

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7079 PCB GEAC 08-16 Retirement
SPONSOR(S): Government Efficiency & Accountability Council and Schenck
TIED BILLS: **IDEN./SIM. BILLS:** SB 2848

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	11 Y, 0 N	Camara/Dykes	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

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.

This bill makes several changes to Chapter 121, F.S., including the deletion of inconsistencies and obsolete provisions, consolidation of repetitive language, and other clarifying changes. It reopens the enrollment period between July 1, 2008 and December 31, 2008, to allow municipalities and special districts to designate all its elected positions for inclusion in the Elected Officers' Class. This bill also lifts certain limitations for retirees reemployed by the Florida School for the Deaf and the Blind in certain noncontractual positions, as well as allows retirees to be reemployed as classroom teachers on an annual contractual basis by the Florida School for the Deaf and the Blind.

This bill does not appear to have a fiscal impact on state or local governments.

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:

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

NORMAL RETIREMENT DATE

Present Situation

A member's retirement date is reached based upon attaining 30 years of service before age 62 for all classes, except the Special Risk Class, which is 25 years of service before age 55. Otherwise, if

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.

vested, the member reaches normal retirement upon attaining age 62 or 55 for all classes, depending upon class of membership.¹³

Proposed Changes

This bill amends the definition of “normal retirement date” to clarify that normal retirement date based upon age is attained on the first day of the month on which the member reaches normal retirement age. When basing normal retirement date on years of service, it is attained on the first day of the month following the month in which the member completes 30 years of service or 25 years of service for special risk members.

FRS INFORMATION DISSEMINATION

This bill establishes a requirement that any promotional materials or advertisements that refer to the FRS, either directly or indirectly, contain a disclaimer that the information is not approved nor endorsed by the FRS, unless prior written approval is received from DMS or the State Board of Administration (SBA).

This bill amends the definition of “employer” to clarify that any employers who participate in the FRS are not agents of either the SBA, DMS, or the Division of Retirement. Neither the SBA, DMS, nor the Division are responsible for the dissemination of erroneous information by representatives of FRS employers.

Moreover, this bill adds definitions for “state board” and “board” to mean the State Board of Administration, and “trustees” to mean the Trustees of the SBA.

QUALIFIED PAST SERVICE

Present Situation

“Past service” of any FRS member is defined as “the number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which the member was in the active employ of an employer prior to his or her date of participation [in the FRS].”¹⁴

Proposed Changes

The bill amends the definition of “past service” to limit past service covered by the FRS to public employment. Moreover, it clarifies that participation in the FRS by an employer due to a transfer, merger, or consolidation of function must occur between two public governmental employing entities. The bill allows the former or current employer to pay for the employee’s past service cost, unless otherwise prohibited.

The bill clarifies that such public entities and their employees who are under a leasing agreement with a co-employer relationship are ineligible to participate in the FRS. It amends the definition of “employee” to reflect this change.

The bill defines “co-employer service” as “employment in a single position simultaneously covered and reported by both a public employer and a private employer.”

¹³ Section 121.021(29), F.S.

¹⁴ Section 121.021(18), F.S.

SERVICE CREDIT PURCHASE

Present Situation

Members may purchase up to five years of credit in the FRS for certain out-of-state service¹⁵ and in-state service¹⁶ performed prior to membership in the FRS. The position under which the credit is claimed must have been covered by a retirement or pension plan provided by the employer, and the member must have completed a minimum of six years of creditable service in the FRS for eligibility to purchase such credit. Such credit is credited as service in the Regular Class.¹⁷ The employer may pay all or a portion of the cost of this service credit.¹⁸

Additionally, persons who become members of the FRS through the transfer, merger, consolidation, or assumption of functions and activities of their governmental employers are entitled to receive past-service credit for the time they performed services for, and were employees of, the governmental employing entity prior to its transfer, merger, consolidation, or assumption of functions and activities.¹⁹

Should an employer not elect to provide past service for the member, the member may purchase it for him or herself.²⁰ Forms of acceptable payment are cash, personal or cashier's checks, and money orders.²¹ These forms of payment also are acceptable for service other than current service, including prior service, military service, leave-of-absence service, out-of-state service, and certain non-FRS in-state service.²²

Proposed Changes

This bill adds direct rollovers or transfers of funds from qualified plans, as permitted under the Internal Revenue Code of the United States, as valid forms of employee payment for service other than current service. It clarifies that the former or current employer may pay for the employee's past service cost, unless otherwise prohibited.

This bill clarifies that participation in the FRS by an employer due to a transfer, merger, or consolidation of function must occur between two public governmental agencies. Thus, limiting service covered by the FRS to public service. Such public entities and their employees who are under a leasing agreement with a co-employer relationship are ineligible to participate in the FRS.

Neither out-of-state service, in-state service, nor past service may be purchased if the member has or is eligible to receive any employer-funded contributions or benefits from such service. This bill also requires that the military service claimed under the out-of-state service provisions be from active military service.

ELECTED OFFICERS CLASS ENROLLMENT PERIOD

Present Situation

The Legislature created an enrollment period between July 1, 2001 and December 31, 2001, to allow governing bodies of municipalities and special districts to elect, by majority vote, to designate all of its elected positions for inclusion in the Elected Officers' Class. Such an election was irrevocable, and the

¹⁵ Section 121.1115, F.S., lists "out-of-state service" to include any military service, or service in a position of employment with a state, a political subdivision thereof, or the Federal Government.

¹⁶ Section 121.1122, F.S., lists "in-state service" as service in accredited nonpublic schools and colleges, including charter schools and charter technical career centers.

¹⁷ Sections 121.1115(1) and 121.1122, F.S.

¹⁸ Section 121.1115(2), F.S.

¹⁹ Section 121.081(1)(f), F.S.

²⁰ Section 121.081(1)(c), F.S.

²¹ Section 121.071(6), F.S.

²² *Id.*

designation of such positions was effective the first day of the month following receipt by DMS of the ordinance or resolution passed by the governing body.²³

Proposed Changes

This bill reopens the enrollment period between July 1, 2008 and December 31, 2008, to allow municipalities and special districts to designate all of its elected positions for inclusion in the Elected Officers' Class pursuant to the aforementioned criteria.

REEMPLOYMENT AFTER RETIREMENT

Present Situation

Anyone who is retired and receiving benefits from the FRS may be reemployed by any employing agency provided:

- The member did not retire under the disability retirement provisions; and
- For the first 12 months immediately after retirement, the employer not be one that participates in a state-administered retirement plan. After 12 months from the date of retirement, a retiree may be both employed by an employing entity that participates in the FRS, and receive retirement benefits.²⁴

Retired members reemployed by an FRS employer after one month of retirement must give timely notice of this fact to the Division of Retirement so their retirement benefits may be suspended for the balance of the remaining 11-month limitation period. Any retiree who is reemployed within one calendar month after retirement voids his or her application for retirement.²⁵ A strict interpretation of current law would require that person's retirement benefit payments to be suspended during the rest of that 11-month period, even if that person worked only a few days or weeks, for example, as a poll worker for the Supervisor of Elections.

Proposed Changes

This bill clarifies that suspension of benefits for reemployment during months two through 12, after retirement, affects only the months actually employed during that limitation period.

REEMPLOYMENT AFTER RETIREMENT

Present Situation

The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retired member as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for one calendar month, but for no more than 780 hours during the first 12 months of retirement. The Division of Retirement must be given timely notice that hours of employment are expected to exceed 780 hours during the first 12 months of retirement so that benefits may be suspended after such time. Any retirement benefits paid to a member whose employment exceeds 780 hours during the 12 months subsequent to retirement must be reimbursed to the FRS by the member.²⁶

Proposed Changes

This bill lifts the 780-hour limitation on retirees reemployed by the Florida School for the Deaf and the Blind as substitute teachers, substitute residential instructors, or substitute nurses, allowing them to both collect a retirement benefit and be reemployed without limitation, except for the requirement that they be retired for one calendar month. The Florida School for the Deaf and the Blind may reemploy

²³ Section 121.052(3)(e), F.S.

²⁴ Section 121.091(9), F.S. (2006).

²⁵ *Id.*

²⁶ Section 121.091(9)(b)6., F.S.

retired members as instructional personnel²⁷ who are classroom teachers²⁸ on an annual contractual basis.

DEFERRED RETIREMENT OPTION PROGRAM

Present Situation

In 1997, the Florida Legislature created a retirement option for FRS members called the Deferred Retirement Option Program (DROP).²⁹ DROP allows a member of the FRS, who has reached normal retirement date, to defer the receipt of retirement benefits while continuing employment with their FRS-participating employer.³⁰ The deferred monthly benefits accrue on behalf of the member, plus interest compounded monthly, for the period of DROP participation. After completing the DROP period and terminating employment, the member not only receives the total of the DROP benefits, but also the previously determined normal retirement benefit.³¹

Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months. Certain instructional personnel, however, may elect to participate in DROP for up to 96 months, 36 months longer than normally allowed, if authorization is obtained. Upon deciding to participate in DROP, members must submit certain forms required by the Division of Retirement.³²

Proposed Changes

This bill removes repetitive language and consolidates certain reemployment and timeframe provisions relating to DROP. It clarifies that a person's receipt of the first DROP payment nullifies any subsequent cancellation of participation, and clarifies that DROP benefits will be suspended for any person who violates the reemployment provisions.

DIRECT PAYMENT OF BENEFITS TO ALTERNATE PAYEES

Present Situation

Section 61.1301, F.S., addresses orders of income deduction for alimony or child support. For purposes of this section, retirement benefits are included in the definition of "income."³³ Currently, there is no statutory authority allowing the Division of Retirement to make payments directly to an alternate payee pursuant to a qualified domestic relations order (QDRO).³⁴

Proposed Changes

This bill grants the Division specific authority to deduct payments from a member's benefit and make such payments directly to an alternate payee pursuant to a QDRO.

FRS MEMBER ANNUAL STATEMENTS

Present Situation

²⁷ Section 1012.01(2), F.S., defines "instructional personnel" as "any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students."

²⁸ Section 1012.01(2)(a), F.S., defines "classroom teacher" as "members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers."

²⁹ Ch. 97-180, L.O.F., s. 8.

³⁰ Section 121.091(13), F.S. (For most members of the FRS, the election to participate in DROP must be made within 12 months immediately following the date on which the member first reaches normal retirement date.)

³¹ *Id.*

³² Section 121.091(13)(b), F.S.

³³ Section 61.046(8), F.S.

³⁴ 26 U.S.C. s. 414(p)(A) defines "qualified domestic relations order," in part, as a "domestic relations order which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan..."

DMS provides each active member of the FRS with five or more years of creditable service an annual statement of benefits with information about the member's retirement account.³⁵

Proposed Changes

This bill requires that the member annual statement contain information related to member benefits, including the member's accrued service credit.

STATE RETIREMENT COMMISSION

Present Situation

The State Retirement Commission was established to allow members to appeal any written adverse decisions by the plan administrator concerning applications for disability retirement, reexamination of retired members receiving disability benefits, applications for special risk membership, and reexamination of special risk members.³⁶ In cases involving disability retirement, the member must present competent medical evidence, and may require vocational evidence before being awarded disability retirement benefits by the commission.³⁷

The Florida Retirement Commission is composed of five members,³⁸ however, current law provides that a quorum is two members.³⁹

Proposed Changes

This bill changes the quorum requirement from two to three members present.

This bill also clarifies that the competent medical evidence presented by the member in a disability retirement case be "substantial" and that such medical evidence meet the requirements of s. 121.091(4)(c)2. and 3., F.S., which sets forth the following criteria:

- The member's medical condition occurred or became symptomatic during the time the member was employed in an employee/employer relationship with his or her employer;
- The member was totally and permanently disabled at the time he or she terminated covered employment;
- The member has not been employed with any other employer after such termination; and
- In the case of an in-line-of-duty disability application, in addition to the above requirements, it must be documented by competent medical evidence that the disability was caused by a job-related illness or accident that occurred while the member was in an employee/employer relationship with his or her employer.

REPEAL OF OBSOLETE, REPETITIOUS AND CONFLICTING PROVISIONS

Any retiree of a state-administered retirement system employed in a regularly established position with a covered employer is enrolled as a compulsory member of the Regular Class of the FRS and is considered a renewed member.⁴⁰ This conflicts with s. 1012.33, F.S., which prohibits renewed membership in district school boards. This bill deletes the renewed membership prohibition in s. 1012.33, F.S., to resolve the aforementioned statutory conflict.

This bill repeals ss. 121.093 and 121.094, F.S., and relocates those provisions under the appropriate section in statute.

³⁵ Section 121.136, F.S.

³⁶ Section 121.23, F.S.

³⁷ Section 121.23(2)(a), F.S.

³⁸ Section 121.22(1), F.S.

³⁹ Section 121.24(1), F.S.

⁴⁰ Section 121.122, F.S.

This bill repeals s. 121.45, F.S., containing obsolete provisions relating to the study of interstate portability of retirement benefits.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to revise definitions.

Section 2 amends s. 121.031, F.S., to require promotional materials that refer to the FRS to include a disclaimer unless approval is obtained.

Section 3 amends s. 121.051, F.S., to revise provisions relating to participation in the FRS and to exclude participation of entities under a lease agreement.

Section 4 amends s. 121.052, F.S., to reopen the enrollment period under which a local government may elect to designate its elected positions for inclusion in the Elected Officers' Class.

Section 5 amends s. 121.071, F.S., to revise provisions relating to receiving credit for past or prior service.

Section 6 amends s. 121.081, F.S., to revise provisions relating to receiving credit for past or prior service.

Section 7 amends s. 121.091, F.S., to revise provisions relating to retirement benefits related to reemployment and DROP.

Section 8 amends s. 121.1115, F.S., to revise provisions relating to receiving retirement credit for out-of-state service.

Section 9 amends s. 121.1122, F.S., to revise provisions relating to receiving retirement credit for in-state service.

Section 10 amends s. 121.136, F.S., to revise provisions related to the annual statement of benefits.

Section 11 amends s. 121.23, F.S., to require the State Retirement Commission to use the same standard of proof used by the Secretary of DMS before approving a disability retirement benefit.

Section 12 amends s. 121.24, F.S., to require a quorum of three members for all appeal hearings held by the State Retirement Commission.

Section 13 amends s. 1012.33, F.S., to delete the provision preventing persons who have retired from the public school system from renewing membership in the FRS upon reemployment.

Section 14 repeals ss. 121.093 and 121.094, F.S., relating to reemployment after retirement, and repeals s. 121.45, F.S., relating to interstate portability compacts.

Section 15 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

2. Other:

Article X, s. 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.⁴¹

This bill does not provide any increase in benefits to members, therefore this bill appears to satisfy the requirements of Article X, s. 14 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

⁴¹ 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 Florida 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.

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 1, 2008, the Government Efficiency & Accountability Council adopted two amendments to PCB GEAC 08-16. Amendment #1 provides that inmates or prisoners who are employed by an FRS employer are prohibited from participating in or receiving retirement benefits based upon such work. Amendment #2 removes the provision that reopens the enrollment period to allow municipalities and special districts to designate all of its elected positions for inclusion in the Elected Officers' Class of the FRS.

The Council reported the bill favorably, as amended.