

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1356

INTRODUCER: Senator Brandes

SUBJECT: Employment After Retirement of School District Personnel

DATE: January 25, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Favorable</b>
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 1356 amends s. 1012.33, F.S., to provide legislative intent and to revise provisions relating to reemployment of retirees by district school boards as instructional personnel on a contract basis.

The bill further provides legislative intent and clarification for purposes of pending civil and administrative proceedings for suits against district school boards for not awarding professional services contracts to retirees.

The bill may have a positive fiscal impact on local school districts.

SB 1356 takes effect upon becoming a law.

**II. Present Situation:**

**School District Instructional Personnel Contracts**

In 2011, the Legislature passed the Student Success Act (act),<sup>1</sup> to require, among other things, the use of performance evaluations to assess performance. The evaluation system for administrative and instructional personnel differentiates among four levels of performance: highly effective, effective, needs improvement,<sup>2</sup> or unsatisfactory.<sup>3</sup> The Commissioner of Education is required to consult with experts, instructional personnel, school administrators, and education stakeholders in developing the criteria for the performance levels.

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<sup>1</sup> Chapter 2011-1, L.O.F.

<sup>2</sup> Section 1012.34(2)(e)3., F.S., provides that for instructional personnel in the first three years of employment, the evaluation may designate the performance as developing.

<sup>3</sup> Section 1012.34(2)(e), F.S.

Prior to 2011, instructional personnel with as little as three years of service could be granted a professional service contract, which provided for automatic renewal of the contract unless the superintendent charged the employee with unsatisfactory performance.<sup>4</sup> For instructional personnel hired on or after July 1, 2011, the act, in effect, provides that professional service contracts and tenure may no longer be given to any instructional personnel who do not currently have a professional service contract.

Specifically, the act provides that employees hired on or after July 1, 2011, must be awarded probationary contracts for a period of one year upon initial employment in a school district.<sup>5</sup> Probationary contract employees may be dismissed without cause or may resign without breach of contract.<sup>6</sup> The district may not award a probationary contract more than once to the same employee;<sup>7</sup> after the initial year, the school district may award an annual contract upon the successful completion of a probationary contract.<sup>8</sup> An annual contract is an employment contract for a period of no longer than one school year, which the district school board may choose to award or not award at the end of the contract term without cause.<sup>9</sup> Instructional personnel with an annual contract may be suspended or dismissed at any time during the term of the contract for just cause.<sup>10</sup>

In addition, the act ties the renewal of a professional service contract, for those employees who have a professional service contract, to the employee's performance evaluation; the professional service contract is no longer automatically renewed.<sup>11</sup> If an employee who holds a professional service contract is not performing his or her duties in a satisfactory manner, the act requires such an employee to receive notice and be placed on probation.<sup>12</sup> If the employee receives two consecutive annual performance evaluations of unsatisfactory, two annual performance evaluations of unsatisfactory within a three-year period, or three consecutive annual performance evaluations of needs improvement or a combination of needs improvement and unsatisfactory, the district may terminate or not renew the employee's contract.<sup>13</sup>

### **The Florida Retirement System**

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was added to the FRS, and in 2007, the membership of the Institute of Food and Agricultural Sciences Supplemental Retirement Program was included in the Regular Class of the FRS as a

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<sup>4</sup> See s. 1012.33(3)(e), F.S. (2010).

<sup>5</sup> Section 1012.335(2)(a), F.S.

<sup>6</sup> Section 1012.335(1)(c), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 1012.335(2)(a), F.S.

<sup>9</sup> Section 1012.335(1)(a), F.S.

<sup>10</sup> Section 1012.335(4), F.S.

<sup>11</sup> Section 1012.33(3), F.S.

<sup>12</sup> Section 1012.34(4)(b), F.S.

<sup>13</sup> See ss. 1012.33 and 1012.34, F.S.

closed group.<sup>14</sup> The FRS is a contributory system, with most members contributing three percent of their salaries.<sup>15</sup>

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Ch. 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).<sup>16</sup> As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for the employees and officers of state and county government agencies, district school boards, Florida College institutions, and state universities, as well as the employees and officers of the 186 cities and 262 special districts that have elected to join the system.<sup>17</sup>

The membership of the FRS is divided into five membership classes:

- The Regular Class<sup>18</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class<sup>19</sup> includes 68,593 active members;
- The Special Risk Administrative Support Class<sup>20</sup> has 84 active members;
- The Elected Officers' Class<sup>21</sup> has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class<sup>22</sup> has 7,607 members, plus 184 in renewed membership.<sup>23</sup>

### ***Investment Plan***

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

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<sup>14</sup> The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: [https://www.rol.frs.state.fl.us/forms/2013-14\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf).

<sup>15</sup> Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

<sup>16</sup> Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

<sup>17</sup> *Id.*, at 146.

<sup>18</sup> The Regular Class is for all members who are not assigned to another class. (Section 121.021(12), F.S.)

<sup>19</sup> The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. (Section 121.0515, F.S.)

<sup>20</sup> The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

<sup>21</sup> The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

<sup>22</sup> The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. (Section 121.055, F.S.)

<sup>23</sup> All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.<sup>24</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>25</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>26</sup> The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.<sup>27</sup> An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.<sup>28</sup>

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>29</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>30</sup>

### ***Pension Plan***

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>31</sup> Investment management of the pension plan assets is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.<sup>32</sup> For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>33</sup> Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.<sup>34</sup> For most members of the pension plan, normal retirement occurs at 30 years of service or age 62.<sup>35</sup> For members in the Special Risk and Special Risk Administrative Support

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<sup>24</sup> Section 121.4501(6)(a), F.S.

<sup>25</sup> If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. (Section 121.4501(6)(b) – (d), F.S.)

<sup>26</sup> Section 121.591, F.S.

<sup>27</sup> Section 121.4501(16), F.S.

<sup>28</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the line of duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

<sup>29</sup> Section 121.4501(8), F.S.

<sup>30</sup> FLA.CONST. art. IV, s. 4.

<sup>31</sup> Section 121.025, F.S.

<sup>32</sup> Section 121.021(45)(a), F.S.

<sup>33</sup> Section 121.021(45)(b), F.S.

<sup>34</sup> Section 121.091, F.S.

<sup>35</sup> Section 121.021(29)(a)1., F.S.

Classes, normal retirement occurs at 25 years of service or age 55.<sup>36</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.<sup>37</sup>

### ***Deferred Retirement Option Program***

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DROP) under which a participant may extend employment for an additional five years and receive a lump sum benefit at a fixed rate of interest for that additional service.<sup>38</sup> Certain instructional personnel in district school boards may participate in DROP for an additional 36 months.<sup>39</sup> Enrollment in DROP requires the participant to serve the employer with a deferred resignation from employment at the end of the period. Current law provides that members who reach their normal retirement date based on service before they reach age 62, or age 55 for Special Risk members, may defer participation in DROP to the 12 months immediately following the attainment of age 57, or 52.<sup>40</sup>

### **Employment after Retirement**

#### Generally

Section 121.091, F.S., governs the payment of benefits under the FRS. For the purposes of the pension plan, a “retiree” means a former member of the FRS or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member.<sup>41</sup> For the purposes of the investment plan, a “retiree” means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided the Internal Revenue Code.<sup>42</sup>

After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting their FRS benefits.

However, there are certain termination requirements and reemployment limitations that affect retirement benefits **if a retiree is employed with an FRS-participating employer** during the first 12 calendar months after the effective retirement date without DROP participation or after the DROP termination date. If a retiree returns to work during the **first six calendar months** of retirement or after the member’s DROP termination date, then the member’s retirement application is voided and all retirement benefits, including any funds accumulated during DROP

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<sup>36</sup> Section 121.021(29)(b)1., F.S.

<sup>37</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>38</sup> Section 121.021(13)(a), F.S.

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

<sup>40</sup> Section 121.091(13)(a)2., F.S.

<sup>41</sup> Section 121.021(60), F.S.

<sup>42</sup> Section 121.4501(2)(k), F.S.

participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. An FRS retiree cannot be reemployed by an FRS employer for a period of 6 months without voiding the member's retirement.

A retiree's benefit will be suspended if the retiree is hired an FRS during the **seventh through twelfth calendar months** of retirement or after the DROP termination date. Beginning the thirteenth calendar month, the benefits are reinstated and no employment restrictions exist.

Suspended retirement benefits for the months a reemployed retiree is employed by an FRS employer during the reemployment limitation period will be payable to the retiree. The reemployed retiree and the employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS employer after a retiree has been retired for 12 calendar months. If a retiree is re-employed with an FRS participating employer, they will be required to sign a statement that their reemployment does not violate these provisions.<sup>43</sup>

Prior to July 1, 2010, there were various exceptions to employment with FRS-covered employers during the reemployment limitation period. All reemployment limitation exceptions that were not specific to educational institutions were closed by operation of Ch. 2009-209, Law of Fla., which also extended the termination period from 1 month to 6 months immediately after retirement during which a retiree could not be reemployed with any FRS employer without voiding his retirement.

#### Exception to the suspension of retirement benefits for Instructional Personnel

The exception to the suspension of retirement benefits relevant to this discussion is the authority of a district school board to reemploy as instructional personnel after 1 calendar month of retirement a retiree whose FRS retirement was effective before July 1, 2010. That retiree could be reemployed on an annual contractual basis after one calendar month of retirement without having her or his retirement benefits suspended.<sup>44</sup> This law does not address the employment relationship after the end of the first twelve months of retirement.

This exception does not apply to any retiree whose effective retirement date is on or after July 1, 2010.

#### **Legal Ambiguity for Reemployment of Instructional Personnel**

In 2011, two retired reemployed instructional personnel brought suit in Orange County, Florida to determine whether the county was required to issue professional service contracts after the employees' successfully completed three years of employment.<sup>45</sup> The Orange County Public

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<sup>43</sup> The information in this section of the bill analysis comes from the FRS Pension Plan: Deferred Retirement Option Program Handbook, 2014 edition, located at <https://www.rol.frs.state.fl.us/forms/drop-guide.pdf> and the FRS Pension Plan member Handbook, 2013 edition, located at [https://www.rol.frs.state.fl.us/forms/member\\_handbook.pdf](https://www.rol.frs.state.fl.us/forms/member_handbook.pdf). See also ss. 121.091(9), 121.122, and 1012.01(2), F.S.

<sup>44</sup> Section 121.091(9)(b)1.a., F.S.

<sup>45</sup> A copy of the circuit court decision is on file with the Government Oversight and Accountability committee.

Schools argued that s. 121.091, F.S., required the instructional personnel to be rehired on an annual contractual basis. The issue in the case centered on whether the FRS act required instructional personnel to be reemployed with an annual contract for the rest of the member's career, or whether the FRS act only pertained to the initial year of reemployment and such member may ultimately be given a professional service contract under s. 1012.33, F.S., which provided for such a contract after three years of service.

The circuit court found that the Legislature intended for retired teachers to be rehired on the same terms as newly hired teachers. At that time, newly hired teachers were placed on an initial annual contract and after serving three years in the district, received a professional service contract.

The Orange County School Board appealed the final judgment to the Fifth District Court of Appeal arguing that the trial court erred and that s. 121.091, F.S., precludes the school board from ever issuing a contract longer than an annual contract when employing retired instructional personnel.<sup>46</sup> The Fifth District Court of Appeal, however, agreed with the lower court and found that the limitations in s. 121.091, F.S., only apply at the time of the initial rehire.

### III. Effect of Proposed Changes:

**Section 1** amends s. 1012.33, F.S., to allow a district school board to reemploy a retiree as instructional personnel under a 1-year probationary contract. If the retiree successfully completes the probationary contract, such employee may receive an annual contract.

The bill states that neither this legislation nor any other previous law allows a retiree to be awarded a professional service contract.

This section further provides that the holding in *Orange County School Board v. Rachman and Shuman*<sup>47</sup> was contrary to legislative intent at the time the statutes were enacted and that retirees under s. 121.091(9), F.S., were never entitled to professional service contracts, regardless of the retiree's date of retirement. This section notes that retirees are not eligible, and were never eligible, to receive a professional services contract under s., F.S., or any statute.

The bill provides legislative intent directing the judge in a civil action or administrative proceeding to rule against a classroom teacher on any claim or cause of action against the district school board, district superintendent, or district school board employee for not awarding that teacher a professional service contract.

The bill provides that it does not void, is not intended to void, and does not in any way impair any professional service contract inadvertently awarded by a district school board to a retiree before the effective date of this act.

**Section 2** directs the Division of Law Revision and Information to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes law.

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<sup>46</sup> *Orange County School Board v. Rachman and Schuman*, 87 So.3d 48 (Fla. 5th DCA 2012).

<sup>47</sup> *Id.*

**Section 3** provides that this bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. The bill may have an impact on school districts since districts will not be required to provide professional services contracts for instructional personnel who are rehired after retiring from the FRS.

**VI. Technical Deficiencies:**

This bill uses the term "retiree" but does not define the term. It is unclear whether retiree is intended to include all retirees (private and public sector), retirees of the FRS pension plan, retirees of the FRS investment plan, or retirees from the particular school district. The effects of this legislation could be significantly different based on this definition.

On lines 50-53 of the bill, the language states that this legislation does not void or impair in any way a professional service contract "inadvertently" awarded by a district school board to a retiree prior to the effective date of this act. It is unclear whether the implicit meaning is to void or impair a professional service contract that the school board intentionally awarded to a retiree.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1012.33 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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