

1 A bill to be entitled
 2 An act relating to reemployment after retirement; amending
 3 s. 121.021, F.S.; redefining the term "termination";
 4 providing that termination has not occurred if a member
 5 was employed in violation of certain rehire provisions;
 6 amending s. 121.091, F.S.; limiting terms of reemployment
 7 for certain members; providing certain exceptions;
 8 providing for joint and several liability for violation of
 9 reemployment provisions; amending s. 121.591, F.S.;
 10 providing that the violation of certain rehire provisions
 11 shall be deemed an invalid distribution; providing an
 12 effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsection (39) of section 121.021, Florida
 17 Statutes, is amended to read:

18 121.021 Definitions.--The following words and phrases as
 19 used in this chapter have the respective meanings set forth
 20 unless a different meaning is plainly required by the context:

21 (39) (a) "Termination" occurs, except as provided in
 22 paragraph (b), when a member ceases all employment relationships
 23 with employers under this system, as defined in subsection (10),
 24 but in the event a member should be employed by any such
 25 employer within the next calendar month, or in violation of the
 26 rehire provisions provided for in s. 121.091(9)(b)1.b.,
 27 termination shall be deemed not to have occurred. A leave of
 28 absence shall constitute a continuation of the employment

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29 relationship, except that a leave of absence without pay due to
 30 disability may constitute termination for a member, if such
 31 member makes application for and is approved for disability
 32 retirement in accordance with s. 121.091(4). The department or
 33 board may require other evidence of termination as it deems
 34 necessary.

35 (b) "Termination" for a member electing to participate
 36 under the Deferred Retirement Option Program occurs when the
 37 Deferred Retirement Option Program participant ceases all
 38 employment relationships with employers under this system in
 39 accordance with s. 121.091(13), but in the event the Deferred
 40 Retirement Option Program participant should be employed by any
 41 such employer within the next calendar month, or in violation of
 42 the rehire provisions provided for in s. 121.091(9)(b)1.b.,
 43 termination will be deemed not to have occurred, except as
 44 provided in s. 121.091(13)(b)4.c. A leave of absence shall
 45 constitute a continuation of the employment relationship.

46 Section 2. Paragraph (b) of subsection (9) of section
 47 121.091, Florida Statutes, is amended to read:

48 121.091 Benefits payable under the system.--Benefits may
 49 not be paid under this section unless the member has terminated
 50 employment as provided in s. 121.021(39)(a) or begun
 51 participation in the Deferred Retirement Option Program as
 52 provided in subsection (13), and a proper application has been
 53 filed in the manner prescribed by the department. The department
 54 may cancel an application for retirement benefits when the
 55 member or beneficiary fails to timely provide the information
 56 and documents required by this chapter and the department's

HB 861

2007

57 rules. The department shall adopt rules establishing procedures
58 for application for retirement benefits and for the cancellation
59 of such application when the required information or documents
60 are not received.

61 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.--

62 (b)1.a. Any person who is retired under this chapter,
63 except under the disability retirement provisions of subsection
64 (4), may be reemployed by any private or public employer after
65 retirement and receive retirement benefits and compensation from
66 his or her employer without any limitations, except that a
67 person may not receive both a salary from reemployment with any
68 agency participating in the Florida Retirement System and
69 retirement benefits under this chapter for a period of 12 months
70 immediately subsequent to the date of retirement. However, a
71 DROP participant shall continue employment and receive a salary
72 during the period of participation in the Deferred Retirement
73 Option Program, as provided in subsection (13).

74 b. Except as provided for in subparagraphs 3., 4., 5., 6.,
75 and 11., and notwithstanding any other provisions in this
76 chapter to the contrary, a member may not be reemployed by the
77 same employer from which the member retired for a period of 12
78 months immediately subsequent to the date of retirement or, in
79 the case of a DROP participant, for a period of 12 months
80 immediately subsequent to the date the participant terminates
81 employment in accordance with subparagraph (13) (b)3. Any person
82 who is reemployed in violation of this sub-subparagraph shall
83 void his or her application for retirement benefits. Further,
84 any person who violates this sub-subparagraph and any employing

85 agency which knowingly employs or appoints such person in
86 violation of this sub-subparagraph shall be jointly and
87 severally liable for reimbursements to the retirement trust fund
88 of any retirement benefits improperly paid during this
89 reemployment limitation period. This provision shall not
90 otherwise limit the employment or appointment opportunities for
91 a person at any other employing agency. The limitations provided
92 for in this sub-subparagraph shall not be applicable when a
93 retiree is elected to an office or appointed by the Governor to
94 an elective office.

95 2. Any person to whom the limitation in subparagraph 1.
96 applies who violates such reemployment limitation and who is
97 reemployed with any agency participating in the Florida
98 Retirement System before completion of the 12-month limitation
99 period shall give timely notice of this fact in writing to the
100 employer and to the division and shall have his or her
101 retirement benefits suspended for the balance of the 12-month
102 limitation period. Any person employed in violation of this
103 paragraph and any employing agency which knowingly employs or
104 appoints such person without notifying the Division of
105 Retirement to suspend retirement benefits shall be jointly and
106 severally liable for reimbursement to the retirement trust fund
107 of any benefits paid during the reemployment limitation period.
108 To avoid liability, such employing agency shall have a written
109 statement from the retiree that he or she is not retired from a
110 state-administered retirement system. Any retirement benefits
111 received while reemployed during this reemployment limitation
112 period shall be repaid to the retirement trust fund, and

HB 861

2007

113 retirement benefits shall remain suspended until such repayment
114 has been made. Benefits suspended beyond the reemployment
115 limitation shall apply toward repayment of benefits received in
116 violation of the reemployment limitation.

117 3. A district school board may reemploy a retired member
118 as a substitute or hourly teacher, education paraprofessional,
119 transportation assistant, bus driver, or food service worker on
120 a noncontractual basis after he or she has been retired for 1
121 calendar month, in accordance with s. 121.021(39). A district
122 school board may reemploy a retired member as instructional
123 personnel, as defined in s. 1012.01(2)(a), on an annual
124 contractual basis after he or she has been retired for 1
125 calendar month, in accordance with s. 121.021(39). Any other
126 retired member who is reemployed within 1 calendar month after
127 retirement shall void his or her application for retirement
128 benefits. District school boards reemploying such teachers,
129 education paraprofessionals, transportation assistants, bus
130 drivers, or food service workers are subject to the retirement
131 contribution required by subparagraph 7.

132 4. A community college board of trustees may reemploy a
133 retired member as an adjunct instructor, that is, an instructor
134 who is noncontractual and part-time, or as a participant in a
135 phased retirement program within the Florida Community College
136 System, after he or she has been retired for 1 calendar month,
137 in accordance with s. 121.021(39). Any retired member who is
138 reemployed within 1 calendar month after retirement shall void
139 his or her application for retirement benefits. Boards of
140 trustees reemploying such instructors are subject to the

HB 861

2007

141 retirement contribution required in subparagraph 7. A retired
142 member may be reemployed as an adjunct instructor for no more
143 than 780 hours during the first 12 months of retirement. Any
144 retired member reemployed for more than 780 hours during the
145 first 12 months of retirement shall give timely notice in
146 writing to the employer and to the division of the date he or
147 she will exceed the limitation. The division shall suspend his
148 or her retirement benefits for the remainder of the first 12
149 months of retirement. Any person employed in violation of this
150 subparagraph and any employing agency which knowingly employs or
151 appoints such person without notifying the Division of
152 Retirement to suspend retirement benefits shall be jointly and
153 severally liable for reimbursement to the retirement trust fund
154 of any benefits paid during the reemployment limitation period.
155 To avoid liability, such employing agency shall have a written
156 statement from the retiree that he or she is not retired from a
157 state-administered retirement system. Any retirement benefits
158 received by a retired member while reemployed in excess of 780
159 hours during the first 12 months of retirement shall be repaid
160 to the Retirement System Trust Fund, and retirement benefits
161 shall remain suspended until repayment is made. Benefits
162 suspended beyond the end of the retired member's first 12 months
163 of retirement shall apply toward repayment of benefits received
164 in violation of the 780-hour reemployment limitation.

165 5. The State University System may reemploy a retired
166 member as an adjunct faculty member or as a participant in a
167 phased retirement program within the State University System
168 after the retired member has been retired for 1 calendar month,

HB 861

2007

169 in accordance with s. 121.021(39). Any retired member who is
170 reemployed within 1 calendar month after retirement shall void
171 his or her application for retirement benefits. The State
172 University System is subject to the retired contribution
173 required in subparagraph 7., as appropriate. A retired member
174 may be reemployed as an adjunct faculty member or a participant
175 in a phased retirement program for no more than 780 hours during
176 the first 12 months of his or her retirement. Any retired member
177 reemployed for more than 780 hours during the first 12 months of
178 retirement shall give timely notice in writing to the employer
179 and to the division of the date he or she will exceed the
180 limitation. The division shall suspend his or her retirement
181 benefits for the remainder of the first 12 months of retirement.
182 Any person employed in violation of this subparagraph and any
183 employing agency which knowingly employs or appoints such person
184 without notifying the Division of Retirement to suspend
185 retirement benefits shall be jointly and severally liable for
186 reimbursement to the retirement trust fund of any benefits paid
187 during the reemployment limitation period. To avoid liability,
188 such employing agency shall have a written statement from the
189 retiree that he or she is not retired from a state-administered
190 retirement system. Any retirement benefits received by a retired
191 member while reemployed in excess of 780 hours during the first
192 12 months of retirement shall be repaid to the Retirement System
193 Trust Fund, and retirement benefits shall remain suspended until
194 repayment is made. Benefits suspended beyond the end of the
195 retired member's first 12 months of retirement shall apply
196 toward repayment of benefits received in violation of the 780-

HB 861

2007

197 hour reemployment limitation.

198 6. The Board of Trustees of the Florida School for the
199 Deaf and the Blind may reemploy a retired member as a substitute
200 teacher, substitute residential instructor, or substitute nurse
201 on a noncontractual basis after he or she has been retired for 1
202 calendar month, in accordance with s. 121.021(39). Any retired
203 member who is reemployed within 1 calendar month after
204 retirement shall void his or her application for retirement
205 benefits. The Board of Trustees of the Florida School for the
206 Deaf and the Blind reemploying such teachers, residential
207 instructors, or nurses is subject to the retirement contribution
208 required by subparagraph 7. Reemployment of a retired member as
209 a substitute teacher, substitute residential instructor, or
210 substitute nurse is limited to 780 hours during the first 12
211 months of his or her retirement. Any retired member reemployed
212 for more than 780 hours during the first 12 months of retirement
213 shall give timely notice in writing to the employer and to the
214 division of the date he or she will exceed the limitation. The
215 division shall suspend his or her retirement benefits for the
216 remainder of the first 12 months of retirement. Any person
217 employed in violation of this subparagraph and any employing
218 agency which knowingly employs or appoints such person without
219 notifying the Division of Retirement to suspend retirement
220 benefits shall be jointly and severally liable for reimbursement
221 to the retirement trust fund of any benefits paid during the
222 reemployment limitation period. To avoid liability, such
223 employing agency shall have a written statement from the retiree
224 that he or she is not retired from a state-administered

HB 861

2007

225 retirement system. Any retirement benefits received by a retired
226 member while reemployed in excess of 780 hours during the first
227 12 months of retirement shall be repaid to the Retirement System
228 Trust Fund, and his or her retirement benefits shall remain
229 suspended until payment is made. Benefits suspended beyond the
230 end of the retired member's first 12 months of retirement shall
231 apply toward repayment of benefits received in violation of the
232 780-hour reemployment limitation.

233 7. The employment by an employer of any retiree or DROP
234 participant of any state-administered retirement system shall
235 have no effect on the average final compensation or years of
236 creditable service of the retiree or DROP participant. Prior to
237 July 1, 1991, upon employment of any person, other than an
238 elected officer as provided in s. 121.053, who has been retired
239 under any state-administered retirement program, the employer
240 shall pay retirement contributions in an amount equal to the
241 unfunded actuarial liability portion of the employer
242 contribution which would be required for regular members of the
243 Florida Retirement System. Effective July 1, 1991, contributions
244 shall be made as provided in s. 121.122 for retirees with
245 renewed membership or subsection (13) with respect to DROP
246 participants.

247 8. Any person who has previously retired and who is
248 holding an elective public office or an appointment to an
249 elective public office eligible for the Elected Officers' Class
250 on or after July 1, 1990, shall be enrolled in the Florida
251 Retirement System as provided in s. 121.053(1)(b) or, if holding
252 an elective public office that does not qualify for the Elected

HB 861

2007

253 Officers' Class on or after July 1, 1991, shall be enrolled in
254 the Florida Retirement System as provided in s. 121.122, and
255 shall continue to receive retirement benefits as well as
256 compensation for the elected officer's service for as long as he
257 or she remains in elective office. However, any retired member
258 who served in an elective office prior to July 1, 1990,
259 suspended his or her retirement benefit, and had his or her
260 Florida Retirement System membership reinstated shall, upon
261 retirement from such office, have his or her retirement benefit
262 recalculated to include the additional service and compensation
263 earned.

264 9. Any person who is holding an elective public office
265 which is covered by the Florida Retirement System and who is
266 concurrently employed in nonelected covered employment may elect
267 to retire while continuing employment in the elective public
268 office, provided that he or she shall be required to terminate
269 his or her nonelected covered employment. Any person who
270 exercises this election shall receive his or her retirement
271 benefits in addition to the compensation of the elective office
272 without regard to the time limitations otherwise provided in
273 this subsection. No person who seeks to exercise the provisions
274 of this subparagraph, as the same existed prior to May 3, 1984,
275 shall be deemed to be retired under those provisions, unless
276 such person is eligible to retire under the provisions of this
277 subparagraph, as amended by chapter 84-11, Laws of Florida.

278 10. The limitations of this paragraph apply to
279 reemployment in any capacity with an "employer" as defined in s.
280 121.021(10), irrespective of the category of funds from which

HB 861

2007

281 the person is compensated.

282 11. An employing agency may reemploy a retired member as a
283 firefighter or paramedic after the retired member has been
284 retired for 1 calendar month, in accordance with s. 121.021(39).
285 Any retired member who is reemployed within 1 calendar month
286 after retirement shall void his or her application for
287 retirement benefits. The employing agency reemploying such
288 firefighter or paramedic is subject to the retired contribution
289 required in subparagraph 8. Reemployment of a retired
290 firefighter or paramedic is limited to no more than 780 hours
291 during the first 12 months of his or her retirement. Any retired
292 member reemployed for more than 780 hours during the first 12
293 months of retirement shall give timely notice in writing to the
294 employer and to the division of the date he or she will exceed
295 the limitation. The division shall suspend his or her retirement
296 benefits for the remainder of the first 12 months of retirement.
297 Any person employed in violation of this subparagraph and any
298 employing agency which knowingly employs or appoints such person
299 without notifying the Division of Retirement to suspend
300 retirement benefits shall be jointly and severally liable for
301 reimbursement to the Retirement System Trust Fund of any
302 benefits paid during the reemployment limitation period. To
303 avoid liability, such employing agency shall have a written
304 statement from the retiree that he or she is not retired from a
305 state-administered retirement system. Any retirement benefits
306 received by a retired member while reemployed in excess of 780
307 hours during the first 12 months of retirement shall be repaid
308 to the Retirement System Trust Fund, and retirement benefits

HB 861

2007

309 shall remain suspended until repayment is made. Benefits
310 suspended beyond the end of the retired member's first 12 months
311 of retirement shall apply toward repayment of benefits received
312 in violation of the 780-hour reemployment limitation.

313 Section 3. Paragraph (a) of subsection (1) of section
314 121.591, Florida Statutes, is amended to read:

315 121.591 Benefits payable under the Public Employee
316 Optional Retirement Program of the Florida Retirement
317 System.--Benefits may not be paid under this section unless the
318 member has terminated employment as provided in s.
319 121.021(39)(a) or is deceased and a proper application has been
320 filed in the manner prescribed by the state board or the
321 department. The state board or department, as appropriate, may
322 cancel an application for retirement benefits when the member or
323 beneficiary fails to timely provide the information and
324 documents required by this chapter and the rules of the state
325 board and department. In accordance with their respective
326 responsibilities as provided herein, the State Board of
327 Administration and the Department of Management Services shall
328 adopt rules establishing procedures for application for
329 retirement benefits and for the cancellation of such application
330 when the required information or documents are not received. The
331 State Board of Administration and the Department of Management
332 Services, as appropriate, are authorized to cash out a de
333 minimis account of a participant who has been terminated from
334 Florida Retirement System covered employment for a minimum of 6
335 calendar months. A de minimis account is an account containing
336 employer contributions and accumulated earnings of not more than

337 \$5,000 made under the provisions of this chapter. Such cash-out
 338 must either be a complete lump-sum liquidation of the account
 339 balance, subject to the provisions of the Internal Revenue Code,
 340 or a lump-sum direct rollover distribution paid directly to the
 341 custodian of an eligible retirement plan, as defined by the
 342 Internal Revenue Code, on behalf of the participant. If any
 343 financial instrument issued for the payment of retirement
 344 benefits under this section is not presented for payment within
 345 180 days after the last day of the month in which it was
 346 originally issued, the third-party administrator or other duly
 347 authorized agent of the State Board of Administration shall
 348 cancel the instrument and credit the amount of the instrument to
 349 the suspense account of the Public Employee Optional Retirement
 350 Program Trust Fund authorized under s. 121.4501(6). Any such
 351 amounts transferred to the suspense account are payable upon a
 352 proper application, not to include earnings thereon, as provided
 353 in this section, within 10 years after the last day of the month
 354 in which the instrument was originally issued, after which time
 355 such amounts and any earnings thereon shall be forfeited. Any
 356 such forfeited amounts are assets of the Public Employee
 357 Optional Retirement Program Trust Fund and are not subject to
 358 the provisions of chapter 717.

359 (1) NORMAL BENEFITS.--Under the Public Employee Optional
 360 Retirement Program:

361 (a) Benefits in the form of vested accumulations as
 362 described in s. 121.4501(6) shall be payable under this
 363 subsection in accordance with the following terms and
 364 conditions:

HB 861

2007

365 1. To the extent vested, benefits shall be payable only to
366 a participant.

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

370 3. To receive benefits under this subsection, the
371 participant must be terminated from all employment with all
372 Florida Retirement System employers, as provided in s.
373 121.021(39).

374 4. Benefit payments may not be made until the participant
375 has been terminated for 3 calendar months, except that the board
376 may authorize by rule for the distribution of up to 10 percent
377 of the participant's account after being terminated for 1
378 calendar month if a participant has reached the normal
379 retirement requirements of the defined benefit plan, as provided
380 in s. 121.021(29).

381 5. If a member or former member of the Florida Retirement
382 System receives an invalid distribution from the Public Employee
383 Optional Retirement Program Trust Fund, such person shall repay
384 the full invalid distribution to the trust fund within 90 days
385 after receipt of final notification by the State Board of
386 Administration or the third-party administrator that the
387 distribution was invalid. If such person fails to repay the full
388 invalid distribution within 90 days after receipt of final
389 notification, the person may be deemed retired from the Public
390 Employee Optional Retirement Program by the state board, as
391 provided pursuant to s. 121.4501(2)(j), and shall be subject to
392 the provisions of s. 121.122. If such person is deemed retired

HB 861

2007

393 by the state board, any joint and several liability set out in
394 s. 121.091(9)(c)2. becomes null and void, and the state board,
395 the Department of Management Services, or the employing agency
396 is not liable for gains on payroll contributions that have not
397 been deposited to the person's account in the Public Employee
398 Optional Retirement Program, pending resolution of the invalid
399 distribution. The member or former member who has been deemed
400 retired or who has been determined by the board to have taken an
401 invalid distribution may appeal the agency decision through the
402 complaint process as provided under s. 121.4501(9)(f)3. As used
403 in this subparagraph, the term "invalid distribution" means any
404 distribution from an account in the Public Employee Optional
405 Retirement Program which is taken in violation of the provisions
406 of this section, s. 121.091(9), or s. 121.4501. Further,
407 violation of the rehire provisions provided for in s.
408 121.091(9)(b)1.b. shall be deemed an invalid distribution and
409 the penalties provided for in this section shall apply.

410 Section 4. This act shall take effect July 1, 2007.