

# SENATE STAFF ANALYSIS AND ECONOMIC 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: Criminal Justice Committee

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BILL: SB 814

SPONSOR: Senator Posey

SUBJECT: Retired Law Enforcement/Reemployment

DATE: March 22, 2005

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

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u>  | <u>CJ</u> | <u>Favorable</u> |
| 2. | _____           | _____          | <u>GO</u> | _____            |
| 3. | _____           | _____          | <u>WM</u> | _____            |
| 4. | _____           | _____          | _____     | _____            |
| 5. | _____           | _____          | _____     | _____            |
| 6. | _____           | _____          | _____     | _____            |

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## I. Summary:

Senate Bill 814 amends s. 121.091, F.S., relating, in part, to employment after retirement, to allow for a retired member of the Florida Retirement System Pension Plan to be reemployed on a part-time basis as a law enforcement officer, correctional officer, or correctional probation officer during the 2nd through 12th calendar months of the member's first 12 months of retirement, not to exceed 780 hours during that period. According to the Department of Management Services (DMS), a special actuarial study of the bill is required to determine its impact on the Florida Retirement System (FRS).

This bill substantially amends s. 121.091, F.S.

## II. Present Situation:

### **Summary of the Florida Retirement System, Special Risk Class, Reemployment Restrictions under the FRS Pension Plan, and Exceptions to Reemployment Limitations<sup>1</sup>**

The FRS was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, judges, and Highway Patrol officers. Today, the FRS is the fourth largest public retirement system in the United States, covering over 633,000 active employees, over 226,000 annuitants (retirees and their surviving beneficiaries), and more than 28,000 participants of the Deferred Retirement Option Program (DROP). As of June 30, 2004, state employees (including university employees) represent 21.83 percent of the FRS membership. Remaining members are employed by local agencies, including all counties (23.46 percent), district school boards (48.3 percent), and community colleges (2.84 percent), as well as cities and special districts (3.57 percent) that have opted to join the FRS.

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<sup>1</sup> Information in this summary is from the DMS's analysis of the bill.

The active membership of the FRS is divided into five membership classes: The Regular Class, the Special Risk Class, the Special Risk Administrative Support Class, the Elected Officers' Class, and the Senior Management Service Class. Each class is separately funded based upon the costs attributable to the members of that class.

In creating the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement and firefighting must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their coworkers. In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation. Since its creation, the Special Risk Class has been expanded to include correctional officers, correctional probation officers, emergency medical technicians, paramedics, fixed-wing aerial fire surveillance pilots, firefighter training and prevention positions, and specified health care professionals in state correctional and forensic facilities.

After retiring under the FRS Pension Plan, a retired member can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his or her FRS benefits. However, the following restrictions apply when an FRS retiree is reemployed by an employer participating in the FRS:

- A retiring member must be off all FRS payrolls for 1 calendar month. Any FRS retiree who returns to work for an FRS employer during the first month of retirement voids his or her retirement. All benefits must be repaid to the system and the member must submit another application and establish a later retirement date to retire.
- For a full year after retirement (including the calendar month described above), unless otherwise exempted, no FRS retiree is permitted to simultaneously receive FRS retirement benefits and a salary from an FRS employer. Any retiree employed by an FRS employer during the 2nd through 12th months after retirement must inform the Division of Retirement. For any months worked during the restricted period, retirement benefits must be suspended, unless the retired member qualifies for an exception....
- After the first 12 months of retirement, there are no restrictions on reemployment.
- A retiree participating in DROP is subject to these reemployment limitations as soon as his or her period of DROP participation ends.

Under current law, after being off all FRS payrolls for 1 calendar month to meet the definition of termination, any eligible FRS retiree who is reemployed in a qualifying position as described below is exempt from reemployment limitations:

- Any FRS retiree may serve in an elective public office with renewed membership.

- A retired justice or judge may be employed on temporary assignment to active judicial service pursuant to Article V of the State Constitution. Such justices or judges are not eligible for renewed membership. Temporary assignments totaling more than 60 days per year must be approved by the chief justice.
- After being retired for 1 calendar month, a member may be reemployed in certain positions without further limitation during the 2nd through 12th months after retirement. The excepted positions are:
  - District School Boards.—FRS and TRS<sup>2</sup> retirees may be reemployed without limitation as classroom teachers on an annual contractual basis. Additionally, noncontractual employment is allowed without further limitation after the first calendar month of retirement for FRS retirees only who are hired as education paraprofessionals, transportation aides, bus drivers, or food service workers.
  - Florida School for the Deaf and the Blind.—FRS and TRS retirees may be reemployed on an annual contractual basis as classroom teachers or as substitute or hourly teachers on a noncontractual basis, without limitation. (Residential instructors are included in the category of noncontractual substitute or hourly teacher.)
  - Charter Schools.—FRS and TRS retirees may be reemployed as classroom teachers on an annual contractual basis or as substitute or hourly teachers on a noncontractual basis, without limitation.
  - Developmental Research Schools (University Lab Schools).—FRS and TRS retirees may be reemployed on an annual contractual basis as classroom teachers or as substitute or hourly teachers on a noncontractual basis, without limitation.

An FRS Pension Plan retiree can be reemployed in the following positions, for up to 780 hours during the 2nd through 12th months after retirement, without suspending his or her retirement benefit:

- Part-time, noncontractual adjunct instructors and phased retirement program participants with community colleges.
- Adjunct faculty and phased retirement program participants with the State University System.
- A firefighter or paramedic.

If an FRS retiree works 780 or more hours during the limitation period, the Division of Retirement must be advised. Beginning in the month the reemployed retiree reaches the

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<sup>2</sup> Teachers' Retirement System.

780-hour limit, retirement benefits are suspended for the balance of the 12-month limitation period.<sup>3</sup>

### **Special Actuarial Study**

Art. X, sec. 14, Fla. Const., provides that “a governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.”

Section 121.19(10), F.S., provides that “it is the intent of the Legislature that future benefit increases enacted into law in this chapter shall be financed concurrently by increased contributions or other adequate funding, and such funding shall be based on sound actuarial data as developed by the actuary or state retirement actuary, as provided in ss. 121.021(6) and 121.192.”

### **III. Effect of Proposed Changes:**

Senate Bill 814 amends s. 121.091, F.S., relating, in part, to employment after retirement, to allow for a retired member of the FRS Pension Plan to be reemployed on a part-time basis<sup>4</sup> as a law enforcement officer, correctional officer, or correctional probation officer<sup>5</sup> during the 2nd through 12th calendar months of the member’s first 12 months of retirement, not to exceed 780 hours during that period. According to the DMS, a special actuarial study of the bill is required to determine its impact on the FRS.

If a person subject to the bill is reemployed for more than 780-hours during the first 12 months of person’s retirement, the person shall provide timely written notice to the employer and to the

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<sup>3</sup> Any person employed in violation of the employment requirements and an employing agency that knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits are jointly and severally liable for reimbursement to the Retirement System Trust Fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and his or her retirement benefits shall remain suspended until payment is made. Benefits suspended beyond the end of the retired member’s first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

<sup>4</sup> In its analysis of the bill, the DMS notes that “the bill specifically allows only part-time reemployment, however “part-time” can mean any length of time that is less than full time. For instance, 39 hours per week of employment is part-time if the normal workweek for an agency contains 40 hours. Also, an employee could work part-time for more than one FRS agency simultaneously causing real difficulty in tracking the number of hours worked. Local employers are not required to report salary and contributions for employees whose employment is not expected to last more than 6 months. Some retirees reemployed under the provision of SB 814 would be reported and some would not. There would be no way for the Division to monitor this in real time. An audit of an agency’s records would be the only way to discover whether they were in compliance and by the time that was accomplished, an agency or employee who had violated this reemployment exception would already owe overpaid retirement benefits back to the Division.”

<sup>5</sup> In its analysis of the bill, the DMS notes that “the bill’s language would allow any retiree to become reemployed in one of the three positions listed, although it would most likely affect members who possessed certification to be in those Special Risk Class positions prior to retirement. Although these employees would not be eligible to be in the Special Risk Class under the renewed membership provisions, they would be in special risk-type positions and is contrary to the original intent of that class of membership when created....”

Division of Retirement of the date the person will exceed the limitation. The division is required to suspend this person's retirement benefits for the remainder of the 12-month period. A person employed in violation of the employment requirements and an employing agency that knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits are jointly and severally liable for reimbursement to the Retirement System Trust Fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and his or her retirement benefits shall remain suspended until payment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.<sup>6</sup>

The bill takes effect July 1, 2005.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

According to the DMS, the bill "may provide for an unfunded mandate in violation of Article VII, Sec. 18, Fla. Const., if meaningful increased employer contributions are required." The DMS states that this constitutional amendment prohibits "unfunded mandates unless an important state interest is served. However, initially, the cost to the FRS Trust Fund would be expected to be de minimus, without the necessity of an immediate increase in employer contributions. The legislature should decide whether the bill provides for an important state interest as an unfunded mandate."

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

Art. X, sec. 14, Fla. Const., provides that "a governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis." According to the DMS, the bill, at this time and in its present form, fails to comply with Art. X, sec. 14.

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<sup>6</sup> As noted by the DMS in its analysis of the bill, "this is essentially the same reemployment exception as is currently available for firefighters and paramedics, and for adjunct instructors, adjunct faculty members, or participants in a phased retirement program working for a community college or university...."

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The DMS states:

The cost of providing a reemployment exception for law enforcement officers, correctional officers, and correctional probation officers is unknown. *A special actuarial study is required to determine the impact SB 814 would have on the FRS.* This group of positions represents a significant portion of the Special Risk Class and would be in addition to the existing exceptions for firefighters and paramedics.

As reemployment exceptions become more prevalent, other employer groups (both special risk and non-special risk employers) will seek similar treatment in order to employ retirees with limited or no restriction. This trend could lead to earlier retirements since returning to work will have nominal, if any, impact on the members' ability to receive FRS retirement benefits. The reemployment exception provided by this bill for law enforcement officers, correctional officers, and correctional probation officers follows the trend toward allowing such exceptions. This trend will lead to higher overall FRS plan costs.

The DMS also states:

While the cost to allow limited post-retirement reemployment during the first year of retirement may have nominal fiscal effects if added incrementally for small groups of employees, the combined effect of adding such exceptions may no longer qualify as nominal. Continuing to expand reemployment exceptions makes this a benefit improvement with identifiable fiscal impact that should be funded on an actuarially sound basis. A special actuarial study is necessary to determine the fiscal impact the enactment of SB 814 would have to the system. Any emerging costs beyond the scope of the study would be discovered in future experience studies and valuations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In its analysis of the bill, DMS notes that, “at the time the reemployment exception was made for firefighters and paramedics ..., classroom teachers had recently been allowed a reemployment exception, and one of the arguments made was that the exception for firefighters and paramedics was needed because they would also provide classroom instruction to school children. It is unclear how broadly this same argument would apply to law enforcement officers, correctional officers, and correctional probation officers.”

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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