

**STORAGE NAME:** h2099.go  
**DATE:** March 22, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
ANALYSIS**

**BILL #:** HB 2099 (PCB GO 00-03)  
**RELATING TO:** DMS/Retirement Rulemaking Authority  
**SPONSOR(S):** Committee on Governmental Operations and Representative Posey  
**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

Section 120.536, F.S., establishes that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. As a result, state agencies are required to review the statutory authority they have for rulemaking and determine if sufficient authority exists for their rules or proposed rules.

For any rules or proposed rules that may be lacking in this authority, the Legislature shall, at the 2000 Regular Legislative Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

This bill amends those sections of the Florida Statutes where a portion of the rule may exceed statutory authority permitted as determined by the Department of Management Services and the Division of Retirement. This rule authorizing bill seeks to correct any deficiencies noted by establishing specific authority in statute. **Please see Section II C., Effect of Proposed Changes, for details.**

It is not anticipated that this legislation will have a financial impact beyond current appropriated funds.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The rules determined to be lacking in specific statutory authority for the Division of Retirement and the Department of Management Services are found in Chapters 60-S and 60-B, of the Florida Administrative Code, respectively. This bill will bring these entities into compliance with the requirements of s. 120.536, F.S.

C. EFFECT OF PROPOSED CHANGES:

Section 1. Adds s. 112.362(7), F.S., providing a member, or a joint annuitant or other beneficiary, who is receiving a monthly benefit may refuse the application of the minimum benefit adjustment to such benefit.

Section 2. Amends s. 121.021(54), F.S., and adds s. 121.021(55) through (61), F.S., clarifying "Work year" as the period of time an employee is required to work during the plan year to receive a full year of retirement credit; and defines the following terms:

"Benefit" means any payment, lump-sum or periodic, to a member, retiree, or beneficiary, based partially or entirely on employer contributions;

"Calendar month" means one of the 12 divisions of a year as determined by the Gregorian calendar (e.g., January, April, etc.);

"Calendar year" means a period of time beginning January 1 and ending on the following December 31;

"Leave of absence" means a leave of absence from employment under the Florida Retirement System, subsequent to November 30, 1970, for which retirement credit may be received in accordance with s. 121.121, F.S.;

"Payee" means a retiree or beneficiary of a retiree who is receiving a retirement benefit payment;

“Retiree” means a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member. This term also includes a person who retired and is receiving benefits under s. 112.05, F.S.; and

“Signature” means the name or mark of a person as written by that person. When an “x” is used as a signature on a document, the document must include the printed names, signatures, and addresses of two persons who witnessed the signing, or the document must be notarized.

- Section 3. Amends ss. 121.051(2)(b), (f), and (4), F.S., establishing provisions for the submission of documents necessary for application of a municipality or special district to participate in the Florida Retirement System; providing for retention of membership in the Florida Retirement System when a member’s employing unit is transferred, merged, or consolidated with a unit that does not participate in the system; and providing for requiring employee information upon enrollment in the system.
- Section 4. Amends ss. 121.0515(2)(c), (5)(a), and (7)(b), F.S., providing a definition of correctional officer, superintendent, and assistant superintendent as defined by rule; providing a member may purchase special risk credit for transfer, merger, or consolidation as provided in s. 121.081(1)(f), F.S.; and providing for retention of special risk normal retirement date if a member was removed from the Special Risk Class effective October 1, 1978, due to a change in special risk criteria as a result of the enactment of chapter 78-308, L.O.F., or was reassigned or employed for training and/or career development or to fill a critical agency need.
- Section 5. Amends s. 121.081(2), F.S., providing that if a member does not wish to claim credit for all of his or her prior service, the service the member claims must be the most recent period of service and providing in which class the member will receive credit under various scenarios.
- Section 6. Creates s. 121.085, F.S., providing that the department shall adopt rules establishing procedures for the submission of evidence or information necessary to establish a member’s claim for creditable service; and providing that no creditable service, which remained unclaimed at retirement, may be claimed or purchased after a retirement benefit payment has been cashed or deposited.
- Section 7. Amends s. 121.091(5), F.S., and adds s. 121.091(8)(c), and (14)(e) and (f), F.S., providing a member whose employment is terminated prior to retirement retains membership rights to previously earned member-noncontributory service credit, and to member-contributory service credit, if the member leaves the member contributions on deposit in his or her retirement account; providing if a terminated member receives a refund of member contributions, such member may reinstate membership rights to the previously earned service credit represented by the refund by completing 1 year of creditable service and repaying the refunded member contributions, plus interest; providing that benefits shall not be paid by the division pending final resolution of charges against a member or beneficiary if the resolution of such charges could require the forfeiture of benefits as provided in statute; providing for payment of

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benefits directly to a beneficiary if such person is no longer a minor or incapacitated; providing that no benefit may be reduced for the purpose of preserving the member's eligibility for a federal program; and providing the division shall adopt rules establishing procedures for determining that the persons to whom benefits are being paid are still living and shall suspend benefits when it is unable to contact such payee and to confirm that he or she is still living.

Section 8. Amends s. 121.121, F.S., providing a member may purchase creditable service for up to 2 work years of authorized leaves of absence, including any leaves of absence covered under the Family Medical Leave Act if certain criteria are met.

Section 9. Amends ss. 287.16(2) and (6), F.S., adding "watercraft" to the currently authorized aircraft and motor vehicles for which the Department of Management Services has responsibility for the acquisition, operation, maintenance, repair, replacement, and disposal of same.

Section 10. Providing legislative intent that the amendments to the enumerated sections of the Florida Statutes specified in this bill are intended to be supplemental to other amendments to said sections which may be enacted at the 2000 Regular Session of the Legislature, unless a contrary intent is specifically indicated.

Section 11. Provides an effective date of July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

**Please see Section II.C, above, Effects of Proposed Changes.**

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Any costs of promulgating rules will be absorbed within existing appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill establishes rulemaking authority to comply with s. 120.536, F.S.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

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Jimmy O. Helms

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