HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:   HB 323   Reemployment After Retirement
SPONSOR(S): Patterson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Mitchell	Williamson
2) Local Government Council			
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

HB 323 limits the reemployment of retired law enforcement officers, correctional officers, and correctional probation officers to entry level positions.

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

This bill does not appear to impact the revenues of the state or local governments. This bill may create expenditures for the state and for local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.
STORAGE NAME: h0323.GO.doc
DATE: 2/3/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty–This bill limits the reemployment of law enforcement officers, correctional officers, and correctional probation officers after retirement to "entry level positions."

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Limitations on Employment after Retirement

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it 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, Florida Statutes, 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 section 121.091, Florida Statutes, governs employment after retirement. This subsection permits any person who is a retired member of the FRS to be employed by a non-FRS employer <u>and</u> receive retirement benefits. Yet, those persons who are retired members of the FRS and who are reemployed by an FRS employer <u>may not</u> 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 are currently 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 twelve months.

Limitations on Reemployment

HB 323 appears to create a permanent limitation on reemployment for law enforcement officers,[5] correctional officers,[6] and correctional probation officers.[7] The bill limits reemployment for these officers to "an entry level position for the duration of such reemployment." This provision appears to be a broad limitation that applies to any employing agency and not just the employing agency from which the officer retired.

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Stat. § 121.021(39)(a) (2005).
[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. Fla. Stat. § 121.091(9)(b)3. (2005).
[5] Fla. Stat. § 943.10(1) (2005).
[6] Fla. Stat. § 943.10(2) (2005).
[7] Fla. Stat. § 943.10(3) (2005).

Only anecdotal data is available on the extent to which law enforcement officers, correctional officers, and correctional probation officers are reemployed in their previous positions after retiring. There also was no data on the number of law enforcement/corrections agencies that have policies like that proposed by HB 323.[8]

This change is unlike the other reemployment provisions in subsection (9) since it does not permit the law enforcement officer, correctional officer, or correctional probation officer to receive both a salary from reemployment and retirement benefits in the period between two and 12 months after the date of retirement. Furthermore, there does not appear to be any adverse impact for the retired FRS member or the employing agency for violating this provision.

C. SECTION DIRECTORY:

Section 1:   Amends section 121.091, Florida Statutes, to limit the reemployment of law enforcement officers, correctional officers, and correctional probation officers.

Section 2:   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 create expenditures for state government if the Division of Retirement within the Department of Management Services is required to change its employer reporting process and monitor compliance with the provisions of this bill.[9]

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:

This bill may create expenditures for local governments that employ law enforcement officers or correctional officers since those local governments will have to determine their entry level positions and may have to report this information to the Division of Retirement within the Department of Management Services.[10]

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 this bill:

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[8] For example, the Florida Highway Patrol has such a practice. Telephone conversation with Colonel Christopher Knight, Florida Highway Patrol (Feb. 2, 2006).

[9] Fla. Dep't of Mgmt. Serv., HB 323 (2006) Staff Analysis (Dec. 19, 2005) (on file with dep't).

[10] *Id*.

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.[11]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

This bill may, however, require counties to spend funds or to take an action requiring the expenditure of funds. Yet, the bill appears to be exempt from the requirements of section 18(a) of article VII of the Florida Constitution because it has an insignificant fiscal impact.[12]

2. Other:

Benefit changes to the state retirement system are governed by section 14 of article X of the Florida Constitution:

SECTION 14. State retirement systems benefit changes.—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.

Since this bill does not change state retirement system benefits, the bill does not need to comply with the requirements of section 14 of article X of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Employing Agency

The bill references "employing agency." This term is not defined in section 121.021, Florida Statutes; rather, this appears to be a reference to section 943.10(4), Florida Statutes. The sponsor may wish to consider an amendment to provide a citation to section 943.10(4), Florida Statutes.

Drafting Issue: Entry-Level Position

The bill limits reemployment to an "entry-level position." This term is not defined in section 121.021, Florida Statutes, or in section 943.10, Florida Statutes. The sponsor may wish to consider an amendment to provide a definition.

Drafting Issue: Scope of the Reemployment Limitation

As currently drafted, the bill appears to limit the reemployment of law enforcement officers, correctional officers, and correctional probation officers with any employing agency, not just the employing agency

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[11] *Id.*
[12] Fla. Const. art. VIII, §18(d).

from which that officer retired. The sponsor may wish to consider an amendment if a more limited restriction on reemployment is desired.

Drafting Issue: Placement in Section 121.091, Florida Statutes

This bill does not affect the benefits payable under the FRS. As such, the sponsor may wish to consider making these changes in chapter 943, Florida Statutes, which governs the employment of law enforcement officers, correctional officers, and correctional probation officers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.