

By Senator Gruters

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1                   A bill to be entitled  
2       An act relating to employment after retirement of  
3       school district personnel; amending s. 121.021, F.S.;  
4       revising the definition of "termination" to conform to  
5       changes made by the act; amending s. 121.091, F.S.;  
6       establishing an exception to reemployment after  
7       retirement limitations to authorize retired  
8       instructional staff to be employed as substitute  
9       teachers before meeting the definition of termination;  
10      prohibiting the accrual of additional retirement  
11      service credit and renewed membership during such  
12      period of reemployment; amending ss. 121.122, 121.591,  
13      and 1012.33, F.S.; conforming provisions and a cross-  
14      reference to changes made by the act; requiring the  
15      State Board of Administration and the Department of  
16      Management Services to request a determination letter  
17      and private letter ruling from the United States  
18      Internal Revenue Service; providing for  
19      nonapplicability of the act, or portions thereof,  
20      under specified circumstances; providing effective  
21      dates.

22  
23 Be It Enacted by the Legislature of the State of Florida:

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

27       121.021 Definitions.—The following words and phrases as  
28       used in this chapter have the respective meanings set forth  
29       unless a different meaning is plainly required by the context:

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30 (39) (a) "Termination" occurs, except as provided in  
31 paragraph (b), when a member ceases all employment relationships  
32 with participating employers, however:

33 1. For retirements effective before July 1, 2010, if a  
34 member is employed by any such employer within the next calendar  
35 month, termination shall be deemed not to have occurred. A leave  
36 of absence constitutes a continuation of the employment  
37 relationship, except that a leave of absence without pay due to  
38 disability may constitute termination if such member makes  
39 application for and is approved for disability retirement in  
40 accordance with s. 121.091(4). The department or state board may  
41 require other evidence of termination as it deems necessary.

42 2. For retirements effective on or after July 1, 2010, if a  
43 member is employed by any such employer within the next 6  
44 calendar months, termination shall be deemed not to have  
45 occurred unless the member is employed as a substitute teacher  
46 following retirement in accordance with ss. 121.091(9)(g) and  
47 1012.33(8)(b). A leave of absence constitutes a continuation of  
48 the employment relationship, except that a leave of absence  
49 without pay due to disability may constitute termination if such  
50 member makes application for and is approved for disability  
51 retirement in accordance with s. 121.091(4). The department or  
52 state board may require other evidence of termination as it  
53 deems necessary.

54 (b) "Termination" for a member electing to participate in  
55 the Deferred Retirement Option Program occurs when the program  
56 participant ceases all employment relationships with  
57 participating employers in accordance with s. 121.091(13),  
58 however:

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59 1. For termination dates occurring before July 1, 2010, if  
60 the member is employed by any such employer within the next  
61 calendar month, termination will be deemed not to have occurred,  
62 except as provided in s. 121.091(13)(b)4.c. A leave of absence  
63 shall constitute a continuation of the employment relationship.

64 2. For termination dates occurring on or after July 1,  
65 2010, if the member becomes employed by any such employer within  
66 the next 6 calendar months, termination will be deemed not to  
67 have occurred, except as provided in s. 121.091(13)(b)4.c. or if  
68 the member is employed as a substitute teacher following  
69 retirement in accordance with ss. 121.091(9)(g) and  
70 1012.33(8)(b). A leave of absence constitutes a continuation of  
71 the employment relationship.

72 (c) Effective July 1, 2011, "termination" for a member  
73 receiving a refund of employee contributions occurs when a  
74 member ceases all employment relationships with participating  
75 employers for 3 calendar months. A leave of absence constitutes  
76 a continuation of the employment relationship.

77 Section 2. Paragraphs (c) and (d) of subsection (9) of  
78 section 121.091, Florida Statutes, are amended, and paragraph  
79 (g) is added to that subsection, to read:

80 121.091 Benefits payable under the system.—Benefits may not  
81 be paid under this section unless the member has terminated  
82 employment as provided in s. 121.021(39)(a) or begun  
83 participation in the Deferred Retirement Option Program as  
84 provided in subsection (13), and a proper application has been  
85 filed in the manner prescribed by the department. The department  
86 may cancel an application for retirement benefits when the  
87 member or beneficiary fails to timely provide the information

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88 and documents required by this chapter and the department's  
89 rules. The department shall adopt rules establishing procedures  
90 for application for retirement benefits and for the cancellation  
91 of such application when the required information or documents  
92 are not received.

93 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

94 (c) Any person whose retirement is effective on or after  
95 July 1, 2010, or whose participation in the Deferred Retirement  
96 Option Program terminates on or after July 1, 2010, who is  
97 retired under this chapter, except under the disability  
98 retirement provisions of subsection (4) or as provided in s.  
99 121.053, may be reemployed by an employer that participates in a  
100 state-administered retirement system and receive retirement  
101 benefits and compensation from that employer. However, a person  
102 may not be reemployed by an employer participating in the  
103 Florida Retirement System before meeting the definition of  
104 termination in s. 121.021 and may not receive both a salary from  
105 the employer and retirement benefits for 6 calendar months after  
106 meeting the definition of termination, except as provided in  
107 paragraph (f) or paragraph (g). However, a DROP participant  
108 shall continue employment and receive a salary during the period  
109 of participation in the Deferred Retirement Option Program, as  
110 provided in subsection (13).

111 1. The reemployed retiree may not renew membership in the  
112 Florida Retirement System, except as provided in s. 121.122.

113 2. The employer shall pay retirement contributions in an  
114 amount equal to the unfunded actuarial liability portion of the  
115 employer contribution that would be required for active members  
116 of the Florida Retirement System in addition to the

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117 contributions required by s. 121.76.

118 3. A retiree initially reemployed in violation of this  
119 paragraph and an employer that employs or appoints such person  
120 are jointly and severally liable for reimbursement of any  
121 retirement benefits paid to the retirement trust fund from which  
122 the benefits were paid, including the Florida Retirement System  
123 Trust Fund and the Florida Retirement System Investment Plan  
124 Trust Fund, as appropriate. The employer must have a written  
125 statement from the employee that he or she is not retired from a  
126 state-administered retirement system. Retirement benefits shall  
127 remain suspended until repayment is made. Benefits suspended  
128 beyond the end of the retiree's 6-month reemployment limitation  
129 period shall apply toward the repayment of benefits received in  
130 violation of this paragraph.

131 (d) This subsection applies to retirees, as defined in s.  
132 121.4501(2), of the Florida Retirement System Investment Plan,  
133 subject to the following conditions:

134 1. Except as provided in subparagraph 2., a retiree may not  
135 be reemployed with an employer participating in the Florida  
136 Retirement System until such person has been retired for 6  
137 calendar months.

138 2. A retiree may be reemployed as a substitute teacher  
139 following retirement in accordance with the requirements of  
140 paragraph (g) and s. 1012.33(8) (b).

141 3. A retiree employed in violation of this subsection and  
142 an employer that employs or appoints such person are jointly and  
143 severally liable for reimbursement of any benefits paid to the  
144 retirement trust fund from which the benefits were paid. The  
145 employer must have a written statement from the retiree that he

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146 or she is not retired from a state-administered retirement  
147 system.

148 (g) A retiree who was employed as instructional staff of a  
149 school district may be reemployed as a substitute teacher  
150 following retirement or DROP termination and may receive  
151 compensation from the employer and retirement benefits before  
152 meeting the definition of termination in s. 121.021, as  
153 authorized under s. 1012.33(8) (b). Reemployed instructional  
154 staff may not receive additional retirement service credit for  
155 such employment and may not renew membership in the Florida  
156 Retirement System during such period of employment.

157 Section 3. Subsection (6) is added to section 121.122,  
158 Florida Statutes, to read:

159 121.122 Renewed membership in system.—

160 (6) If a retiree otherwise eligible for renewed membership  
161 in accordance with subsections (3), (4), and (5) is reemployed  
162 as a substitute teacher pursuant to ss. 121.091(9) (g) and  
163 1012.33(8) (b) before meeting the definition of termination in s.  
164 121.021, such retiree must cease all employment relationships,  
165 including service as a substitute teacher, with participating  
166 employers for 6 calendar months in order to be enrolled as a  
167 renewed member if subsequently reemployed in a regularly  
168 established position.

169 Section 4. Paragraph (a) of subsection (1) of section  
170 121.591, Florida Statutes, is amended to read:

171 121.591 Payment of benefits.—Benefits may not be paid under  
172 the Florida Retirement System Investment Plan unless the member  
173 has terminated employment as provided in s. 121.021(39) (a) or is  
174 deceased and a proper application has been filed as prescribed

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175 by the state board or the department. Benefits, including  
176 employee contributions, are not payable under the investment  
177 plan for employee hardships, unforeseeable emergencies, loans,  
178 medical expenses, educational expenses, purchase of a principal  
179 residence, payments necessary to prevent eviction or foreclosure  
180 on an employee's principal residence, or any other reason except  
181 a requested distribution for retirement, a mandatory de minimis  
182 distribution authorized by the administrator, or a required  
183 minimum distribution provided pursuant to the Internal Revenue  
184 Code. The state board or department, as appropriate, may cancel  
185 an application for retirement benefits if the member or  
186 beneficiary fails to timely provide the information and  
187 documents required by this chapter and the rules of the state  
188 board and department. In accordance with their respective  
189 responsibilities, the state board and the department shall adopt  
190 rules establishing procedures for application for retirement  
191 benefits and for the cancellation of such application if the  
192 required information or documents are not received. The state  
193 board and the department, as appropriate, are authorized to cash  
194 out a de minimis account of a member who has been terminated  
195 from Florida Retirement System covered employment for a minimum  
196 of 6 calendar months. A de minimis account is an account  
197 containing employer and employee contributions and accumulated  
198 earnings of not more than \$5,000 made under the provisions of  
199 this chapter. Such cash-out must be a complete lump-sum  
200 liquidation of the account balance, subject to the provisions of  
201 the Internal Revenue Code, or a lump-sum direct rollover  
202 distribution paid directly to the custodian of an eligible  
203 retirement plan, as defined by the Internal Revenue Code, on

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204 behalf of the member. Any nonvested accumulations and associated  
205 service credit, including amounts transferred to the suspense  
206 account of the Florida Retirement System Investment Plan Trust  
207 Fund authorized under s. 121.4501(6), shall be forfeited upon  
208 payment of any vested benefit to a member or beneficiary, except  
209 for de minimis distributions or minimum required distributions  
210 as provided under this section. If any financial instrument  
211 issued for the payment of retirement benefits under this section  
212 is not presented for payment within 180 days after the last day  
213 of the month in which it was originally issued, the third-party  
214 administrator or other duly authorized agent of the state board  
215 shall cancel the instrument and credit the amount of the  
216 instrument to the suspense account of the Florida Retirement  
217 System Investment Plan Trust Fund authorized under s.  
218 121.4501(6). Any amounts transferred to the suspense account are  
219 payable upon a proper application, not to include earnings  
220 thereon, as provided in this section, within 10 years after the  
221 last day of the month in which the instrument was originally  
222 issued, after which time such amounts and any earnings  
223 attributable to employer contributions shall be forfeited. Any  
224 forfeited amounts are assets of the trust fund and are not  
225 subject to chapter 717.

226 (1) NORMAL BENEFITS.—Under the investment plan:

227 (a) Benefits in the form of vested accumulations as  
228 described in s. 121.4501(6) are payable under this subsection in  
229 accordance with the following terms and conditions:

- 230 1. Benefits are payable only to a member, an alternate  
231 payee of a qualified domestic relations order, or a beneficiary.  
232 2. Benefits shall be paid by the third-party administrator

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233 or designated approved providers in accordance with the law, the  
234 contracts, and any applicable board rule or policy.

235 3. The member must be terminated from all employment with  
236 all Florida Retirement System employers, as provided in s.  
237 121.021(39).

238 4. Benefit payments may not be made until the member has  
239 been terminated for 3 calendar months, except that the state  
240 board may authorize by rule for the distribution of up to 10  
241 percent of the member's account after being terminated for 1  
242 calendar month if the member has reached the normal retirement  
243 date as defined in s. 121.021.

244 5. If a member or former member of the Florida Retirement  
245 System receives an invalid distribution, such person must either  
246 repay the full amount within 90 days after receipt of final  
247 notification by the state board or the third-party administrator  
248 that the distribution was invalid, or, in lieu of repayment, the  
249 member must terminate employment from all participating  
250 employers. If such person fails to repay the full invalid  
251 distribution within 90 days after receipt of final notification,  
252 the person may be deemed retired from the investment plan by the  
253 state board and is subject to s. 121.122. If such person is  
254 deemed retired, any joint and several liability set out in s.  
255 121.091(9)(d)3. ~~s. 121.091(9)(d)2.~~ is void, and the state board,  
256 the department, or the employing agency is not liable for gains  
257 on payroll contributions that have not been deposited to the  
258 person's account in the investment plan, pending resolution of  
259 the invalid distribution. The member or former member who has  
260 been deemed retired or who has been determined by the state  
261 board to have taken an invalid distribution may appeal the

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262 agency decision through the complaint process as provided under  
263 s. 121.4501(9)(g)3. As used in this subparagraph, the term  
264 "invalid distribution" means any distribution from an account in  
265 the investment plan which is taken in violation of this section,  
266 s. 121.091(9), or s. 121.4501.

267 Section 5. Subsection (8) of section 1012.33, Florida  
268 Statutes, is amended to read:

269 1012.33 Contracts with instructional staff, supervisors,  
270 and school principals.—

271 (8) Notwithstanding any other provision of law, a retired  
272 member may interrupt retirement and be reemployed in any public  
273 school as:

274 (a) Instructional personnel under a 1-year probationary  
275 contract as defined in s. 1012.335(1). If the retiree  
276 successfully completes the probationary contract, the district  
277 school board may reemploy the retiree under an annual contract  
278 as defined in s. 1012.335(1). The retiree is not eligible for a  
279 professional service contract.

280 (b) A substitute teacher, if employed as instructional  
281 staff of a school district before retirement or termination from  
282 the Deferred Retirement Option Program, and receive compensation  
283 from that employer and retirement benefits. The reemployed  
284 substitute teacher may not receive additional retirement service  
285 credit for such employment and may not renew membership in the  
286 Florida Retirement System during such period of employment.

287 Section 6. (1) Effective upon this act becoming a law, the  
288 State Board of Administration and the Department of Management  
289 Services shall request, as soon as practicable, a determination  
290 letter and private letter ruling from the United States Internal

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291 Revenue Service. If the United States Internal Revenue Service  
292 refuses to act upon a request for a private letter ruling, a  
293 legal opinion from a qualified tax attorney or firm may be  
294 substituted for the private letter ruling.

295 (2) If the state board or the department receives  
296 notification from the United States Internal Revenue Service  
297 that this act or any portion of this act will cause the Florida  
298 Retirement System, or a portion thereof, to be disqualified for  
299 tax purposes under the Internal Revenue Code, the act or any  
300 portion thereof which will cause the disqualification does not  
301 apply. Upon receipt of such notice, the state board and the  
302 department shall notify the presiding officers of the  
303 Legislature.

304 Section 7. Except as otherwise expressly provided in this  
305 act and except for this section, which shall take effect upon  
306 becoming a law, this act shall take effect January 1, 2020.