paid out of the survivor benefit account of the
 1129 Florida Retirement System Trust Fund established under this
 1130 subsection.

1131 (e) Computation of survivor benefit retirement benefit.-

1132 1. For a member killed in the line of duty on or after
 1133 July 1, 2016, the amount of each monthly payment must be
 1134 calculated as provided under s. 121.091(7)(d).

1135 2. For a member killed in the line of duty on or after
 1136 July 1, 2002, but before July 1, 2016, the initial benefit
 1137 payable on or after July 1, 2016, will be equal to the benefit
 1138 provided under s. 121.091(7)(d), except that it will be:

1139 a. Actuarially reduced by the amount of the investment
 1140 plan account payout, if a payout was provided to the
 1141 beneficiary; and

1142 b. After the actuarial reduction, increased by the
 1143 applicable cost-of-living adjustment that would have been
 1144 payable if the survivor benefit payment had begun the month

1145 following the member's death. On each July 1 thereafter, the
 1146 survivor benefit payment shall be increased by the applicable
 1147 cost-of-living adjustment.

1148 (f) Death of surviving spouse or children.—

1149 1. Upon the death of a surviving spouse, the monthly
 1150 benefits shall be paid through the last day of the month of
 1151 death and shall terminate or be paid on behalf of the unmarried
 1152 child or children until the 18th birthday of the youngest child.

1153 2. If the surviving spouse dies and the benefits are being
 1154 paid on behalf of the member's unmarried child or children as
 1155 provided in subparagraph 1., benefits shall be paid until the
 1156 last day of the month the youngest child reaches his or her 18th
 1157 birthday.

1158 Section 8. Section 121.5912, Florida Statutes, is created
 1159 to read:

1160 121.5912 Survivor benefit retirement program; qualified
 1161 status; rulemaking authority.—It is the intent of the
 1162 Legislature that the survivor benefit retirement program for
 1163 members of the Florida Retirement System Investment Plan meet
 1164 all applicable requirements for a qualified plan. If the state
 1165 board or the division receives notification from the Internal
 1166 Revenue Service that this program or any portion of this program
 1167 will cause the retirement system, or any portion thereof, to be
 1168 disqualified for tax purposes under the Internal Revenue Code,
 1169 the portion that will cause the disqualification does not apply.
 1170 Upon such notice, the state board or the division shall notify

1171 the presiding officers of the Legislature. The state board and
 1172 the department may adopt any rules necessary to maintain the
 1173 qualified status of the survivor benefit retirement program.

1174 Section 9. Subsection (1) of section 121.71, Florida
 1175 Statutes, is amended to read:

1176 121.71 Uniform rates; process; calculations; levy.—

1177 (1) In conducting the system actuarial study required
 1178 under s. 121.031, the actuary shall follow all requirements
 1179 specified to determine, by Florida Retirement System employee
 1180 membership class, the dollar contribution amounts necessary for
 1181 the next fiscal year for the pension plan. In addition, the
 1182 actuary shall determine, by Florida Retirement System membership
 1183 class, based on an estimate for the next fiscal year of the
 1184 gross compensation of employees participating in the investment
 1185 plan, the dollar contribution amounts necessary to make the
 1186 allocations required under ss. 121.72, ~~and~~ 121.73, and 121.735.
 1187 For each employee membership class and subclass, the actuarial
 1188 study must establish a uniform rate necessary to fund the
 1189 benefit obligations under both Florida Retirement System
 1190 retirement plans by dividing the sum of total dollars required
 1191 by the estimated gross compensation of members in both plans.

1192 Section 10. Section 121.735, Florida Statutes, is created
 1193 to read:

1194 121.735 Allocations for member line-of-duty death
 1195 benefits; percentage amounts.—

1196 (1) The allocations established in subsection (3) shall be

1197 used to provide line-of-duty death benefit coverage for the
 1198 surviving spouses and children of members in the investment plan
 1199 and shall be transferred monthly by the division from the
 1200 Florida Retirement System Contributions Clearing Trust Fund to
 1201 the survivor benefit account of the Florida Retirement System
 1202 Trust Fund.

1203 (2) Such allocations are stated as a percentage of each
 1204 investment plan member's gross compensation for the calendar
 1205 month. Any change in a contribution percentage is effective the
 1206 first day of the month for which retirement contributions may be
 1207 made on or after the beginning date of the change. Contribution
 1208 percentages may be modified by general law.

1209 (3) Effective July 1, 2016, allocations from the Florida
 1210 Retirement System Contributions Clearing Trust Fund to provide
 1211 line-of-duty death benefits for members in the investment plan
 1212 and to offset the costs of administering said coverage are as
 1213 follows:

<u>Membership Class</u>	<u>Percentage of</u> <u>Gross</u> <u>Compensation</u>
<u>Regular Class</u>	<u>0.06%</u>

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1219	<u>Special Risk Class</u>	<u>0.46%</u>
	<u>Special Risk</u>	
	<u>Administrative</u>	
1220	<u>Support Class</u>	<u>0.04%</u>
	<u>Elected Officers' Class-</u>	
	<u>Legislators, Governor,</u>	
	<u>Lt. Governor,</u>	
	<u>Cabinet Officers,</u>	
	<u>State Attorneys,</u>	
1221	<u>Public Defenders</u>	<u>0.17%</u>
	<u>Elected Officers' Class-</u>	
1222	<u>Justices, Judges</u>	<u>0.14%</u>
	<u>Elected Officers' Class-</u>	
1223	<u>County Elected Officers</u>	<u>0.23%</u>
1224	<u>Senior Management Service Class</u>	<u>0.06%</u>

1225 Section 11. Section 121.74, Florida Statutes, is amended
 1226 to read:

1227 121.74 Administrative and educational expenses.—In
 1228 addition to contributions required to fund member accounts under
 1229 s. ss. ~~121.71 and 121.73~~, effective July 1, 2010, through June

1230 30, 2014, employers participating in the Florida Retirement
 1231 System shall contribute an employer assessment amount equal to
 1232 0.03 percent of the payroll reported for each class or subclass
 1233 of Florida Retirement System membership. Effective July 1, 2014,
 1234 the employer assessment is 0.04 percent of the payroll reported
 1235 for each class or subclass of membership. The amount assessed
 1236 shall be transferred by the division ~~of Retirement~~ from the
 1237 Florida Retirement System Contributions Clearing Trust Fund to
 1238 the State Board of Administration's Administrative Trust Fund to
 1239 offset the costs of administering the investment plan and the
 1240 costs of providing educational services to members of the
 1241 Florida Retirement System. Approval of the trustees is required
 1242 before the expenditure of these funds. Payments for third-party
 1243 administrative or educational expenses shall be made only
 1244 pursuant to the terms of the approved contracts for such
 1245 services.

1246 Section 12. Section 121.75, Florida Statutes, is amended
 1247 to read:

1248 121.75 Allocation for pension plan.—After making the
 1249 transfers required pursuant to ss. 121.71, 121.72, 121.73,
 1250 121.735, and 121.74, the monthly balance of funds in the Florida
 1251 Retirement System Contributions Clearing Trust Fund shall be
 1252 transferred to the Florida Retirement System Trust Fund to pay
 1253 the costs of providing pension plan benefits and plan
 1254 administrative costs under the pension plan.

1255 Section 13. For the 2016-2017 fiscal year only, upon

1256 notification by the Department of Management Services that
 1257 sufficient funds are not available to make survivor benefit
 1258 payments authorized by this act, the State Board of
 1259 Administration shall transfer, to the extent necessary, moneys
 1260 in the Administrative Trust Fund to the survivor benefits
 1261 account in the Florida Retirement System Trust Fund to ensure
 1262 the timely payment of survivor benefits.

1263 Section 14. (1) In order to fund the benefit changes
 1264 provided in this act, the required employer contribution rates
 1265 for members of the Florida Retirement System established in s.
 1266 121.71(4), Florida Statutes, are adjusted as follows:

1267 (a) The Regular Class is increased by 0.01 percentage
 1268 point.

1269 (b) The Special Risk Class is increased by 0.07 percentage
 1270 point.

1271 (c) The Special Risk Administrative Support Class is
 1272 increased by 0.02 percentage point.

1273 (d) The Elected Officers' Class-Legislators, Governor, Lt.
 1274 Governor, Cabinet Officers, State Attorneys, Public Defenders is
 1275 increased by 0.05 percentage point.

1276 (e) The Elected Officers' Class-Justices, Judges is
 1277 increased by 0.02 percentage point.

1278 (f) The Elected Officers' Class-County Elected Officers is
 1279 increased by 0.07 percentage point.

1280 (g) The Senior Management Service Class is increased by
 1281 0.01 percentage point.

1282 (2) The adjustments provided in subsection (1) are in
 1283 addition to any other changes to such contributions rates that
 1284 may be enacted into law to take effect on July 1, 2016. The
 1285 Division of Law Revision and Information is directed to adjust
 1286 accordingly the contribution rates provided in s. 121.71,
 1287 Florida Statutes.

1288 Section 15. The Legislature finds that a proper and
 1289 legitimate state purpose is served when employees and retirees
 1290 of the state and its political subdivisions, and the dependents,
 1291 survivors, and beneficiaries of such employees and retirees, are
 1292 extended the basic protections afforded by governmental
 1293 retirement systems. These persons must be provided benefits that
 1294 are fair and adequate and that are managed, administered, and
 1295 funded in an actuarially sound manner, as required by s. 14,
 1296 Article X of the State Constitution and part VII of chapter 112,
 1297 Florida Statutes. Therefore, the Legislature determines and
 1298 declares that this act fulfills an important state interest.

1299 Section 16. For the 2016-17 fiscal year, the recurring
 1300 sums of \$4,249,000 from the General Revenue Fund and \$564,000
 1301 from trust funds are appropriated to Administered Funds in order
 1302 to fund the increased employer contribution rates to be paid
 1303 under this act by state agencies, state universities, state
 1304 colleges, and school districts.

1305 Section 17. This act shall take effect July 1, 2016.