

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

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 (Division).¹

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 164 cities and 209 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over 680,000 active members,³ 264,000 retirees and surviving beneficiaries,⁴ and 31,000 Deferred Retirement Option Program participants.⁵ Members of the FRS belong to one of five membership classes:

1. Regular Class ⁶	588,204 members	86.46% of membership
2. Special Risk Class ⁷	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class ⁸	74 members	0.01% of membership
4. Elected Officers' Class ⁹	2,078 members	0.31% of membership
5. Senior Management Service Class ¹⁰	7,562 members	1.11% of membership ¹¹

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.¹²

REEMPLOYMENT OF RETIREES

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 the Deferred Retirement Option Program (DROP) to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with his or her FRS

¹ Section 121.025, F.S.

² Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs) [hereafter referred to as FRS Annual Report].

³ *Id.* at 43.

⁴ *Id.* at 52.

⁵ *Id.* at 49.

⁶ Section 121.021(12), F.S.

⁷ Section 121.0515, F.S.

⁸ Section 121.0515(7), F.S.

⁹ Section 121.052, F.S.

¹⁰ Section 121.055, F.S.

¹¹ FRS Annual Report at 43.

¹² *See, e.g.*, s. 121.055(3)(a)1., F.S.

employer.¹³ Termination is void if any FRS-participating employer reemploys a member within the next calendar month.¹⁴

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. 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. There are no restrictions on the types of positions or the number of hours a retired FRS member may work with an FRS employer after the 12-month period.

There are several exceptions to the reemployment limitation 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 a retired FRS member may work. These include the positions of firefighters or paramedics,¹⁵ and certain positions employed by district school boards,¹⁶ community college boards of trustees,¹⁷ the state university system,¹⁸ the Board of Trustees of the Florida School for the Deaf and the Blind,¹⁹ developmental research schools,²⁰ and charter schools.²¹

Retirees who become members of the Elected Officers' Class, by virtue of an election or appointment to an elective office covered by the Elected Officers' Class, may continue to receive retirement benefits as well as compensation for the elected officer service for as long as they remain in the elected position covered by that class.²²

RENEWED MEMBERSHIP

FRS retirees and retirees of other state-administered retirement programs who are reemployed in FRS-covered employment renew their membership in the FRS and earn service credit toward a "second-career" retirement benefit. They qualify for such benefit upon vesting again. Renewed members may elect to participate in either the FRS Investment Plan or FRS Pension Plan.

Renewed members are ineligible:

- To participate in DROP;
- For membership in the Special Risk Class; and
- For disability benefits.²³

As of June 30, 2007, there were 8,089 renewed members in the FRS, 180 of which were renewed members in the Elected Officers' Class.²⁴

PROPOSED CHANGES

This bill revises the definition of "termination" by extending the prohibition on retiree reemployment with an FRS employer from one calendar month to 12 calendar months. The bill also extends the period under which a retiree reemployed by any FRS employer may not collect both a salary and retirement

¹³ Section 121.021(39)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 121.091(9)(b)11., F.S.

¹⁶ Section 121.091(9)(b)3., F.S.

¹⁷ Section 121.091(9)(b)4., F.S.

¹⁸ Section 121.091(9)(b)5., F.S.

¹⁹ Section 121.091(9)(b)6., F.S.

²⁰ Section 121.093, F.S.

²¹ Section 121.094, F.S.

²² Section 121.053(1)(b)1., F.S.

²³ The surviving spouse or dependent children of a renewed member may qualify for survivor benefits.

²⁴ Department of Management Services HB1405 (2008) Substantive Bill Analysis (Mar. 25, 2008) at 5 (on file with the Government Efficiency & Accountability Council).

benefits from months two through 12 after retirement to months 13 through 24. It removes the reemployment limitation exceptions for elected officers and firefighters and paramedics.

The bill also requires the Division to suspend retirement benefits for retirees earning \$100,000 or more from reemployment with an FRS employer. This provision requires the employer to notify the Division when this occurs, either upon employment at such a salary level or when salary increases lead to the \$100,000 threshold. Any person employed and receiving retirement benefits in violation of this limitation or any agency that knowingly employs or appoints such a person without notifying the Division is jointly and severally liable for reimbursement to the retirement trust fund of any such benefits paid during the limitation period.

The bill eliminates renewed membership in the FRS. Thus, precluding retirees reemployed with an FRS employer from accruing a second retirement benefit. The bill, however, grandfathers in those who are renewed members at the time of the bill's effective date.

Section 61.1301, F.S., addresses orders of income deduction for alimony and child support. For purposes of this section, retirement benefits are included in the definition of "income."²⁵ This bill grants the Division specific authority to deduct payments from a member's benefit and make such payments directly to an alternate payee pursuant to a qualified domestic relations order.²⁶

The bill also colocates provisions relating to the reemployment of instructional personnel employed by developmental research schools, charter schools, and the Florida School for the Deaf and the Blind. It repeals obsolete provisions relating to the study of interstate portability of retirement benefits, and makes clarifying changes to DROP provisions.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to redefine the term "termination."

Section 2 amends s. 121.053, F.S., to revise provisions relating to participation in the Elected Officers' Class.

Section 3 amends s. 121.055, F.S., to revise provisions relating to participation in the Senior Management Service Class.

Section 4 amends s. 121.091, F.S., to revise provisions relating to benefits payable under the FRS.

Section 5 repeals ss. 121.093 and 121.094, F.S., relating to the reemployment of certain instructional personnel.

Section 6 amends s. 121.122, F.S., to provide that certain persons are ineligible for renewed membership in the Florida Retirement System.

Section 7 amends s. 121.35, F.S., to provide a cross-reference.

Section 8 repeals s. 121.45, F.S., relating to interstate compacts for pension portability.

Section 9 amends s. 121.4501, F.S., to revise the definition of the term "eligible employee" for purposes of the Public Employee Optional Retirement Program.

²⁵ Section 61.046(8), F.S., defines "income" as "any form of payment to an individual, regardless of source, including, but not limited to: wages, salary commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government."

²⁶ 26 U.S.C. s. 414(p)(A) defines "qualified domestic relations order," in part, as a "domestic relations order which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan..."

Section 10 amends s. 121.591, F.S., to provide a cross-reference.

Section 11 provides an effective date of January 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

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:

According to the Division of Retirement, this bill will produce cost savings in two areas: For those reemployed retirees who initially are enrolled on or after January 1, 2009, their employers will no longer pay the normal cost funding of future FRS benefits for these individuals. The amount of this savings will grow over time as future retirees of state-administered retirement systems return to work with covered employers. Secondly, for the overall funding of the FRS, this change will limit future actuarial liabilities since retirees initially reemployed on and after January 1, 2009 will no longer accrue future benefit rights. This change will help to contain future FRS cost to taxpayers.²⁷

The Division also stated this bill might necessitate a significant amount of reprogramming to implement the changes to termination and reemployment exceptions, and to monitor new requirements for post-retirement benefit limitations tied to a reemployed retiree's salary of \$100,000 or more per employer. There is an estimate of one additional senior benefit technician position in the Division's Bureau of Enrollment & Contributions for the additional work required for enrollment changes of reemployed retirees and additional employer reporting to monitor post-employment earnings. The Division places the cost for this position, including salary and benefits, at \$39,615.²⁸ Reprogramming costs are covered under the Division's information technology contract with BearingPoint.²⁹

²⁷ E-mail from the Division of Retirement (Apr. 15, 2008) (on file with the Government Efficiency & Accountability Council).

²⁸ *Id.*

²⁹ E-mail from the Division of Retirement (Apr. 21, 2008) (on file with the Government Efficiency & Accountability Council).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

2. Other:

Article X, s. 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.³⁰

This bill does not provide any increase in benefits to members; therefore, this bill appears to satisfy the requirements of Article X, s. 14 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 16, 2008, the Government Efficiency & Accountability Council adopted a strike-all amendment and reported the bill favorably as a Council Substitute.

The bill revised reemployment provisions for FRS retirees elected or appointed to an elective public office. It prohibited those retired members from collecting both a retirement benefit and compensation for the elective office.

The amendment:

- Revises the definition of the term "termination" by extending from one month to 12 months the prohibition on FRS employers rehiring FRS retirees immediately following retirement.
- Extends the reemployment limitation period, which prohibits most retirees from collecting both a retirement benefit and a salary from an FRS employer. The limitation is changed from months two through 12 to months 13 through 24, after retirement.
- Requires the suspension of an FRS retiree's retirement benefit if that retiree is rehired by an FRS employer and is earning a yearly income of \$100,000 or more.
- Removes reemployment limitation exceptions that are not specific to educational institutions.
- Eliminates renewed membership in the FRS, but grandfathers in those members who are deemed renewed members before the effective date.

³⁰ Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of Article X, s. 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in part by public funds.

- Authorizes the Division to deduct payments from a member's benefit and make such payments directly to an alternate payee pursuant to a qualified domestic relations order.
- Colocates provisions relating to the reemployment of instructional personnel employed by developmental research schools, charter schools, and the Florida School for the Deaf and the Blind.
- Repeals obsolete provisions relating to the study of interstate portability of retirement benefits.
- Makes clarifying changes to provisions relating to the DROP.