

By Senator Gruters

23-00460A-19

2019402__

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:

23-00460A-19

2019402__

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:

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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

23-00460A-19

2019402__

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.