

By Senator Posey

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See HB

1 A bill to be entitled

2 An act relating to reemployment after

3 retirement; amending s. 121.021, F.S.;

4 redefining the term "termination"; providing

5 that termination has not occurred if a member

6 was employed in violation of certain rehire

7 provisions; amending s. 121.091, F.S.; limiting

8 terms of reemployment for certain members;

9 providing certain exceptions; providing for

10 joint and several liability for violation of

11 reemployment provisions; amending s. 121.591,

12 F.S.; providing that the violation of certain

13 rehire provisions shall be deemed an invalid

14 distribution; providing an effective date.

16 Be It Enacted by the Legislature of the State of Florida:

18 Section 1. Subsection (39) of section 121.021, Florida Statutes, is amended to read:

20 121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

23 (39)(a) "Termination" occurs, except as provided in

24 paragraph (b), when a member ceases all employment

25 relationships with employers under this system, as defined in

26 subsection (10), but in the event a member should be employed

27 by any such employer within the next calendar month, or in

28 violation of the rehire provisions provided for in s.

29 121.091(9)(b)1.b., termination shall be deemed not to have

30 occurred. A leave of absence shall constitute a continuation

31 of the employment relationship, except that a leave of absence

1 without pay due to disability may constitute termination for a
2 member, if such member makes application for and is approved
3 for disability retirement in accordance with s. 121.091(4).
4 The department or board may require other evidence of
5 termination as it deems necessary.

6 (b) "Termination" for a member electing to participate
7 under the Deferred Retirement Option Program occurs when the
8 Deferred Retirement Option Program participant ceases all
9 employment relationships with employers under this system in
10 accordance with s. 121.091(13), but in the event the Deferred
11 Retirement Option Program participant should be employed by
12 any such employer within the next calendar month, or in
13 violation of the rehire provisions provided for in s.
14 121.091(9)(b)1.b., termination will be deemed not to have
15 occurred, except as provided in s. 121.091(13)(b)4.c. A leave
16 of absence shall constitute a continuation of the employment
17 relationship.

18 Section 2. Paragraph (b) of subsection (9) of section
19 121.091, Florida Statutes, is amended to read:

20 121.091 Benefits payable under the system.--Benefits
21 may not be paid under this section unless the member has
22 terminated employment as provided in s. 121.021(39)(a) or
23 begun participation in the Deferred Retirement Option Program
24 as provided in subsection (13), and a proper application has
25 been filed in the manner prescribed by the department. The
26 department may cancel an application for retirement benefits
27 when the member or beneficiary fails to timely provide the
28 information and documents required by this chapter and the
29 department's rules. The department shall adopt rules
30 establishing procedures for application for retirement
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1 | benefits and for the cancellation of such application when the
2 | required information or documents are not received.

3 | (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.--

4 | (b)1.a. Any person who is retired under this chapter,
5 | except under the disability retirement provisions of
6 | subsection (4), may be reemployed by any private or public
7 | employer after retirement and receive retirement benefits and
8 | compensation from his or her employer without any limitations,
9 | except that a person may not receive both a salary from
10 | reemployment with any agency participating in the Florida
11 | Retirement System and retirement benefits under this chapter
12 | for a period of 12 months immediately subsequent to the date
13 | of retirement. However, a DROP participant shall continue
14 | employment and receive a salary during the period of
15 | participation in the Deferred Retirement Option Program, as
16 | provided in subsection (13).

17 | b. Except as provided for in subparagraphs 3., 4., 5.,
18 | 6., and 11., and notwithstanding any other provisions in this
19 | chapter to the contrary, a member may not be reemployed by the
20 | same employing agency from which the member retired for a
21 | period of 12 months immediately subsequent to the date of
22 | retirement or, in the case of a DROP participant, for a period
23 | of 12 months immediately subsequent to the date the
24 | participant terminates employment in accordance with
25 | subparagraph (13)(b)3. Any person who is reemployed in
26 | violation of this sub-subparagraph shall void his or her
27 | application for retirement benefits. Further, any person who
28 | violates this sub-subparagraph and any employing agency which
29 | knowingly employs or appoints such person in violation of this
30 | sub-subparagraph shall be jointly and severally liable for
31 | reimbursements to the retirement trust fund of any retirement

1 benefits improperly paid during this reemployment limitation
2 period. This provision shall not otherwise limit the
3 employment or appointment opportunities for a person at any
4 other employing agency. The limitations provided for in this
5 sub-subparagraph shall not be applicable when a retiree is
6 elected to an office or appointed by the Governor to an
7 office.

8 2. Any person to whom the limitation in subparagraph
9 1. applies who violates such reemployment limitation and who
10 is reemployed with any agency participating in the Florida
11 Retirement System before completion of the 12-month limitation
12 period shall give timely notice of this fact in writing to the
13 employer and to the division and shall have his or her
14 retirement benefits suspended for the balance of the 12-month
15 limitation period. Any person employed in violation of this
16 paragraph and any employing agency which knowingly employs or
17 appoints such person without notifying the Division of
18 Retirement to suspend retirement benefits shall be jointly and
19 severally liable for reimbursement to the retirement trust
20 fund of any benefits paid during the reemployment limitation
21 period. To avoid liability, such employing agency shall have a
22 written statement from the retiree that he or she is not
23 retired from a state-administered retirement system. Any
24 retirement benefits received while reemployed during this
25 reemployment limitation period shall be repaid to the
26 retirement trust fund, and retirement benefits shall remain
27 suspended until such repayment has been made. Benefits
28 suspended beyond the reemployment limitation shall apply
29 toward repayment of benefits received in violation of the
30 reemployment limitation.

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1 3. A district school board may reemploy a retired
2 member as a substitute or hourly teacher, education
3 paraprofessional, transportation assistant, bus driver, or
4 food service worker on a noncontractual basis after he or she
5 has been retired for 1 calendar month, in accordance with s.
6 121.021(39). A district school board may reemploy a retired
7 member as instructional personnel, as defined in s.
8 1012.01(2)(a), on an annual contractual basis after he or she
9 has been retired for 1 calendar month, in accordance with s.
10 121.021(39). Any other retired member who is reemployed within
11 1 calendar month after retirement shall void his or her
12 application for retirement benefits. District school boards
13 reemploying such teachers, education paraprofessionals,
14 transportation assistants, bus drivers, or food service
15 workers are subject to the retirement contribution required by
16 subparagraph 7.

17 4. A community college board of trustees may reemploy
18 a retired member as an adjunct instructor, that is, an
19 instructor who is noncontractual and part-time, or as a
20 participant in a phased retirement program within the Florida
21 Community College System, after he or she has been retired for
22 1 calendar month, in accordance with s. 121.021(39). Any
23 retired member who is reemployed within 1 calendar month after
24 retirement shall void his or her application for retirement
25 benefits. Boards of trustees reemploying such instructors are
26 subject to the retirement contribution required in
27 subparagraph 7. A retired member may be reemployed as an
28 adjunct instructor for no more than 780 hours during the first
29 12 months of retirement. Any retired member reemployed for
30 more than 780 hours during the first 12 months of retirement
31 shall give timely notice in writing to the employer and to the

1 | division of the date he or she will exceed the limitation. The
2 | division shall suspend his or her retirement benefits for the
3 | remainder of the first 12 months of retirement. Any person
4 | employed in violation of this subparagraph and any employing
5 | agency which knowingly employs or appoints such person without
6 | notifying the Division of Retirement to suspend retirement
7 | benefits shall be jointly and severally liable for
8 | reimbursement to the retirement trust fund of any benefits
9 | paid during the reemployment limitation period. To avoid
10 | liability, such employing agency shall have a written
11 | statement from the retiree that he or she is not retired from
12 | a state-administered retirement system. Any retirement
13 | benefits received by a retired member while reemployed in
14 | excess of 780 hours during the first 12 months of retirement
15 | shall be repaid to the Retirement System Trust Fund, and
16 | retirement benefits shall remain suspended until repayment is
17 | made. Benefits suspended beyond the end of the retired
18 | member's first 12 months of retirement shall apply toward
19 | repayment of benefits received in violation of the 780-hour
20 | reemployment limitation.

21 | 5. The State University System may reemploy a retired
22 | member as an adjunct faculty member or as a participant in a
23 | phased retirement program within the State University System
24 | after the retired member has been retired for 1 calendar
25 | month, in accordance with s. 121.021(39). Any retired member
26 | who is reemployed within 1 calendar month after retirement
27 | shall void his or her application for retirement benefits. The
28 | State University System is subject to the retired contribution
29 | required in subparagraph 7., as appropriate. A retired member
30 | may be reemployed as an adjunct faculty member or a
31 | participant in a phased retirement program for no more than

1 780 hours during the first 12 months of his or her retirement.
2 Any retired member reemployed for more than 780 hours during
3 the first 12 months of retirement shall give timely notice in
4 writing to the employer and to the division of the date he or
5 she will exceed the limitation. The division shall suspend his
6 or her retirement benefits for the remainder of the first 12
7 months of retirement. Any person employed in violation of this
8 subparagraph and any employing agency which knowingly employs
9 or appoints such person without notifying the Division of
10 Retirement to suspend retirement benefits shall be jointly and
11 severally liable for reimbursement to the retirement trust
12 fund of any benefits paid during the reemployment limitation
13 period. To avoid liability, such employing agency shall have a
14 written statement from the retiree that he or she is not
15 retired from a state-administered retirement system. Any
16 retirement benefits received by a retired member while
17 reemployed in excess of 780 hours during the first 12 months
18 of retirement shall be repaid to the Retirement System Trust
19 Fund, and retirement benefits shall remain suspended until
20 repayment is made. Benefits suspended beyond the end of the
21 retired member's first 12 months of retirement shall apply
22 toward repayment of benefits received in violation of the
23 780-hour reemployment limitation.

24 6. The Board of Trustees of the Florida School for the
25 Deaf and the Blind may reemploy a retired member as a
26 substitute teacher, substitute residential instructor, or
27 substitute nurse on a noncontractual basis after he or she has
28 been retired for 1 calendar month, in accordance with s.
29 121.021(39). Any retired member who is reemployed within 1
30 calendar month after retirement shall void his or her
31 application for retirement benefits. The Board of Trustees of

1 | the Florida School for the Deaf and the Blind reemploying such
2 | teachers, residential instructors, or nurses is subject to the
3 | retirement contribution required by subparagraph 7.
4 | Reemployment of a retired member as a substitute teacher,
5 | substitute residential instructor, or substitute nurse is
6 | limited to 780 hours during the first 12 months of his or her
7 | retirement. Any retired member reemployed for more than 780
8 | hours during the first 12 months of retirement shall give
9 | timely notice in writing to the employer and to the division
10 | of the date he or she will exceed the limitation. The division
11 | shall suspend his or her retirement benefits for the remainder
12 | of the first 12 months of retirement. Any person employed in
13 | violation of this subparagraph and any employing agency which
14 | knowingly employs or appoints such person without notifying
15 | the Division of Retirement to suspend retirement benefits
16 | shall be jointly and severally liable for reimbursement to the
17 | retirement trust fund of any benefits paid during the
18 | reemployment limitation period. To avoid liability, such
19 | employing agency shall have a written statement from the
20 | retiree that he or she is not retired from a
21 | state-administered retirement system. Any retirement benefits
22 | received by a retired member while reemployed in excess of 780
23 | hours during the first 12 months of retirement shall be repaid
24 | to the Retirement System Trust Fund, and his or her retirement
25 | benefits shall remain suspended until payment is made.
26 | Benefits suspended beyond the end of the retired member's
27 | first 12 months of retirement shall apply toward repayment of
28 | benefits received in violation of the 780-hour reemployment
29 | limitation.
30 | 7. The employment by an employer of any retiree or
31 | DROP participant of any state-administered retirement system

1 shall have no effect on the average final compensation or
2 years of creditable service of the retiree or DROP
3 participant. Prior to July 1, 1991, upon employment of any
4 person, other than an elected officer as provided in s.
5 121.053, who has been retired under any state-administered
6 retirement program, the employer shall pay retirement
7 contributions in an amount equal to the unfunded actuarial
8 liability portion of the employer contribution which would be
9 required for regular members of the Florida Retirement System.
10 Effective July 1, 1991, contributions shall be made as
11 provided in s. 121.122 for retirees with renewed membership or
12 subsection (13) with respect to DROP participants.

13 8. Any person who has previously retired and who is
14 holding an elective public office or an appointment to an
15 elective public office eligible for the Elected Officers'
16 Class on or after July 1, 1990, shall be enrolled in the
17 Florida Retirement System as provided in s. 121.053(1)(b) or,
18 if holding an elective public office that does not qualify for
19 the Elected Officers' Class on or after July 1, 1991, shall be
20 enrolled in the Florida Retirement System as provided in s.
21 121.122, and shall continue to receive retirement benefits as
22 well as compensation for the elected officer's service for as
23 long as he or she remains in elective office. However, any
24 retired member who served in an elective office prior to July
25 1, 1990, suspended his or her retirement benefit, and had his
26 or her Florida Retirement System membership reinstated shall,
27 upon retirement from such office, have his or her retirement
28 benefit recalculated to include the additional service and
29 compensation earned.

30 9. Any person who is holding an elective public office
31 which is covered by the Florida Retirement System and who is

1 concurrently employed in nonelected covered employment may
2 elect to retire while continuing employment in the elective
3 public office, provided that he or she shall be required to
4 terminate his or her nonelected covered employment. Any person
5 who exercises this election shall receive his or her
6 retirement benefits in addition to the compensation of the
7 elective office without regard to the time limitations
8 otherwise provided in this subsection. No person who seeks to
9 exercise the provisions of this subparagraph, as the same
10 existed prior to May 3, 1984, shall be deemed to be retired
11 under those provisions, unless such person is eligible to
12 retire under the provisions of this subparagraph, as amended
13 by chapter 84-11, Laws of Florida.

14 10. The limitations of this paragraph apply to
15 reemployment in any capacity with an "employer" as defined in
16 s. 121.021(10), irrespective of the category of funds from
17 which the person is compensated.

18 11. An employing agency may reemploy a retired member
19 as a firefighter or paramedic after the retired member has
20 been retired for 1 calendar month, in accordance with s.
21 121.021(39). Any retired member who is reemployed within 1
22 calendar month after retirement shall void his or her
23 application for retirement benefits. The employing agency
24 reemploying such firefighter or paramedic is subject to the
25 retired contribution required in subparagraph 8. Reemployment
26 of a retired firefighter or paramedic is limited to no more
27 than 780 hours during the first 12 months of his or her
28 retirement. Any retired member reemployed for more than 780
29 hours during the first 12 months of retirement shall give
30 timely notice in writing to the employer and to the division
31 of the date he or she will exceed the limitation. The division

1 shall suspend his or her retirement benefits for the remainder
2 of the first 12 months of retirement. Any person employed in
3 violation of this subparagraph and any employing agency which
4 knowingly employs or appoints such person without notifying
5 the Division of Retirement to suspend retirement benefits
6 shall be jointly and severally liable for reimbursement to the
7 Retirement System Trust Fund of any benefits paid during the
8 reemployment limitation period. To avoid liability, such
9 employing agency shall have a written statement from the
10 retiree that he or she is not retired from a
11 state-administered retirement system. Any retirement benefits
12 received by a retired member while reemployed in excess of 780
13 hours during the first 12 months of retirement shall be repaid
14 to the Retirement System Trust Fund, and retirement benefits
15 shall remain suspended until repayment is made. Benefits
16 suspended beyond the end of the retired member's first 12
17 months of retirement shall apply toward repayment of benefits
18 received in violation of the 780-hour reemployment limitation.

19 Section 3. Paragraph (a) of subsection (1) of section
20 121.591, Florida Statutes, is amended to read:

21 121.591 Benefits payable under the Public Employee
22 Optional Retirement Program of the Florida Retirement
23 System.--Benefits may not be paid under this section unless
24 the member has terminated employment as provided in s.
25 121.021(39)(a) or is deceased and a proper application has
26 been filed in the manner prescribed by the state board or the
27 department. The state board or department, as appropriate, may
28 cancel an application for retirement benefits when the member
29 or beneficiary fails to timely provide the information and
30 documents required by this chapter and the rules of the state
31 board and department. In accordance with their respective

1 | responsibilities as provided herein, the State Board of
2 | Administration and the Department of Management Services shall
3 | adopt rules establishing procedures for application for
4 | retirement benefits and for the cancellation of such
5 | application when the required information or documents are not
6 | received. The State Board of Administration and the Department
7 | of Management Services, as appropriate, are authorized to cash
8 | out a de minimis account of a participant who has been
9 | terminated from Florida Retirement System covered employment
10 | for a minimum of 6 calendar months. A de minimis account is an
11 | account containing employer contributions and accumulated
12 | earnings of not more than \$5,000 made under the provisions of
13 | this chapter. Such cash-out must either be a complete lump-sum
14 | liquidation of the account balance, subject to the provisions
15 | of the Internal Revenue Code, or a lump-sum direct rollover
16 | distribution paid directly to the custodian of an eligible
17 | retirement plan, as defined by the Internal Revenue Code, on
18 | behalf of the participant. If any financial instrument issued
19 | for the payment of retirement benefits under this section is
20 | not presented for payment within 180 days after the last day
21 | of the month in which it was originally issued, the
22 | third-party administrator or other duly authorized agent of
23 | the State Board of Administration shall cancel the instrument
24 | and credit the amount of the instrument to the suspense
25 | account of the Public Employee Optional Retirement Program
26 | Trust Fund authorized under s. 121.4501(6). Any such amounts
27 | transferred to the suspense account are payable upon a proper
28 | application, not to include earnings thereon, as provided in
29 | this section, within 10 years after the last day of the month
30 | in which the instrument was originally issued, after which
31 | time such amounts and any earnings thereon shall be forfeited.

1 Any such forfeited amounts are assets of the Public Employee
2 Optional Retirement Program Trust Fund and are not subject to
3 the provisions of chapter 717.

4 (1) NORMAL BENEFITS.--Under the Public Employee
5 Optional Retirement Program:

6 (a) Benefits in the form of vested accumulations as
7 described in s. 121.4501(6) shall be payable under this
8 subsection in accordance with the following terms and
9 conditions:

10 1. To the extent vested, benefits shall be payable
11 only to a participant.

12 2. Benefits shall be paid by the third-party
13 administrator or designated approved providers in accordance
14 with the law, the contracts, and any applicable board rule or
15 policy.

16 3. To receive benefits under this subsection, the
17 participant must be terminated from all employment with all
18 Florida Retirement System employers, as provided in s.
19 121.021(39).

20 4. Benefit payments may not be made until the
21 participant has been terminated for 3 calendar months, except
22 that the board may authorize by rule for the distribution of
23 up to 10 percent of the participant's account after being
24 terminated for 1 calendar month if a participant has reached
25 the normal retirement requirements of the defined benefit
26 plan, as provided in s. 121.021(29).

27 5. If a member or former member of the Florida
28 Retirement System receives an invalid distribution from the
29 Public Employee Optional Retirement Program Trust Fund, such
30 person shall repay the full invalid distribution to the trust
31 fund within 90 days after receipt of final notification by the

1 State Board of Administration or the third-party administrator
2 that the distribution was invalid. If such person fails to
3 repay the full invalid distribution within 90 days after
4 receipt of final notification, the person may be deemed
5 retired from the Public Employee Optional Retirement Program
6 by the state board, as provided pursuant to s. 121.4501(2)(j),
7 and shall be subject to the provisions of s. 121.122. If such
8 person is deemed retired by the state board, any joint and
9 several liability set out in s. 121.091(9)(c)2. becomes null
10 and void, and the state board, the Department of Management
11 Services, or the employing agency is not liable for gains on
12 payroll contributions that have not been deposited to the
13 person's account in the Public Employee Optional Retirement
14 Program, pending resolution of the invalid distribution. The
15 member or former member who has been deemed retired or who has
16 been determined by the board to have taken an invalid
17 distribution may appeal the agency decision through the
18 complaint process as provided under s. 121.4501(9)(f)3. As
19 used in this subparagraph, the term "invalid distribution"
20 means any distribution from an account in the Public Employee
21 Optional Retirement Program which is taken in violation of the
22 provisions of this section, s. 121.091(9), or s. 121.4501.
23 Further, violation of the rehire provisions provided for in s.
24 121.091(9)(b)1.b. shall be deemed an invalid distribution and
25 the penalties provided for in this section shall apply.

26 Section 4. This act shall take effect July 1, 2007.
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