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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 941
RELATING TO: School District Re-employment
SPONSOR(S): Representative(s) Detert and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION
- (2) FISCAL POLICY & RESOURCES
- (3) FISCAL RESPONSIBILITY COUNCIL
- (4)
- (5)

I. SUMMARY:

Current law provides that a Florida Retirement System (FRS) member employee who obtains 30 years of creditable service may retire with full normal retirement benefits. An employee may continue to work for a FRS employer after applying for retirement by electing to participate in the Deferred Retirement Option Program (DROP). The DROP allows a FRS member who reaches the normal retirement date or age for the member's membership subclass to elect to defer the receipt of retirement benefits but continue to work for a period of up to 60 months after the election. Instructional personnel (classroom teachers, librarians, and other instructional staff) may elect to participate in DROP anytime after the normal retirement date. After the 60 month period in DROP, the FRS member must, as all retiring FRS members, terminate employment with the FRS employer and cannot be employed by a FRS employer for a 12 month period from the date of termination. Current law provides that certain employees of local school districts may re-employ with a local school district one month after the date of retirement, but then only on a less than full-time basis.

This bill provides for post-DROP employment of teachers, principals, and assistant principals by local school districts. If the post-DROP employee is re-employed by a local school district, that post-DROP employee is exempted from the requirement that the employee not be employed by a FRS employer for a period of time after the date of retirement. The bill also authorizes the local school district employer of a post-DROP employee to enroll the employee in the Public Employee Optional Retirement Program (PEORP) or to purchase additional retirement benefits under an annuity or alternative retirement plan. The bill specifically provides that the local school district employer may not enroll a post-DROP employee in the defined benefit program in the FRS.

The bill does not appear to have a fiscal impact on the state or local governments. It will have a direct fiscal impact on local school districts. It may have a future indirect impact on participating FRS employers. Please see section III.D. "Fiscal Comments," of this analysis.

The bill takes effect upon becoming law.

There are numerous concerns about the implementation of this bill. Please see section V, "Comments," of this analysis.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

B. PRESENT SITUATION:

The Florida Retirement System

The Florida Retirement System (FRS) is a defined benefit, non-participatory, multi-employer pension plan covering the employees, survivors and dependents of some 800 state and local government employers. Section 121.011, F.S., created the FRS in 1970 as the successor benefit plan to the separate Teachers' Retirement System, Highway Patrol retirement plan, and State and County Officers' and Employees Retirement System. Section 121.046, F.S., incorporated the separate Judicial Retirement System into the FRS in 1972. The Division of Retirement indicates that the FRS now covers about 600,000 active employees and nearly 200,000 retirees. The Division's records indicates that as of June 30, 2001, school board employees constitute approximately 48 percent (292,351) of the active membership in the FRS.

The FRS offers an annuitized monthly benefit payable over a retiree's lifetime that is calculated as a percentage of the highest five years of a member's average final pay, as defined in s. 121.021(24), F.S. A FRS member is eligible to receive a retirement benefit upon reaching the normal retirement date for the membership subclass to which that member belongs. Section 121.021(29), F.S., provides the parameters for determining a member's normal retirement date:

"Normal retirement date" means the first day of any month following the date a member attains one of the following statuses:

(a) If a Regular Class member, the member:

1. Completes 6 or more years of creditable service and attains age 62; or
2. Completes 30 years of creditable service, regardless of age, which may include a maximum of 4 years of military service credit as long as such credit is not claimed under any other system.

(b) If a Special Risk Class member, the member:

1. Completes 6 or more years of creditable service in the Special Risk Class and attains age 55;
2. Completes 25 years of creditable service in the Special Risk Class, regardless of age; or
3. Completes 25 years of creditable service and attains age 52, which service may include a maximum of 4 years of military service credit as long as such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

(c) If a Senior Management Service Class member, the member:

1. Completes 6 years of creditable service in the Senior Management Service Class and attains age 62; or

2. Completes 30 years of any creditable service, regardless of age, which may include a maximum of 4 years of military service credit as long as such credit is not claimed under any other system.

(d) If an Elected Officers' Class member, the member:

1. Completes 6 years of creditable service in the Elected Officers' Class and attains age 62; or
2. Completes 30 years of any creditable service, regardless of age, which may include a maximum of 4 years of military service credit as long as such credit is not claimed under any other system.

"Normal retirement age" is attained on the "normal retirement date."

Section 121.091(6), F.S., provides that the standard benefit option will provide a monthly payment over the annuitant's lifetime and terminate upon the death of the annuitant. This subsection also provides three reduced payment options that provide for survivors' benefits.

Section 121.091(9), F.S., provides that retiring FRS members must not re-employ with a FRS employer for a 12 month period immediately subsequent to the date of retirement. Section 121.091(9)(b)3.a., F.S., provides an exception to that requirement local school districts which may re-employ a retired instructional personnel employee on a noncontractual basis after that employee has been retired for one month. The re-employed employee may only work a total of 780 hours (19.5 weeks) in the first year of re-employment.

The Public Employee Optional Retirement Program (PEORP)

Chapter 2000-169, L.O.F., created s. 121.4501, F.S., which regulates an optional defined contribution retirement program, the Public Employee Optional Retirement Program (PEORP), within the Florida Retirement System. The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees have the opportunity to choose to participate in either the defined benefit retirement program or the defined contribution program. A participant vests in the PEORP after one year of creditable service.

Current public employees electing to participate in the PEORP begin this process on a phase-in schedule: employees of state entities are given the option to join the optional program between June 1, 2002, and August 31, 2002; employees of education-related employers between September 1, 2002, and November 30, 2002; and, other local government employees between December 1, 2002, and February 28, 2003.

Unlike the defined benefit retirement program, the PEORP offers retirement payments that are not fixed for a lifetime. Rather, a participant may elect to receive the benefits in a lump-sum, in a lump-sum distribution that is rolled over to another qualified investment, or in periodic distributions. Like the defined benefit plan, the PEORP is specifically regulated under the Internal Revenue Code.

The Deferred Retirement Option Program

The Deferred Retirement Option Program (DROP) for all Florida Retirement System (FRS) members was created by the 1997 Legislature. Section 121.091(13), F.S., creates the DROP which allows a FRS member who reaches the normal retirement date or age for the member's membership subclass to elect to defer the receipt of retirement benefits and continue to work for a period of up to 60 months after the election. That subsection provides that a member who elects to participate in DROP within 12 months of his or her normal retirement date or age, may effectively retire, have his or her retirement benefits credited to the DROP and deposited into the FRS Trust Fund to draw interest while continuing to work for a period not to exceed a maximum of 60 months following the date on which the member first reaches normal retirement age or date.

Section 121.091(13)(a)6., F.S., provides that effective July 1, 2001, instructional personnel defined in s. 228.041(9)(a)[classroom teachers], (b)[pupil personnel services], (c)[librarians and other media specialists and (d)[other instructional staff], F.S., can elect to participate in DROP at any time after the FRS member reaches normal retirement date.

At the time the member enters the DROP, his or her retirement benefit will be calculated based on the retirement option selected, years of service, and average final compensation (AFC) as of that date, and the resultant monthly retirement benefit will be paid into DROP and credited to the member. After the member enters the DROP he or she is retired for the purposes of the FRS and therefore, should the member become disabled while in the DROP, the member will not be eligible to receive disability benefits from the FRS but will receive the annual benefit determined when DROP was established, plus cost of living adjustments. Options for payment of DROP balances include lump-sum payments directly to the retiree, and a roll-over payment into an approved retirement plan or annuity.

C. EFFECT OF PROPOSED CHANGES:

This bill provides for post-DROP employment of teachers, principals, and assistant principals by local school districts. If the post-DROP employee is re-employed by a local school district, that post-DROP employee is exempted from the requirement that the employee not be employed by a FRS employer for a period of time after the date of retirement.

The bill also authorizes the local school district employer of a post-DROP employee to enroll the employee in the Public Employee Optional Retirement Program (PEORP) or to purchase additional retirement benefits under an annuity or alternative retirement plan. The bill specifically provides that the local school district employer may not enroll a post-DROP employee in the defined benefit program in the FRS.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Section One. Amends s. 121.091(9), F.S., relating to limitations on employment after retirement, by renumbering the current text of s. 121.091(9)(b)3, F.S., as s. 121.091(9)(b)3.a., F.S., and creating s. 121.091(9)(b)3.b., F.S.

This new sub-subparagraph provides that local school districts may, notwithstanding the provisions of s. 121.091(9)(b)3.a., F.S., and s. 112.16, F.S., may re-employ a teacher, principal, or assistant principal after that employee has completed the full 60 month DROP period.

As described in the section II.D. "Present Situation" of this analysis, s. 121.091(9)(b)3.a., F.S., provides that a local school district may re-employ, among others, a substitute or hourly teacher on a noncontractual basis after that employee has been retired for one month. The re-employed employee may only work a total of 780 hours (19.5 weeks) in the first year of re-employment. This is an exception to s. 121.091(b)(1), F.S., which limits employment of retired FRS members for the 12 months immediately subsequent to the date of retirement to employers other than FRS employers. Finally, s. 112.16, F.S., addresses the re-employment of retirees under the State and County Officers and Employees Retirement System, a retirement system absorbed into the FRS in 1970.

This re-employment requirement would appear to conflict with s. 121.091(13)5.d., F.S., which provides that a DROP participant's election for the DROP is void if that participant does not terminate employment at the conclusion of the DROP period and that if termination does not occur, the employer must pay to the FRS trust fund an amount to cover the difference between the DROP contribution made and what would be the normal retirement contribution for that DROP participant, plus 6.5 percent compounded annually, for the period the DROP participant is employed.

This sub-subparagraph goes on to provide that a local school district may employ those teachers, principals and assistant principals in the DROP who receive satisfactory employment evaluations for the previous three consecutive years. Section 121.091(13), F.S., provides that participation in the DROP does not guarantee employment for the specific DROP period.

The sub-subparagraph provides that the re-employment of an employee will not void the retirement benefits for which the employee is eligible. Without more specific citations, it is unclear what other provisions of chapter 121, F.S., are being excepted by this sub-subparagraph.

The sub-subparagraph provides that the re-employed employee "may not be enrolled in the defined benefit program of the Florida Retirement System." House legislative drafting practice usually requires "shall" to make a statutory requirement mandatory.

The sub-subparagraph provides that a local school district may enroll the employee in the Public Employee Optional Retirement Program (PEORP), or may purchase an annuity pursuant to s. 231.495, F.S. (authorizing school districts boards to purchase retirement annuities for district personnel) or may provide another alternative retirement benefit that complies with the Internal Revenue Code.

First, it is unclear whether the operation of this sub-subparagraph would put the tax-exempt status of the FRS at peril, as it contemplates an exception to the requirements of employees terminating employment with all FRS employers for a period of time prior to re-employing with an FRS employer. It may be appropriate to qualify the operation of this sub-subparagraph on a favorable ruling from the Internal Revenue Service. Second, s. 213.495, F.S., appears specifically designed to induce currently employed teachers to defer taking early retirement and as a recruiting tool to draw out-of-state teachers into service in this state. There is, however, general authority in this section for the purchase of annuities or to provide local supplemental retirement programs for school personnel. This section should be amended to reflect its use under this sub-subparagraph.

Section Two. The bill is effective upon becoming law. It may be appropriate to make the effectiveness of the bill contingent upon a favorable ruling from the Internal Revenue Service.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Local school districts will be directly impacted by the provisions of this bill. The Department of Management Services indicates that an actuarial study is required to determine the number of individuals that might be eligible for participation under this bill and whether that group would have an impact on the FRS significant enough to require an adjustment in contribution rates by all FRS employers.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Department of Management Services' actuary, in his analysis of the bill, states that in its current form, the bill would appear to violate section 14, Art. X, Florida Constitution, which provides that the FRS be funded on an actuarial sound basis. The bill appears to pass on the costs of funding its provisions onto future taxpayers and across all FRS employers.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Department of Management Service indicated in its analysis of this bill the following concerns:

- The bill is silent as to when DROP account proceeds would be paid to the retiree;
- The proposed legislation conflicts with the Internal Revenue Code (IRC)(however the analysis did not identify which IRC regulations with which the bill conflicts);
- The bill may put the qualified status of the FRS in peril because the IRC requires that distribution of benefits only occur under certain circumstances: 1) retirement; 2) termination; 3) death; and 4) disability. The department indicates that bill as drafted does not provide for the distribution of account proceeds to the employee under one of the four requirements;
- “There may be an additional cost to the pension plan for enrolling the re-employed retiree into the PEORP investment plan because reenrollment in the defined benefit plan is cost-neutral to cost-enhancing for the Trust Fund. To the extent eligible teachers and administrators retire earlier in order to begin receiving both benefits and salary, there will be a negative fiscal impact on the FRS.” The department does not know how many employees will take advantage of this program; however it is clear that a FRS member taking early retirement would cause a longer payout period than would otherwise occur if the member retired on his or her normal retirement date. It would follow that a program that appears to provide incentive for a group of FRS members to take early retirement would have more of an impact on the FRS Trust Fund than would otherwise occur;
- “As drafted, only those teachers and administrators who elect to participate the maximum period, or 60 months, will be eligible to be re-employed under the provisions of this bill”; and
- “Although the bill includes references to the re-employment provisions of chapters 121 [the Florida Retirement System], and 122, [the State and County Officer and Employee Retirement System], F.S., it fails to include retired members of the Teachers’ Retirement System by also including reference to Chapter 238.181, F.S.”

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

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