

By Senator Taddeo

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1 A bill to be entitled
2 An act relating to reemployment after retirement of
3 instructional 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 authorizing former members of the Florida Retirement
7 System to be reemployed as instructional personnel
8 following 1 calendar month of retirement or
9 termination of participation in the Deferred
10 Retirement Option Program; specifying limitations and
11 restrictions; amending s. 121.591, F.S.; conforming a
12 cross-reference; requiring the State Board of
13 Administration and the Department of Management
14 Services to request a determination letter and private
15 letter ruling from the United States Internal Revenue
16 Service; providing for nonapplicability; providing a
17 declaration of important state interest; providing
18 effective dates.

19
20 WHEREAS, for many years, state law authorized retirees of
21 the Florida Retirement System to return to employment with a
22 participating employer after 1 calendar month had passed from
23 the retiree's date of retirement, while suspending the
24 reemployed retiree's receipt of retirement benefits for the 2nd
25 through the 12th calendar months immediately following
26 retirement, and

27 WHEREAS, in 2009, the Legislature enacted chapter 2009-209,
28 Laws of Florida, which made numerous changes to the laws
29 governing the Florida Retirement System, including increasing

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30 the time that the retirees may not be reemployed with a
31 participating employer following retirement from 1 calendar
32 month to 6 calendar months, and

33 WHEREAS, the impact of this change has resulted in
34 hardships for some retirees because they are sometimes unable to
35 bridge the gap in maintaining an adequate income level between
36 retiring from the Florida Retirement System and later becoming
37 eligible for certain federal benefits, such as Medicare and
38 Social Security, and often have to seek other employment during
39 this interim period after retirement, and

40 WHEREAS, this act will provide a narrow exception to the
41 2009 law by allowing retirees to be reemployed as instructional
42 personnel with a covered employer 1 calendar month following
43 retirement, which will help to alleviate financial hardships
44 that have resulted for some retirees under the present
45 reemployment limitations, NOW, THEREFORE,

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

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

51 121.021 Definitions.—The following words and phrases as
52 used in this chapter have the respective meanings set forth
53 unless a different meaning is plainly required by the context:

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

57 1. For retirements effective before July 1, 2010, if a
58 member is employed by any such employer within the next calendar

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59 month, termination shall be deemed not to have occurred. A leave
60 of absence constitutes a continuation of the employment
61 relationship, except that a leave of absence without pay due to
62 disability may constitute termination if such member makes
63 application for and is approved for disability retirement in
64 accordance with s. 121.091(4). The department or state board may
65 require other evidence of termination as it deems necessary.

66 2. For retirements effective on or after July 1, 2010, if a
67 member is employed by any such employer within the next 6
68 calendar months, termination shall be deemed not to have
69 occurred except as provided under s. 121.091(9)(d)2. and (9)(g).

70 A leave of absence constitutes a continuation of the employment
71 relationship, except that a leave of absence without pay due to
72 disability may constitute termination if such member makes
73 application for and is approved for disability retirement in
74 accordance with s. 121.091(4). The department or state board may
75 require other evidence of termination as it deems necessary.

76 (b) "Termination" for a member electing to participate in
77 the Deferred Retirement Option Program occurs when the program
78 participant ceases all employment relationships with
79 participating employers in accordance with s. 121.091(13),
80 however:

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

86 2. For termination dates occurring on or after July 1,
87 2010, if the member becomes employed by any such employer within

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88 the next 6 calendar months, termination will be deemed not to
89 have occurred, except as provided in s. 121.091(9)(g) and
90 (13)(b)4.c. ~~s. 121.091(13)(b)4.c.~~ A leave of absence constitutes
91 a continuation of the employment relationship.

92 (c) Effective July 1, 2011, "termination" for a member
93 receiving a refund of employee contributions occurs when a
94 member ceases all employment relationships with participating
95 employers for 3 calendar months. A leave of absence constitutes
96 a continuation of the employment relationship.

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

100 121.091 Benefits payable under the system.—Benefits may not
101 be paid under this section unless the member has terminated
102 employment as provided in s. 121.021(39)(a) or begun
103 participation in the Deferred Retirement Option Program as
104 provided in subsection (13), and a proper application has been
105 filed in the manner prescribed by the department. The department
106 may cancel an application for retirement benefits when the
107 member or beneficiary fails to timely provide the information
108 and documents required by this chapter and the department's
109 rules. The department shall adopt rules establishing procedures
110 for application for retirement benefits and for the cancellation
111 of such application when the required information or documents
112 are not received.

113 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

114 (c) Any person whose retirement is effective on or after
115 July 1, 2010, or whose participation in the Deferred Retirement
116 Option Program terminates on or after July 1, 2010, who is

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117 retired under this chapter, except under the disability
118 retirement provisions of subsection (4) or as provided in s.
119 121.053, may be reemployed by an employer that participates in a
120 state-administered retirement system and receive retirement
121 benefits and compensation from that employer. However, a person
122 may not be reemployed by an employer participating in the
123 Florida Retirement System before meeting the definition of
124 termination in s. 121.021 and may not receive both a salary from
125 the employer and retirement benefits for 6 calendar months after
126 meeting the definition of termination, except as provided in
127 paragraph (f) or paragraph (g). However, a DROP participant
128 shall continue employment and receive a salary during the period
129 of participation in the Deferred Retirement Option Program, as
130 provided in subsection (13).

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

133 2. The employer shall pay retirement contributions in an
134 amount equal to the unfunded actuarial liability portion of the
135 employer contribution that would be required for active members
136 of the Florida Retirement System in addition to the
137 contributions required by s. 121.76.

138 3. A retiree initially reemployed in violation of this
139 paragraph and an employer that employs or appoints such person
140 are jointly and severally liable for reimbursement of any
141 retirement benefits paid to the retirement trust fund from which
142 the benefits were paid, including the Florida Retirement System
143 Trust Fund and the Florida Retirement System Investment Plan
144 Trust Fund, as appropriate. The employer must have a written
145 statement from the employee that he or she is not retired from a

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146 state-administered retirement system. Retirement benefits shall
147 remain suspended until repayment is made. Benefits suspended
148 beyond the end of the retiree's 6-month reemployment limitation
149 period shall apply toward the repayment of benefits received in
150 violation of this paragraph.

151 (d) This subsection applies to retirees, as defined in s.
152 121.4501(2), of the Florida Retirement System Investment Plan,
153 subject to the following conditions:

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

158 2. A retiree may initially be reemployed as instructional
159 personnel with an employer participating in the Florida
160 Retirement System, as authorized pursuant to paragraph (g), on a
161 probationary contractual basis in accordance with ss. 1012.33(8)
162 and 1012.335(2) after he or she has been retired for 1 calendar
163 month.

164 3. A retiree employed in violation of this subsection and
165 an employer that employs or appoints such person are jointly and
166 severally liable for reimbursement of any benefits paid to the
167 retirement trust fund from which the benefits were paid. The
168 employer must have a written statement from the retiree that he
169 or she is not retired from a state-administered retirement
170 system.

171 (g) A former member of the Florida Retirement System may
172 initially be reemployed as instructional personnel, as defined
173 in s. 1012.01(2), on a probationary contractual basis in
174 accordance with ss. 1012.33(8) and 1012.335(2) by an employer

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175 that participates in the Florida Retirement System after he or
176 she has been retired, or terminated from Deferred Retirement
177 Option Program participation, for 1 calendar month. Any former
178 member who is reemployed within 1 calendar month after
179 retirement or termination from the Deferred Retirement Option
180 Program voids his or her application for retirement benefits.
181 Retirement benefits for a former member who is reemployed
182 pursuant to this paragraph shall be suspended for the second
183 calendar month through the 12th calendar month immediately
184 subsequent to the date of retirement or termination from the
185 Deferred Retirement Option Program. The former member may not
186 renew membership in the Florida Retirement System, except as
187 provided in s. 121.122.

188 Section 3. Paragraph (a) of subsection (1) of section
189 121.591, Florida Statutes, is amended to read:

190 121.591 Payment of benefits.—Benefits may not be paid under
191 the Florida Retirement System Investment Plan unless the member
192 has terminated employment as provided in s. 121.021(39)(a) or is
193 deceased and a proper application has been filed as prescribed
194 by the state board or the department. Benefits, including
195 employee contributions, are not payable under the investment
196 plan for employee hardships, unforeseeable emergencies, loans,
197 medical expenses, educational expenses, purchase of a principal
198 residence, payments necessary to prevent eviction or foreclosure
199 on an employee's principal residence, or any other reason except
200 a requested distribution for retirement, a mandatory de minimis
201 distribution authorized by the administrator, or a required
202 minimum distribution provided pursuant to the Internal Revenue
203 Code. The state board or department, as appropriate, may cancel

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204 an application for retirement benefits if the member or
205 beneficiary fails to timely provide the information and
206 documents required by this chapter and the rules of the state
207 board and department. In accordance with their respective
208 responsibilities, the state board and the department shall adopt
209 rules establishing procedures for application for retirement
210 benefits and for the cancellation of such application if the
211 required information or documents are not received. The state
212 board and the department, as appropriate, are authorized to cash
213 out a de minimis account of a member who has been terminated
214 from Florida Retirement System covered employment for a minimum
215 of 6 calendar months. A de minimis account is an account
216 containing employer and employee contributions and accumulated
217 earnings of not more than \$5,000 made under the provisions of
218 this chapter. Such cash-out must be a complete lump-sum
219 liquidation of the account balance, subject to the provisions of
220 the Internal Revenue Code, or a lump-sum direct rollover
221 distribution paid directly to the custodian of an eligible
222 retirement plan, as defined by the Internal Revenue Code, on
223 behalf of the member. Any nonvested accumulations and associated
224 service credit, including amounts transferred to the suspense
225 account of the Florida Retirement System Investment Plan Trust
226 Fund authorized under s. 121.4501(6), shall be forfeited upon
227 payment of any vested benefit to a member or beneficiary, except
228 for de minimis distributions or minimum required distributions
229 as provided under this section. If any financial instrument
230 issued for the payment of retirement benefits under this section
231 is not presented for payment within 180 days after the last day
232 of the month in which it was originally issued, the third-party

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233 administrator or other duly authorized agent of the state board
234 shall cancel the instrument and credit the amount of the
235 instrument to the suspense account of the Florida Retirement
236 System Investment Plan Trust Fund authorized under s.
237 121.4501(6). Any amounts transferred to the suspense account are
238 payable upon a proper application, not to include earnings
239 thereon, as provided in this section, within 10 years after the
240 last day of the month in which the instrument was originally
241 issued, after which time such amounts and any earnings
242 attributable to employer contributions shall be forfeited. Any
243 forfeited amounts are assets of the trust fund and are not
244 subject to chapter 717.

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

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

249 1. Benefits are payable only to a member, an alternate
250 payee of a qualified domestic relations order, or a beneficiary.

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

254 3. The member must be terminated from all employment with
255 all Florida Retirement System employers, as provided in s.
256 121.021(39).

257 4. Benefit payments may not be made until the member has
258 been terminated for 3 calendar months, except that the state
259 board may authorize by rule for the distribution of up to 10
260 percent of the member's account after being terminated for 1
261 calendar month if the member has reached the normal retirement

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262 date as defined in s. 121.021.

263 5. If a member or former member of the Florida Retirement
264 System receives an invalid distribution, such person must either
265 repay the full amount within 90 days after receipt of final
266 notification by the state board or the third-party administrator
267 that the distribution was invalid, or, in lieu of repayment, the
268 member must terminate employment from all participating
269 employers. If such person fails to repay the full invalid
270 distribution within 90 days after receipt of final notification,
271 the person may be deemed retired from the investment plan by the
272 state board and is subject to s. 121.122. If such person is
273 deemed retired, any joint and several liability set out in s.
274 121.091(9)(d)3. ~~s. 121.091(9)(d)2.~~ is void, and the state board,
275 the department, or the employing agency is not liable for gains
276 on payroll contributions that have not been deposited to the
277 person's account in the investment plan, pending resolution of
278 the invalid distribution. The member or former member who has
279 been deemed retired or who has been determined by the state
280 board to have taken an invalid distribution may appeal the
281 agency decision through the complaint process as provided under
282 s. 121.4501(9)(g)3. As used in this subparagraph, the term
283 "invalid distribution" means any distribution from an account in
284 the investment plan which is taken in violation of this section,
285 s. 121.091(9), or s. 121.4501.

286 Section 4. (1) Effective upon this act becoming a law, the
287 State Board of Administration and the Department of Management
288 Services shall request, as soon as practicable, a determination
289 letter and private letter ruling from the United States Internal
290 Revenue Service. If the United States Internal Revenue Service

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291 refuses to act upon a request for a private letter ruling, then
292 a legal opinion from a qualified tax attorney or firm may be
293 substituted for the private letter ruling.

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

302 Section 5. The Legislature finds that a proper and
303 legitimate state purpose is served when employees and retirees
304 of the state and its political subdivisions, as well as the
305 dependents, survivors, and beneficiaries of such employees and
306 retirees, are extended the basic protections afforded by
307 governmental retirement systems that provide fair and adequate
308 benefits and that are managed, administered, and funded in an
309 actuarially sound manner as required by s. 14, Article X of the
310 State Constitution and part VII of chapter 112, Florida
311 Statutes. Therefore, the Legislature determines and declares
312 that this act fulfills an important state interest.

313 Section 6. Except as otherwise expressly provided in this
314 act and except for this section, which shall take effect upon
315 this act becoming a law, this act shall take effect January 1,
316 2021.