

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Retirement System Act

Chapter 121, F.S., the "Florida Retirement System Act," governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

Section 121.091, F.S., governs the payment of benefits under the FRS. This section requires a member of the FRS to terminate employment or begin participation in the Deferred Retirement Option Program in order to receive benefits. Termination occurs when a member ceases all employment relationships with FRS employers.² Termination is void if a member becomes reemployed by any member of the FRS within the next calendar month.³

Subsection (9) of s. 121.091, F. S., governs employment after retirement. This provision permits any person who is a retired member of the FRS to be employed by a non-FRS employer and receive retirement benefits. Yet, those persons who are retired members of the FRS and who are reemployed by an FRS employer may not receive both a salary from reemployment and retirement benefits in the period between two and 12 months after the date of retirement. After 12 months from the date of retirement, a person may receive both a salary from reemployment from the FRS employer and retirement benefits.

There currently are several provisions that allow a person who has retired to receive both a salary from reemployment with an FRS employer and retirement benefits in the period between two and 12 months after the date of retirement.⁴ These provisions limit the types of positions that the retired FRS member may accept, the number of hours the retired FRS member may work, or both. There currently are no restrictions on the types of positions or the number of hours that a retired FRS member may work with an FRS employer after 12 months.

Department of Law Enforcement Act

Chapter 943, F.S., is entitled the "Department of Law Enforcement Act," and includes various provisions relating to law enforcement within the State of Florida. Section 943.1395, F.S., provides conditions relating to the certification of law enforcement officers, correctional officers and correctional probation officers for employment or appointment, and provides for inactive status and revocation of certification.

¹ Section 121.025, F.S.

² Section 121.021(39)(a), F.S.

³ *Id.*

⁴ For example, a district school board may reemploy a retired member as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver or food service worker on a noncontractual basis. See, s. 121.091(9)(b)3, F.S.

Effect of Proposed Changes

This bill amends s. 943.1395, F.S., to create a restriction on the reemployment of law enforcement officers, correctional officers and correctional probation officers who retire from an agency under ch. 121, F. S. If these officers seek reemployment at the agency from which they retired, they may only be appointed, reappointed, employed or reemployed at the lowest rank and pay scale for a certified law enforcement officer, correctional officer, or correctional probation officer within that agency for a minimum period of three years. The bill makes the certification inactive for a law enforcement officer, correctional officer or correctional probation officer who violates the reemployment restriction.⁵

The bill does not otherwise limit the employment or appointment opportunities for the law enforcement officer, correctional officer or correctional probation officer at any other employing agency. This bill also does not change the limitations on employment after retirement in s. 121.091(9), F.S.

Only anecdotal data was available on the extent to which law enforcement officers, correctional officers and correctional probation officers are reemployed in their previous positions after retiring. Anecdotal data also was the only source for the number of law enforcement/corrections agencies that have policies similar to those proposed by the bill.⁶ Some of these incidents, however, have been attributed to employees participating in the Deferred Retirement Option Program,⁷ who are required to submit binding letters of termination establishing a deferred termination date.⁸

The changes made by this bill are significantly different from the other limitations on reemployment with an FRS employer after retirement.⁹ The bill affects reemployment with only a single FRS employer and applies for three years, and the bill adversely impacts a professional certification.

C. SECTION DIRECTORY:

Section 1: Amends s. 943.1395, F.S., to set the conditions of the reemployment of law enforcement officers, correctional officers and correctional probation officers.

Section 2: Conforms a statutory reference in s. 943.22, F.S.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to create, modify, amend or eliminate any revenues of state government.

2. Expenditures:

This bill may affect the Florida Department of Law Enforcement if the department is required to change its certification monitoring process to comply with the provisions of this bill. The department may be able to absorb any additional costs within existing budget.

⁵ Law enforcement officers, correctional officers or correctional probation officers must be certified for appointment to or employment in most positions.

⁶ For example, the Florida Highway Patrol has such a practice. Telephone conversation with Colonel Christopher Knight, Florida Highway Patrol (Feb. 2, 2006). The Marion County Sheriff's Office also has a similar policy. Testimony before the Fla. House Gov't Ops. Comm. (Mar. 15, 2006) (recording on file with the Fla. House of Representatives.).

⁷ Testimony before the Fla. House Gov't Ops. Comm. (Mar. 15, 2006) (recording on file with the Fla. House of Representatives.).

⁸ Section 121.091(13)(b)2.b, F.S.; *see, also* s. 121.091(13)(c)5.d., F.S. (reestablishing membership in the Florida Retirement System and requiring repayment plus interest for a participant who fails to terminate employment).

⁹ As previously discussed, most limitations allow a person who has retired to receive both a salary from reemployment with an FRS employer and retirement benefits in the period between two and 12 months after the date of retirement as long as the retired person works in designated positions and/or not more than a certain number of hours.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to create, modify, amend or eliminate any revenues of local governments.

2. Expenditures:

It is unknown whether this bill will create expenditures for local governments for law enforcement or correctional personnel or compliance costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the Enrolled Actuary regarding the bill as filed:

This bill does not alter existing reemployment exceptions or create new exceptions or requirements for forfeiture of benefits during reemployment. In its current form, this bill would not have a fiscal impact on the FRS.¹⁰

The Committee Substitute does not appear to change this fiscal note.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Benefit changes to the state retirement system are governed by s. 14 of Art. X of the State Constitution. Since this bill does not change state retirement system benefits, this section does not apply.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The Florida Sheriffs Association raised three concerns regarding this bill: (1) it conflicts with the independence of constitutional officers provided in s. 30.53, F.S.; (2) it creates a discriminatory policy towards three classes of employees; and (3) it runs counter to recent legislative changes that encourage the reemployment of employees with specialized experience.¹¹

¹⁰ *Id.*

¹¹ Florida Sheriffs Association, *Reemployment of Retired Officers* (Feb. 7, 2006); Testimony before the Fla. House Gov't Ops. Comm. (Mar. 15, 2006) (recording on file with the Fla. House of Representatives.).

The Florida Police Benevolent Association (FPBA) is a proponent of this bill. It believes that the bill will serve to prevent an abuse of the state retirement system whereby employees retire and then return to work in their previously-held positions. Also, the FPBA believes that by ensuring that employees permanently retire from higher-level positions, the bill will remove impediments for other officers seeking promotion through the ranks.¹²

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its meeting on March 15, 2006, the Governmental Operations Committee adopted a substitute strike-everything amendment and approved the bill with committee substitute. The substitute strike-everything amendment provided that if a law enforcement officer, correctional officer or correctional probation officer seeks to return to the agency from which that officer retired, that officer may only be appointed, reappointed, employed or reemployed at the lowest rank and pay scale for those officers within that agency for a minimum period of three years. The substitute amendment made the certification of a law enforcement officer, correctional officer or correctional probation officer who violates this reemployment restriction inactive. The substitute strike-everything amendment also moved the statutory revisions from Chapter 121, F.S., (Florida Retirement System) to Chapter 943, F.S., (Department of Law Enforcement). This change was made because the statutory revisions are more related to employment than retirement benefits.

¹² Telephone conversation with FPBA representative on March 27, 2006.