



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – This bill limits the reemployment options of Florida Retirement System retirees.

### B. EFFECT OF PROPOSED CHANGES:

#### Florida Retirement System

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>1</sup>

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 158 cities and 192 independent special districts that have elected to join the system.<sup>2</sup>

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over 600,000 active members and over 252,000 retirees and surviving beneficiaries, and over 31,000 Deferred Retirement Option Program participants.<sup>3</sup> Members of the FRS belong to one of five membership classes:

|   |                 |                                  |
|---|-----------------|----------------------------------|
| 1. Regular Class <sup>4</sup>                             | 583,213 members | 87.73% of membership             |
| 2. Special Risk Class <sup>5</sup>                        | 72,078 members  | 10.84% of membership             |
| 3. Special Risk Administrative Support Class <sup>6</sup> | 74 members      | 0.01% of membership              |
| 4. Elected Officers' Class <sup>7</sup>                   | 2,195 members   | 0.33% of membership              |
| 5. Senior Management Service Class <sup>8</sup>           | 7,259 members   | 1.09% of membership <sup>9</sup> |

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.<sup>10</sup>

#### Reemployment of Retirees

Section 121.091, F.S., governs the payment of benefits under the FRS. This section requires a member of the FRS to terminate employment or begin participation in the Deferred Retirement Option Program in order to receive benefits. Termination occurs when a member ceases all employment relationships with his or her FRS employers.<sup>11</sup> Termination is void if a member is reemployed by any FRS-participating employer within the next calendar month.<sup>12</sup>

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<sup>1</sup> Section 121.025, F.S.

<sup>2</sup> FL Dept. of Mgmt. Svcs., Florida Division of Retirement Main Page (visited Feb. 12, 2007) <www.frs.state.fl.us>

<sup>3</sup> *Id.*

<sup>4</sup> Section 121.021(12), F.S.

<sup>5</sup> Section 121.0515, F.S.

<sup>6</sup> Section 121.0515(7), F.S.

<sup>7</sup> Section 121.052, F.S.

<sup>8</sup> Section 121.055, F.S.

<sup>9</sup> FL Dept. of Mgmt Svc, HB 861 (2007) Substantive Bill Analysis at 3. (March 12, 2007) (on file with dept. and the Committee on State Affairs) [hereafter referred to as DMS Analysis]

<sup>10</sup> See, e.g., s. 121.055(3)(a)1., F.S.

<sup>11</sup> Section 121.021(39)(a), F.S.

<sup>12</sup> *Id.*

Section 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and allows those retirees to continue receiving retirement benefits. Yet, retirees reemployed by and receiving a salary from an FRS employer must wait a period of 12 months, after which time they may receive both their retirement benefit and salary from reemployment with the FRS employer.<sup>13</sup>

There are several exceptions to reemployment limitations that allow a person who has retired to receive both a salary from reemployment with an FRS employer and retirement benefits in the period between months two and 12 after the date of retirement. These provisions limit the types of positions and the number of hours that a retired FRS member may work.<sup>14</sup> Currently, there are no restrictions on the types of positions or the number of hours that a retired FRS member may work with an FRS employer after the 12 month period.

### Proposed Changes

This bill revises the reemployment provisions for FRS retirees. It prohibits the reemployment of a member by the same FRS employer from which that member retired, for the 12 months immediately subsequent to the date of retirement. Any person who violates this provision voids his or her retirement benefits. In addition, any person or FRS employer who knowingly violates this prohibition is jointly and severally liable for reimbursements to the FRS Trust Fund for any benefits improperly paid during the reemployment limitation period. Further, a member of the FRS Public Employee Optional Retirement Program who violates these rehire provisions is deemed to have received an invalid distribution.

Exceptions to the reemployment limitations include:

- An FRS retiree who is elected or appointed to an elective office by the Governor.
- A retired justice or judge on temporary assignment to active judicial service pursuant to Article V of the State Constitution after being retired for one calendar month.<sup>15</sup>
- District School Boards - Retirees may be reemployed without limitation as a classroom teacher on an annual contractual basis or as a noncontractual substitute or hourly teacher without limitation. Additionally, noncontractual employment is allowed without further limitation for an FRS retiree only who is hired as an education paraprofessional, a transportation aide, a bus driver, or a food service worker.<sup>16</sup>
- Florida School for the Deaf and the Blind - Retirees may be reemployed on an annual contractual basis as a classroom teacher or a substitute or hourly teacher on a noncontractual basis, without limitation.<sup>17</sup>
- Charter Schools - Retirees may be reemployed as a classroom teacher on an annual contractual basis or as a substitute or hourly teacher on a noncontractual basis, without limitation.<sup>18</sup>
- Developmental Research Schools (University Lab Schools) - Retirees may be reemployed on an annual contractual basis as a classroom teacher or as a substitute or hourly teacher on a noncontractual basis, without limitation.<sup>19</sup>
- Community Colleges - Retirees may be reemployed as a part-time, noncontractual adjunct instructor or may be employed as a phased retirement program participant for up to 780 hours.<sup>20</sup>
- Universities - Retirees may be reemployed as an adjunct faculty member or a phased retirement program participant with the State University System for up to 780 hours.<sup>21</sup>

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<sup>13</sup> Section 121.091(9), F.S.

<sup>14</sup> See, e.g., s. 121.091(9)(b)3., 4., 5., 6., and 11., F.S.

<sup>15</sup> Such justices or judges are not eligible for renewed membership.

<sup>16</sup> Section 121.091(9)(b)3., F.S.

<sup>17</sup> Section 121.093(1), F.S.; A substitute residential instructor and a substitute nurse are included in the category of noncontractual substitute or hourly teacher.

<sup>18</sup> Section 121.094, F.S.

<sup>19</sup> Section 121.093(2), F.S.

<sup>20</sup> Section 121.091(9)(b)4., F.S.

- Firefighters or paramedics - Retirees may be reemployed as a firefighter or paramedic serving in a temporary or regularly established position for up to 780 hours.<sup>22</sup>

The bill amends the definition of “termination” to reflect the prohibitions provided by the bill.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., redefining the term “termination.”

Section 2 amends s. 121.091, F.S., limiting the terms of reemployment for members of the FRS, with exceptions.

Section 3 amends s. 121.591, F.S., limiting the terms of reemployment for members of the FRS Public Employee Optional Retirement Program.

Section 4 provides an effective date of July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Members of the FRS who violate the reemployment provisions found in the bill would lose their retirement benefit. As such, the FRS Trust Fund could see an increase in funds.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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<sup>21</sup> Section 121.091(9)(b)5., F.S.

<sup>22</sup> Section 121.091(9)(b)11., F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Management Services

According to the Department of Management Services:

- This bill could help to eliminate the appearance of impropriety which occurs when retirees are rehired by the employer they retired from very soon after retiring. In some cases this could encourage the opportunity for advancement of other employees.
- This bill could limit employer access to experienced employees due to the potential fiscal impact to the employee. Also, there is no exception for critical need. This could encourage further expansion of reemployment exceptions that could be expected from this provision in the future.<sup>23</sup>

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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<sup>23</sup> DMS Analysis at 2.