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REPLY TO: TALLAHASSEE

MEMORANDUM

TO: Local Government Clients

FROM: Jim Linn, Glenn E. Thomas and Janice Rustin

DATE: March 17, 2020

RE: 2020 Retirement Legislation – Final Report

Although the 2020 Legislative Session has been extended through the end of this week to complete the budget, action on all other bills came to a close on March 13. All retirement legislation that passed this year concerned the Florida Retirement System. The FRS bills that passed, and all the other retirement legislation we have been tracking this year, are summarized below.

Copies of any bill can be viewed at the legislature's website: www.leg.state.fl.us. Please feel free to contact us if you have any questions.

Bills That Passed

SB 936 (Gainer) FRS Disability Retirement Benefits

Section 121.091(4)(c), Florida Statutes, requires proof that an FRS member is totally and permanently disabled before any disability retirement benefit will be paid under FRS. Valid proof includes, at a minimum, certification of disability by two physicians licensed in Florida. A member whose position requires the member to work full time outside of Florida may include certification by two licensed physicians of the state where the member works. This bill allows a member who is receiving care at a federal Veterans' Health Administration facility to provide a certification of disability by two licensed physicians working at that facility, regardless of where they are licensed.

SB 952 (Perry) FRS Senior Management Service Class

This bill makes participation in the FRS Senior Management Service Class compulsory for each appointed criminal conflict and civil regional counsel and each district's assistant regional counsel chiefs, administrative directors, and chief investigators, effective July 1, 2020. Senior Management Service Class members affected may purchase additional retirement credit in the

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class f or creditable service under Senior Management Service Class retroactive to October 1, 2007.

HB 5007 FRS Employer Contribution Rates (Senate Governmental Oversight and Accountability Committee)

HB 5007 contains the FRS employer contribution rates for the year beginning July 1, 2020. The contribution rates are intended to fund the full normal cost as well as the amortization payment for unfunded actuarial liabilities, as reflected in the July 1, 2019 actuarial valuation. The bill provides the following employer contribution rates:

FRS Membership Class	Current Rates Effective July 1, 2019			New Rates Effective July 1, 2020		
	Normal Cost	UAL Rate	Total	Normal Cost	UAL Rate	Total
Regular Class	3.19%	3.56%	6.75%	4.84%	3.44%	8.28%
Special Risk Class	12.53%	11.14%	23.67%	15.13%	7.60%	22.73%
Special Risk Administrative Support Class	3.61%	33.26%	36.87%	9.89%	24.23%	34.12%
Elected Officer's Class						
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.67%	47.64%	54.31%	8.38%	48.81%	57.19%
• Justices and Judges	12.30%	27.98%	40.28%	13.31%	24.70%	38.01%
• Local Officers	8.73%	38.37%	47.10%	10.07%	37.39%	47.46%
Senior Management Service Class	4.60%	19.09%	23.69%	6.39%	19.18%	25.57%
Deferred Retirement Option Program	4.68%	8.26%	12.94%	7.03%	8.29%	15.32%

Note: the above employer contribution rates do not include the FRS health insurance subsidy contribution (1.66%), which is not changed in the bill; or the 0.06% employer assessment for administrative and educational expenses. Also, the above employer contribution rates do not reflect the 3% member contribution.

Bills that Did Not Pass

HB 425 FRS Cost-of-Living Adjustment (Clemons, Willhite); SB 858 (Gruters)

FRS pension plan members who retired before July 1, 2011 are entitled to an annual 3% cost of living adjustment (COLA). The COLA provisions in FRS were revised in 2011. FRS pension plan members who retire on or after July 1, 2011 receive a reduced COLA, based on dividing their length of service before that date into their total years of service. So if a member had 15 years of credited service before July 1, 2011 and retires with a total of 30 years of service, their annual COLA would be 1.5% ($3\% \times 15/30 = 1.5\%$).

HB 425 would have changed the manner in which future COLAs are calculated for current FRS Special Risk members with service credit earned prior to July 1, 2011. Under this bill, FRS would have calculated the COLA factor for each such member by multiplying 3% by the quotient of the member's service credit earned before July 1, 2011, divided by the member's total service credit earned as of June 30, 2020.

The effect of the change would have been to freeze the COLA factor for members of the Special Risk Class under the FRS pension plan as of June 30, 2020. Members retiring on or after July 1, 2020 would have experienced no additional reduction in their applicable COLA factor after that date.

HB 721 Public Deposits (Roth); SB 990 (Hutson)

Chapters 175 and 185 require that all plan funds be deposited with either the plan sponsor or in a "qualified public depository" as defined in s. 280.02. The current definition includes banks, savings banks and savings associations. These bills would have amended the definition of "qualified public depository" to include credit unions insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

Florida Retirement System Special Risk Class Bills

Several bills were filed that would have included new employment classifications under the FRS Special Risk Class. Special Risk Class members earn benefits at a higher rate (3%) than Regular Class members (1.6%), and are eligible for normal (i.e., unreduced) retirement benefits at an earlier age (vested and age 60 or 30 years of service regardless of age) than Regular Class members (vested and age 65 or 33 years of service). Employer contribution rates are higher for Special Risk. Only one of the bills (Juvenile Justice Detention Officers) made any progress this session.

SB 1146 (Brandes); HB 1175 (Massullo) would have extended membership in the Special Risk Class to members employed by the Department of Juvenile Justice as a certified juvenile detention officer or certified juvenile detention officer supervisor, and have primary duties that include ensuring the custody and applying physical restraint when necessary, of detained juveniles. SB 1146 passed the Senate but the House version was not placed on a single committee agenda.

HB 785 (Rodriguez); SB 1630 (Flores) would have extended membership in the FRS Special Risk Class to members employed in water, sewer, or other public works departments, who perform duties under conditions where there is a clear and present safety or health hazard that poses an imminent risk to the life and safety of the member, such as working in confined spaces or working around toxic chemicals or wastewater.

SB 796 (Book); HB 937 (Aloupis) would have extended membership in the FRS Special Risk Class to members employed by the Florida State Hospital, Northeast Florida State Hospital, Sunland Center at Marianna and Chattahoochee, including the Developmental Disabilities Defendant Program, or North Florida Evaluation and Treatment Center, who spend at least 75% of their time performing duties that involve contact with patients or inmates.

SB 1178 (Montford) would have extended membership in the FRS Special Risk Class to members employed by the Florida State Hospital in one of 44 listed positions and spend at least 75% of their time performing duties that involve contact with patients or inmates.

HB 1033 (Raschein) would have extended membership in the Special Risk Class to members employed by a local government as a pilot or registered nurse and who perform their primary duties on an air ambulance service, as defined in s. 401.23, that is licensed under s. 401.251 and operated by the local government.

HB 811 Transfers in Divorce (Geller); SB 1306 (Thurston)

Section 222.21(2)(a), Florida Statutes, exempts any assets payable to a participant or beneficiary in a fund or account from all claims of creditors of the participant or beneficiary if the fund or account is exempt from taxation under sections 401(a), 403(a), 403(b), 408, 408A, 409, 414, 457(b), or 501(a) of the Internal Revenue Code. Under section 222.21(c) any such assets that are exempt from claims of creditors do not cease to be exempt by reason of a direct transfer or eligible rollover after the owner's death. HB 811 would have amended 222.21(c) to provide that an interest in any fund or account described in section 222.21(2)(a) that is received in a transfer incident to divorce also continues to be exempt from legal process after the transfer. This provision would have been made effective retroactive to transfers incident to divorce without regard to the date the transfer was made.

SB 992 Florida Retirement System Investment Plan (Brandes)

SB 992 would have made several changes related to employer and employee contributions, as well as account allocations, under the FRS Investment Plan. Currently under FRS, employees are enrolled in the pension plan at the commencement of employment and may elect to participate in either the pension plan or the investment plan within eight months. If a member who is not in the Special Risk Class fails to make an election during the eight-month period, he or she will be deemed to have elected the investment plan retroactive to the date of employment. Special Risk Class members are deemed to have elected the pension plan.

SB 992 clarified that if an employee defaults into the investment plan retroactively to the date of employment, the employee and employer begin paying employee and employer contributions at the applicable rate for investment plan members only after the default has occurred and not retroactively to the date of hire. The bill would also have allowed FRS investment plan members to make voluntary, after-tax employee contributions to their investment plan accounts, up to the maximum allowed by IRS rules.

Employee contribution rates to the investment plan are currently 3% of gross compensation. Beginning July 1, 2021, SB 992 would have increased member contribution rates for investment plan members initially enrolled before July 1, 2020 as follows:

FRS Membership Class	Rate Effective July 1, 2021	Rate Effective July 1, 2022	Rate Effective July 1, 2023	Rate Effective July 1, 2024
Regular Class	5%	5%	5%	5%
Special Risk Class	3.5%	4%	4.5%	5%
Special Risk Administrative Support Class	3.5%	4%	4.5%	5%
Elected Officer's Class				
<ul style="list-style-type: none"> • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • Local Officers 	3.5%	4%	4.5%	5%
Senior Management Service Class	3.5%	4%	4.5%	5%

The required employee contribution for members initially enrolled in the FRS investment plan on or after July 1, 2020, would have been 5% for all membership classes under the investment plan. Monthly employee and employer contributions to the FRS investment plan are deposited into the Florida Retirement System Contributions Clearing Trust Fund. Allocations from the Contributions Clearing Trust Fund are transferred monthly by the Division of Retirement to a third-party administrator for deposit in each employee's individual investment plan account based on the membership class of the participant. The allocation amounts are stated as a percentage of the member's gross compensation. Current allocations from the FRS Contributions Clearing Trust Fund to member accounts are as shown below (effective since July 1, 2012).

FRS Membership Class	Percentage of Gross Compensation
Regular Class	6.3%
Special Risk Class	14%
Special Risk Administrative Support Class	7.95%
Elected Officer's Class <ul style="list-style-type: none"> • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • Local Officers 	9.38%
	13.23%
	11.34%
Senior Management Service Class	7.67%

SB 992 would have incrementally increased allocations to investment plan accounts. The chart below illustrates the allocations from the FRS Contributions Clearing Trust Fund to investment plan accounts proposed under SB 992 for members who are initially enrolled in the FRS Investment Plan before July 1, 2020. The proposed allocations to investment plan accounts for members initially enrolled on or after July 1, 2020, would have been equal to the July 1, 2024 allocation rates.

FRS Membership Class	Effective July 1, 2021	Effective July 1, 2022	Effective July 1, 2023	Effective July 1, 2024
Regular Class	10.30%	10.30%	10.30%	10.30%
Special Risk Class	15.00%	16.00%	17.00%	18.00%
Special Risk Administrative Support Class	8.95%	9.95%	10.95%	11.95%
Elected Officer's Class <ul style="list-style-type: none"> • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • Local Officers 	10.38%	11.38%	12.38%	13.38%
	14.23%	15.23%	16.23%	17.23%
	12.34%	13.34%	14.34%	15.34%
Senior Management Service Class	8.67%	9.67%	10.67%	11.67%

In order to fund the increased allocations to investment plan member accounts under SB 992, required employer contribution rates would have increased by an undetermined amount. Currently, employer contribution rates are the same for FRS pension plan and investment plan members: 8.47% of compensation for Regular Class members and 25.48% of compensation for Special Risk Class members. Under SB 992, employer contributions to the investment plan would have likely increased by about 2%.

Finally, the bill would have required the State Board of Administration to prepare a report that examines the adequacy and use of current annuity options available to members of the investment plan. The report would have recommended strategies on how to further increase access to income annuity options and any additional options for guaranteed lifetime income which would assist in providing greater retirement security for investment plan retirees. It required the SBA to propose any legislative changes that are necessary to implement any of the recommendations outlined in its report, to the SBA trustees, the President of the Senate, and the Speaker of the House of Representatives.

HB 1331 (Roach); SB 760 (Brandes) Municipal Service Taxing Units – Participation in Chapter 175 Premium Tax Revenue Sharing Program

Under Section 125.01(1)(q), Florida Statutes, counties have the power to establish, merge or abolish municipal service taxing units (MSTUs) to provide essential facilities and municipal services to a fixed geographic area within the county. The MSTU provides counties with an additional tool to fund services within all or a portion of the unincorporated areas of the county by way of a levy of ad valorem taxes. The boundaries of a MSTU may also include all or part of the boundaries of a municipality, subject to the consent of the affected municipality. This grant of authority includes the power to levy additional taxes within the limits of the MSTU for a municipal purpose, including but not limited to fire protection and law enforcement.

While an MSTU can provide fire services (and law enforcement services), Chapter 175, Florida Statutes, does not address MSTUs for purposes of premium tax distribution.

Section 175.041(3) states:

The provisions of this chapter shall apply only to municipalities organized and established pursuant to the laws of the state and to special fire control districts. This chapter and said provisions shall not apply to the unincorporated areas of any county or counties except with respect to special fire control districts that include unincorporated areas.

Based on the above language, the current provisions of Chapter 175 do not apply to unincorporated areas of a county unless they are included within the boundaries of a special fire control district.

HB 1331 would have amended Chapter 175 to include municipal service taxing units in the local government entities covered under the Chapter. The bill also would have amended Chapter 175 to include plans covering both police officers and firefighters who are providing services within an MSTU. The change would make pension plans covering police officers and firefighters who

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perform services in an MSTU eligible for Chapter 175 premium tax revenues collected within the boundaries of the MSTU. The bill also amends section 633.422, to include MSTUs in distributions from the Firefighters' Supplemental Compensation Trust Fund.

SB 1734 Reemployment after Retirement of Instructional Personnel (Taddeo)

Under current law, if an FRS retiree is employed by any FRS employer within six calendar months following retirement, termination of employment will be deemed not to have occurred and the member's retirement is voided. All benefits received must be paid back to FRS.

SB 1734 created a narrow exception, effective January 1, 2021, under which an FRS retiree may be reemployed as instructional personnel with an FRS employer on a probationary contractual basis after he or she has been retired or terminated from Deferred Retirement Option Program participation for one calendar month. Retirement benefits would be suspended for the second calendar month through the 12th calendar month immediately following retirement or termination from DROP.

If you have any questions on a bill, please let us know.