

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

CAROL MCBRIDE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2010-1976
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
_____	)	

**FINAL ORDER**

On July 25, 2011, the presiding officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Carol McBride, and upon counsel for the Respondent. Both Petitioner and Respondent filed a Proposed Recommended Order. Neither party filed exceptions, which were due on August 9, 2011. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

**ORDERED**


The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner’s request she be allowed to transfer from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan without paying the statutorily-required “buy-back” amount, hereby is denied.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal

pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 17<sup>th</sup> day of August, 2011, in Tallahassee, Florida.

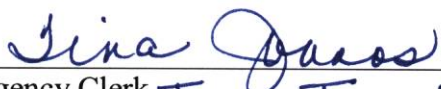
**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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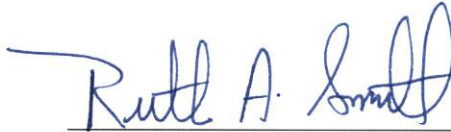
Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.

  
Agency Clerk TINA JOANOS

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Carol McBride, pro se, [REDACTED], and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 17<sup>th</sup> day of August, 2011.



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Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

CAROL MCBRIDE,

Petitioner,

vs.

Case No.: 2010-1976

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on April 29, 2011 in Tallahassee, Florida.

**APPEARANCES**

For Petitioner:

Carol McBride, Pro Se  


For Respondent:

Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

GENERAL COUNSEL'S OFFICE

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STATE BOARD OF ADMIN

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner should be allowed to transfer from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan without paying the buy-in required by statute.

**EXHIBIT A**

## **PRELIMINARY STATEMENT**

Petitioner submitted a request for intervention to the SBA on December 9, 2010, asking that she be allowed to transfer from the Investment Plan to the Pension Plan without paying the buy-in required by statute, stating that she had never been informed that a buy-in might be required. That request was denied, and Petitioner was provided a copy of a transcript of a March 9, 2005 call she made to the MyFRS Financial Guidance Line. Petitioner then filed a Petition for Hearing requesting the same relief, in which she recognized that she was informed about a possible buy-in, but stated that the example given was misleading. This administrative proceeding followed.

Petitioner attended the hearing by telephone and testified on her own behalf. Petitioner's exhibits 1, 2, 2A, 3, 4, 5, 5A and 6 were received in evidence. Respondent presented the testimony of Petitioner and Daniel Beard, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-5 were received in evidence.

A transcript of the hearing was filed with the agency and provided to the parties, who were given thirty days to submit proposed recommended orders. Both Petitioner and Respondent submitted proposed recommended orders.

## **UNDISPUTED MATERIAL FACTS**

1. Petitioner was hired by the Florida Department of Health on October 22, 2004. She was given a deadline of April 29, 2005 to elect membership in either the FRS Pension Plan or Investment Plan.
2. On March 9, 2005, Petitioner called the MyFRS Financial Guidance Line and elected membership in the Investment Plan. During this call, and before she elected membership



in the Investment Plan, Petitioner was told that if she later used her second election to transfer to the Pension Plan, she would have to pay any difference between the value of her Investment Plan account and the amount of the Pension Plan buy-in.

3. During this call, the following exchange occurred between Petitioner and a MyFRS Financial Guidance Line representative regarding some of the advantages and disadvantages of membership in the Pension Plan compared to the Investment Plan:

**FRS Representative:** Well, no – I mean, you’re selecting on what plan you want to go with right now, but you understood the risk, you know, switching, and the Pension Plan is that, if you leave before six years, there would be no benefit for you.

**Ms. McBride:** Right, so it makes no sense to go that way. It makes sense to go Investment. If you’re still here in six years, then you still have the option to switch over.

**FRS Representative:** That’s correct, but just understand one thing. Six years down the road when you’re considering getting back into the Pension Plan, you’re actually doing what is called a Pension Plan buy-back, which is where – let’s say you have, you know, \$20,000 in your Investment Plan account.

**Ms. McBride:** Okay.

**FRS Representative:** And let’s say at that time the Division of Retirement calculates it would cost you, let’s say, \$21,000 to buy back into the Pension Plan.

**Ms. McBride:** So I would owe that thousand dollars?

**FRS Representative:** Well, if you wanted to actually get back into the Pension Plan, you would have to come up with that difference on your own.

**Ms. McBride:** Okay.

**FRS Representative:** Depending on how your salary goes and depending on how your investments go will determine whether or not it will cost you money to buy back in down the road.

**Ms. McBride:** Oh, okay. Well, that's something they don't tell you, or if they do tell you, they put it in a bunch of fine print that nobody reads.

**FRS Representative:** That's why I'm here to tell you.

**Ms. McBride:** Yeah. Thank you.

**FRS Representative:** But just understand that it can go either way depending on how your salary and investments go.

**Ms. McBride:** Okay. No –

**FRS Representative:** But it's not just like a magic wand and you just don't get back in the Pension Plan.

**Ms. McBride:** Okay. Well, that was good to know.

4. In 2010, Petitioner passed the six year mark in her FRS-covered employment. After contacting the MyFRS Guidance Line to inquire about using her one-time election to switch from the Investment Plan to the Pension Plan, she learned that approximately [REDACTED] would be required for her to make this switch.

#### CONCLUSIONS OF LAW

5. Section 121.4501(4)(e)2, Florida Statutes states:

If the employee chooses to move to the defined benefit program [the Pension Plan], the employee must transfer from his or her optional retirement program [the Investment Plan] account and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the defined benefit program and service in the optional retirement program [Investment Plan]. Benefit commencement occurs on the first date the employee would become eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System defined benefit plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the defined benefit plan, the then-present value of such accrued benefit

shall be deemed part of the required transfer amount described in this subparagraph. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

6. Petitioner was advised during her March 9, 2005 call to the MyFRS Financial Guidance Line that there could be a cost associated with her transfer to the Pension Plan. Petitioner asserts that the fact that she was given an example of a \$1,000 buy-in misled her into believing the buy-in would be lower than the [REDACTED] now required.

7. Petitioner was explicitly warned during this same call: "just understand that [the buy-in] can go either way depending on how your salary and investments go."

8. Respondent SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

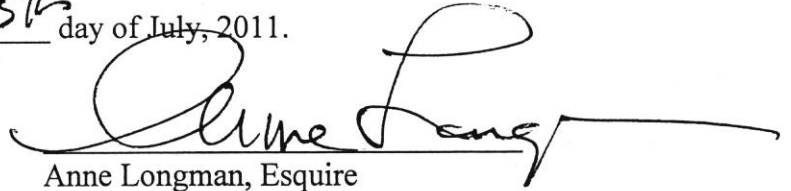
9. It is understandable that after making her initial election almost six years ago, Petitioner would not have remembered having been told about a possible buy-in or would have inferred that it would be minimal. There is nothing in the material undisputed facts of this case, however, that points to Petitioner having been misled about what would be required to switch from the Pension Plan to the Investment Plan. It is unfortunate that she apparently assumed that her Investment Plan account would generally keep pace with the required buy-in amount, but she was, in fact, advised otherwise, and the SBA has no statutory authority to waive the buy-in requirement imposed by Section 121.4501(4)(e)2., Florida Statutes.



**RECOMMENDATION**

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2011.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
P.O. Box 16098  
Tallahassee, FL 32317

**NOTICE: THIS IS NOT A FINAL ORDER**

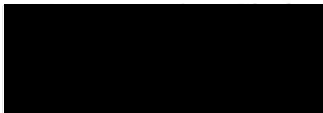
All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order, which must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

8/9/11

Filed with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
(850) 488-4406

This 25<sup>th</sup> day of July, 2011.

Copies furnished to:  
Carol McBride



Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095



Attorney