

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 479 Retirement
SPONSOR(S): Governmental Affairs Policy Committee, Schenck and others
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Governmental Affairs Policy Committee, 12 Y, 0 N, As CS, Haug, Williamson.

SUMMARY ANALYSIS

Current law authorizes reemployment of Florida Retirement System (FRS) retirees by non-FRS employers and allows those retirees to continue receiving retirement benefits.

Retirees employed as firefighters or paramedics, or in certain positions specific to educational institutions are exempt from the 12-month limitation period and may receive both retirement benefits and compensation during this period.

This bill revises termination and reemployment provisions for all FRS retirees, including those elected or appointed to an elective public office. It extends from one month to 12 months the exclusionary period immediately after retirement in which a retiree may not be reemployed with any FRS employer.

The bill removes all reemployment limitation exceptions that are not specific to educational institutions. It eliminates renewed membership in the FRS, however, it grandfathers in those members who are deemed renewed members before the bill's effective date.

The bill relocates 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; and makes clarifying changes to provisions relating to the Deferred Retirement Option Program.

The bill is expected to produce cost savings to the overall funding of the FRS, and state and local FRS employers who will no longer be required to pay the normal cost funding of future FRS benefits for reemployed retirees.

The bill has an effective date of July 1, 2009, with certain reemployment restrictions beginning January 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. 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).<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 175 cities and 223 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 683,000 active members,<sup>3</sup> 276,000 retirees and surviving beneficiaries,<sup>4</sup> and 31,000 Deferred Retirement Option Program participants.<sup>5</sup> Members of the FRS belong to one of five membership classes:

1. Regular Class<sup>6</sup> (589,544 members) comprises 86.21 percent of the membership.
2. Special Risk Class<sup>7</sup> (74,939 members) comprises 10.96 percent of the membership.
3. Special Risk Administrative Support Class<sup>8</sup> (75 members) comprises 0.01 percent of the membership.
4. Elected Officers' Class<sup>9</sup> (2,073 members) comprises 0.30 percent of the membership.
5. Senior Management Service Class<sup>10</sup> (7,668 members) comprises 1.12 percent of the membership.<sup>11</sup>

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

<sup>2</sup> Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2007 – June 30, 2008 at 92 (on file with the Governmental Affairs Policy Committee) [hereafter referred to as FRS Annual Report].

<sup>3</sup> *Id.* at 43.

<sup>4</sup> *Id.* at 52.

<sup>5</sup> *Id.* at 49.

<sup>6</sup> Section 121.021(12), F.S.

<sup>7</sup> Section 121.0515, F.S.

<sup>8</sup> Section 121.0515(7), F.S.

<sup>9</sup> Section 121.052, F.S.

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>12</sup>

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

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. Positions include firefighters or paramedics<sup>15</sup> and certain positions employed by district school boards,<sup>16</sup> community college boards of trustees,<sup>17</sup> the state university system,<sup>18</sup> the Board of Trustees of the Florida School for the Deaf and the Blind,<sup>19</sup> developmental research schools<sup>20</sup> and charter schools.<sup>21</sup>

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.<sup>22</sup>

### 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 the FRS Pension Plan.

Renewed members are ineligible:

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

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<sup>10</sup> Section 121.055, F.S.

<sup>11</sup> FRS Annual Report at 43.

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

<sup>13</sup> Section 121.021(39)(a), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 121.091(9)(b)11., F.S.

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

<sup>17</sup> Section 121.091(9)(b)4., F.S.

<sup>18</sup> Section 121.091(9)(b)5., F.S.

<sup>19</sup> Section 121.091(9)(b)6., F.S.

<sup>20</sup> Section 121.093, F.S.

<sup>21</sup> Section 121.094, F.S.

<sup>22</sup> Section 121.053(1)(b)1., F.S.

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

As of June 30, 2008, there were 9,397 renewed members in the FRS, 200 of which were renewed members in the Elected Officers' Class.<sup>24</sup>

## 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 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.

FRS retirees may continue to receive their pension and salary if reemployed as instructional personnel by an FRS employer; however, they must first meet the definition of termination, which means they must separate from employment for a 12 month period before being reemployed as such personnel.

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, grandfathered 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."<sup>25</sup> 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.<sup>26</sup>

The bill also co-locates 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.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 121.021, F.S., to redefine several terms including "employer," "officer or employee," "past service," "normal retirement date," "termination," "regularly established position" and "temporary position" and add terms "state board" and "trustees."

**Section 2.** Amends s. 121.031, F.S., to revise a provision relating to disclaimer statements.

**Section 3.** Amends s. 121.051, F.S., to revise provisions relating to program distribution and to make cross reference revisions.

**Section 4.** Amends s. 121.052, F.S., to revise provisions relating to the membership class of elected officials.

**Section 5.** Amends s. 121.053, F.S., to revise provisions relating to participation in the Elected Officers' Class.

**Section 6.** Amends s. 121.055, F.S., to revise provisions relating to participation in the Senior Management Service Class.

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<sup>24</sup> FRS Annual Report at 43.

<sup>25</sup> 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."

<sup>26</sup> 26 U.S.C. s. 414(p)(1)(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 7.** Amends s. 121.071, F.S., to revise provisions relating to contributions to the Florida Retirement System.

**Section 8.** Amends s. 121.081, F.S., to revise provisions relating to past and prior service.

**Section 9.** Amends s. 121.091, F.S., to revise provisions relating to benefits payable under the FRS including reemployment provisions.

**Section 10.** Amends s. 121.1115, F.S., to revise a provision relating to restrictions on the purchase of service credits in the FRS from out-of-state or federal service.

**Section 11.** Amends s. 121.1122, F.S., to add a restriction on the purchase of service credits in the FRS.

**Section 12.** Amends s. 121.122, F.S., to provide that certain persons are ineligible for renewed membership in the FRS.

**Section 13.** Amends s. 121.136, F.S., to add accrued service credit to the reporting requirements.

**Section 14.** Amends s. 121.1905, F.S., to remove the mission statement for the Division of Retirement.

**Section 15.** Amends s. 121.23, F.S., to add a reference to documentation standards in 121.091(4)(c).

**Section 16.** Amends s. 121.24, F.S., to revise the quorum requirement for the State Retirement Commission's appellate hearing panels.

**Section 17.** Amends s. 121.35, F.S., to revise the State University System optional retirement program to include faculty at all state university medical schools.

**Section 18.** Amends s. 121.4501, F.S., to revise the definition of the term "eligible employee" for purposes of the Public Employee Optional Retirement Program.

**Section 19.** Amends s. 121.591, F.S., to provide a cross-reference.

**Section 20.** Amends s. 1012.33, F.S., to remove the renewed membership provision.

**Section 21.** Repeals ss. 121.093, 121.094 and 121.45, F.S.

**Section 22.** Provides a statement of legitimate state purpose.

**Section 23.** Provides an effective date of July 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:**

See Fiscal Comments section.

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, 2010, 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 FRS retirees 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, 2010 will no longer accrue future benefit rights. This change will help to contain future FRS cost to taxpayers.<sup>27</sup>

The Division will perform any additional work load within existing resources.

### 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:

The bill is in compliance with the actuarial requirements of Article X, Section 14 of the Florida Constitution.<sup>28</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

According to the Department of Management Services, an actuarial study is required in order to comply with Chapter 112, Part VII, F.S.,<sup>29</sup> which states “[t]he net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses shall be amortized within 30 plan years.”<sup>30</sup> Further, “[w]hen substantial changes in actuarial assumptions have been made, the study shall reflect the results of an actuarial assumption as of the current date based on the assumptions utilized in the prior actuarial report.”<sup>31</sup>

Drafting Issues

Two amendments are needed:

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<sup>27</sup> Department of Management Services HB 479 (2009) Substantive Bill Analysis (Feb. 17, 2009) at 6 (on file with the Governmental Affairs Policy Committee).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 112.64(4), F.S.

<sup>31</sup> Section 121.031(3)(c), F.S.

- Section 121.091(9)(c), F.S., requires an amendment to change the 3 calendar month provision to 12 months.
- Section 121.35(3)(h), F.S., requires an amendment to conform provisions related to multiple Florida medical schools.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

The Governmental Affairs Policy Committee met on March 11, 2009, and adopted a strike all amendment that removed the \$100,000 salary limitation from the bill and incorporated multiple changes to better align substantive provisions and clarify definitions. The amendment also clarified language specific to each retirement system class the provisions related to reemployment and the elimination of renewed membership in the retirement system.

The Division revised their assessment of fiscal impact as a result of the changes made to the bill by the strike-all amendment. The work load associated with the bill, prior to the amendment, was associated primarily with administering the \$100,000 salary cap provision. The removal of this substantive change by the strike-all amendment eliminated the need for an additional FTE for an additional senior benefit technician (\$46,745 annual recurring).<sup>32</sup>

The bill was reported favorably as a Committee Substitute.

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<sup>32</sup> Email from staff of the Division of Retirement to staff of the Governmental Affairs Policy Committee (Mar. 17, 2009) at 1 (on file with the Governmental Affairs Policy Committee).