

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – This bill limits the reemployment options of certain Florida Retirement System retirees.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

FLORIDA RETIREMENT SYSTEM

Chapter 121, F.S., 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

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 164 cities and 209 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over 680,000 active members,³ 264,000 retirees and surviving beneficiaries,⁴ and 31,000 Deferred Retirement Option Program participants.⁵ Members of the FRS belong to one of five membership classes:

1. Regular Class ⁶	588,204 members	86.46% of membership
2. Special Risk Class ⁷	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class ⁸	74 members	0.01% of membership
4. Elected Officers' Class ⁹	2,078 members	0.31% of membership
5. Senior Management Service Class ¹⁰	7,562 members	1.11% of membership ¹¹

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.¹²

ELECTED OFFICERS' CLASS

The Elected Officers' Class of the FRS initially was created for holders of the offices of Governor, Lieutenant Governor, Cabinet officer, legislator, Supreme Court justice, district court of appeal judge,

¹ Section 121.025, F.S.

² Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs) [hereafter referred to as FRS Annual Report].

³ *Id.* at 43.

⁴ *Id.* at 52.

⁵ *Id.* at 49.

⁶ Section 121.021(12), F.S.

⁷ Section 121.0515, F.S.

⁸ Section 121.0515(7), F.S.

⁹ Section 121.052, F.S.

¹⁰ Section 121.055, F.S.

¹¹ FRS Annual Report at 43.

¹² *See, e.g.,* s. 121.055(3)(a)1., F.S.

circuit judge, and state attorney. The class subsequently has been expanded to include county court judges, public defenders, constitutional county elected officers, public service commissioners, and any elected officer of a municipality or special district.¹³ Participation in the Elected Officers' Class is compulsory for the aforementioned officeholders, except public service commissioners.¹⁴

Within six months of being elected, elected officials may elect to withdraw from the FRS or may elect to participate in another class of the FRS in lieu of the Elected Officers' Class under the following circumstances:

- Members who are dually employed due to employment with another FRS employer and their elective office may choose to elect membership in the class under which they are eligible;
- Sheriffs may elect to participate in the Special Risk Class; or
- All elected officers may elect membership in the Senior Management Service Class.¹⁵

Members of the Elected Officers' Class earn a higher normal retirement benefit accrual rate of 3 percent of the member's average final compensation;¹⁶ judicial members earn a 3.5 percent accrual rate.¹⁷ These increased benefits are funded through higher employer contribution rates¹⁸ starting at 13.32 percent of gross compensation for statewide elected officers, legislators, state attorneys and public defenders. Judicial members and county elected officers contribute higher rates of 18.40 percent and 15.37 percent, respectively.¹⁹

REEMPLOYMENT OF RETIREES

Section 121.091, F.S., governs the payment of benefits under the FRS. It requires a member of the FRS to terminate employment to begin receiving benefits, or begin participation in the Deferred Retirement Option Program (DROP) to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with his or her FRS employer.²⁰ Termination is void if any FRS-participating employer reemploys a member within the next calendar month.²¹

Subsection 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and authorizes those retirees to continue receiving retirement benefits. Yet, retirees reemployed by and receiving a salary from an FRS employer must wait a period of 12 months, after which time they may receive both their retirement benefit and salary from reemployment with the FRS employer. There are no restrictions on the types of positions or the number of hours a retired FRS member may work with an FRS employer after the 12-month period.

There are several exceptions to the reemployment limitation 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 months two and 12 after the date of retirement. These provisions limit the types of positions and the number of hours a retired FRS member may work.²² Retirees who become members of the Elected Officers' Class, by virtue of an election or appointment to an elective office covered by the Elected Officers' Class, may continue to receive retirement benefits as well as compensation for the elected officer service for as long as they remain in the elected position covered by that class.²³

¹³ Section 121.052(2), F.S.

¹⁴ Section 121.052(3), F.S.

¹⁵ *Id.*

¹⁶ Section 121.021(24), F.S., defines "average final compensation" as "the average of the five highest fiscal years of compensation for creditable service prior to retirement, termination, or death."

¹⁷ Section 121.052(10), F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁸ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2007, and 9.59 percent, effective July 1, 2008, for Regular Class members).

¹⁹ Section 121.052(7), F.S.

²⁰ Section 121.021(39)(a), F.S.

²¹ *Id.*

²² *See, e.g.*, s. 121.091(9)(b)3., 4., 5., 6., and 11., F.S.

²³ Section 121.053(1)(b)1., F.S.

RENEWED MEMBERSHIP

FRS retirees and retirees of other state-administered retirement programs who are reemployed in FRS-covered employment renew their membership in the FRS and earn service credit toward a "second-career" retirement benefit. They qualify for such benefit upon vesting again. Renewed members may elect to participate in either the FRS investment Plan or FRS Pension Plan.

Renewed members are ineligible:

- To participate in DROP;
- For membership in the Special Risk Class; and
- For disability benefits.²⁴

As of June 30, 2007, there were 8,089 renewed members in the FRS, 180 of which were renewed members in the Elected Officers' Class.²⁵

PROPOSED CHANGES

This bill prohibits any previously retired person holding an elective public office or appointed to such office from receiving retirement benefits until after he or she terminates such service. In essence, the bill suspends the person's retirement benefit. Upon termination of service in the elective public office, the suspension of retirement benefits is lifted and the retirement benefit is recalculated to include the additional service and compensation earned.

The bill creates a conflict with the existing provisions of s. 121.053, F.S., which requires a retiree elected or appointed to an elective office covered by the Elected Officers' Class to renew membership towards a second career benefit. The bill also creates a conflict with the existing provisions of s. 121.091, F.S., which provides that the amount of a retirement benefit is final once the first benefit payment has been cashed or deposited or credited to DROP.

C. SECTION DIRECTORY:

Section 1 amends s. 121.091, F.S., to prohibit previously retired persons elected or appointed to an elective public office from receiving retirement benefits until after termination of such service.

Section 2 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

An actuarial special study is needed to determine the fiscal impact of this bill.²⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²⁴ The surviving spouse or dependent children of a renewed member may qualify for survivor benefits.

²⁵ Department of Management Services HB1405 (2008) Substantive Bill Analysis (Mar. 25, 2008) at 5 (on file with the Government Efficiency & Accountability Council) [hereafter referred to as DMS Analysis].

²⁶ DMS Analysis at 7.

1. Revenues:

None.

2. Expenditures:

An actuarial special study is needed to determine the fiscal impact of this bill.²⁷

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:

According to the Department of Management Services:

Since the additional service would be added to the first retirement's service credit, all service would result in a benefit improvement without the elected official having to work an additional six years to vest in an additional benefit. The employer contributions paid on reemployed elective service may not be adequate to fund the fiscal impact of this proposed change. A special study is needed to determine the required funding. However, the lack of clarity in the Legislation makes any fiscal analysis almost impossible. Some questions are:

- Is it the bill's intention to apply to current elected officials, apply immediately to current elected officials or only apply when current officials are reelected?
- Does the "resumed" benefit include upward adjustments for missed 3% increases?
- If the elected AFC is greater than the AFC at original retirement does the entire prior service accrual benefit?
- How likely is the affected AFC to be greater than the original AFC?
- How would a greater AFC interact with 3% cost-of-living increases? Could he or she get a 6% increase for two missed cost-of-living increases, another 6% accrual for two years of elected service and then the entire benefit increased by a greater AFC?

Any changes to the demographics and actuarial experience of the renewed membership classes resulting from this bill that result in additional fiscal impact will be reflected in future valuations and experience studies of the FRS.²⁸

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, however, may require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Until an actuarial special study is performed, it is unknown whether this bill qualifies as a mandate under Article VII, s. 18(a) of the State Constitution.

2. Other:

Article X, s. 14 of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after

²⁷ *Id.*

²⁸ *Id.*

January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.²⁹

This bill requires an actuarial special study to establish the required contribution rate to fund its benefits in an actuarially sound manner. Therefore, this bill does not appear to satisfy the requirements of Article X, s. 14 of the State Constitution.³⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

²⁹ Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of Article X, s. 14 of the State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district, and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in part by public funds.

³⁰ DMS Analysis at 7.