

By Senator Stargel

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1 A bill to be entitled
2 An act relating to employment of school district
3 personnel after retirement; amending ss. 121.091 and
4 238.181, F.S.; revising provisions relating to
5 reemployment of retirees as instructional personnel on
6 a contractual basis; clarifying applicability and
7 legislative intent; amending s. 1012.33, F.S.;
8 revising provisions relating to reemployment of
9 retirees as instructional personnel on a contractual
10 basis; providing legislative intent and findings to
11 clarify authorization to such award contracts;
12 providing a directive to the Division of Law Revision
13 and Information; providing an effective date.

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

16
17 Section 1. Paragraph (b) of subsection (9) of section
18 121.091, Florida Statutes, is amended to read:

19 121.091 Benefits payable under the system.—Benefits may not
20 be paid under this section unless the member has terminated
21 employment as provided in s. 121.021(39) (a) or begun
22 participation in the Deferred Retirement Option Program as
23 provided in subsection (13), and a proper application has been
24 filed in the manner prescribed by the department. The department
25 may cancel an application for retirement benefits when the
26 member or beneficiary fails to timely provide the information
27 and documents required by this chapter and the department's
28 rules. The department shall adopt rules establishing procedures
29 for application for retirement benefits and for the cancellation

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30 of such application when the required information or documents
31 are not received.

32 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

33 (b) Any person whose retirement is effective before July 1,
34 2010, or whose participation in the Deferred Retirement Option
35 Program terminates before July 1, 2010, except under the
36 disability retirement provisions of subsection (4) or as
37 provided in s. 121.053, may be reemployed by an employer that
38 participates in a state-administered retirement system and
39 receive retirement benefits and compensation from that employer,
40 except that the person may not be reemployed by an employer
41 participating in the Florida Retirement System before meeting
42 the definition of termination in s. 121.021 and may not receive
43 both a salary from the employer and retirement benefits for 12
44 calendar months immediately subsequent to the date of
45 retirement. However, a DROP participant shall continue
46 employment and receive a salary during the period of
47 participation in the Deferred Retirement Option Program, as
48 provided in subsection (13).

49 1. A retiree who violates such reemployment limitation
50 before completion of the 12-month limitation period must give
51 timely notice of this fact in writing to the employer and to the
52 Division of Retirement or the state board and shall have his or
53 her retirement benefits suspended for the months employed or the
54 balance of the 12-month limitation period as required in sub-
55 subparagraphs b. and c. A retiree employed in violation of this
56 paragraph and an employer who employs or appoints such person
57 are jointly and severally liable for reimbursement to the
58 retirement trust fund, including the Florida Retirement System

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59 Trust Fund and the Public Employee Optional Retirement Program
60 Trust Fund, from which the benefits were paid. The employer must
61 have a written statement from the retiree that he or she is not
62 retired from a state-administered retirement system. Retirement
63 benefits ~~shall~~ remain suspended until repayment has been made.
64 Benefits suspended beyond the reemployment limitation ~~shall~~
65 apply toward repayment of benefits received in violation of the
66 reemployment limitation.

67 a. A district school board may reemploy a retiree as a
68 substitute or hourly teacher, education paraprofessional,
69 transportation assistant, bus driver, or food service worker on
70 a noncontractual basis after he or she has been retired for 1
71 calendar month. A district school board may reemploy the a
72 retiree as instructional personnel, as defined in s.
73 1012.01(2)(a), under a 1-year probationary contract as defined
74 in s. 1012.335(1) ~~on an annual contractual basis~~ after he or she
75 has been retired for 1 calendar month. If the retiree
76 successfully completes the probationary contract, the district
77 school board may reemploy the retiree under an annual contract
78 as defined in s. 1012.335(1). ~~A~~ Any member who is reemployed
79 within 1 calendar month after retirement voids ~~shall void~~ his or
80 her application for retirement benefits. District school boards
81 reemploying such teachers, education paraprofessionals,
82 transportation assistants, bus drivers, or food service workers
83 are subject to the retirement contribution required in ~~by~~
84 subparagraph 2. This sub-subparagraph does not allow, and has
85 never allowed, a retiree to be awarded a professional service
86 contract under s. 1012.33.

87 b. A Florida College System institution board of trustees

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88 may reemploy a retiree as an adjunct instructor or as a
89 participant in a phased retirement program within the Florida
90 College System, after he or she has been retired for 1 calendar
91 month. A member who is reemployed within 1 calendar month after
92 retirement voids ~~shall void~~ his or her application for
93 retirement benefits. Boards of trustees reemploying such
94 instructors are subject to the retirement contribution required
95 in subparagraph 2. A retiree may be reemployed as an adjunct
96 instructor for up to ~~no more than~~ 780 hours during the first 12
97 months of retirement. A retiree reemployed for more than 780
98 hours during the first 12 months of retirement must give timely
99 notice in writing to the employer and to the Division of
100 Retirement or the state board of the date he or she will exceed
101 the limitation. The division shall suspend his or her retirement
102 benefits for the remainder of the 12 months of retirement. A Any
103 retiree employed in violation of this sub-subparagraph and an
104 ~~any~~ employer who employs or appoints such person without
105 notifying the division to suspend retirement benefits are
106 jointly and severally liable for any benefits paid during the
107 reemployment limitation period. The employer must have a written
108 statement from the retiree that he or she is not retired from a
109 state-administered retirement system. Any retirement benefits
110 received by the retiree while reemployed in excess of 780 hours
111 during the first 12 months of retirement must be repaid to the
112 Florida Retirement System Trust Fund, and retirement benefits
113 ~~shall~~ remain suspended until repayment is made. Benefits
114 suspended beyond the end of the retiree's first 12 months of
115 retirement ~~shall~~ apply toward repayment of benefits received in
116 violation of the 780-hour reemployment limitation.

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117 c. The State University System may reemploy a retiree as an
118 adjunct faculty member or as a participant in a phased
119 retirement program within the State University System after the
120 retiree has been retired for 1 calendar month. A member who is
121 reemployed within 1 calendar month after retirement voids ~~shall~~
122 ~~void~~ his or her application for retirement benefits. The State
123 University System is subject to the retired contribution
124 required in subparagraph 2., as appropriate. A retiree may be
125 reemployed as an adjunct faculty member or a participant in a
126 phased retirement program for up to ~~no more than~~ 780 hours
127 during the first 12 months of his or her retirement. A retiree
128 reemployed for more than 780 hours during the first 12 months of
129 retirement must give timely notice in writing to the employer
130 and to the Division of Retirement or the state board of the date
131 he or she will exceed the limitation. The division shall suspend
132 his or her retirement benefits for the remainder of the 12
133 months. A ~~Any~~ retiree employed in violation of this sub-
134 subparagraph and an ~~any~~ employer who employs or appoints such
135 person without notifying the division to suspend retirement
136 benefits are jointly and severally liable for any benefits paid
137 during the reemployment limitation period. The employer must
138 have a written statement from the retiree that he or she is not
139 retired from a state-administered retirement system. Any
140 retirement benefits received by the retiree while reemployed in
141 excess of 780 hours during the first 12 months of retirement
142 must be repaid to the Florida Retirement System Trust Fund, and
143 retirement benefits ~~shall~~ remain suspended until repayment is
144 made. Benefits suspended beyond the end of the retiree's first
145 12 months of retirement ~~shall~~ apply toward repayment of benefits

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146 received in violation of the 780-hour reemployment limitation.

147 d. The Board of Trustees of the Florida School for the Deaf
148 and the Blind may reemploy a retiree as a substitute teacher,
149 substitute residential instructor, or substitute nurse on a
150 noncontractual basis after he or she has been retired for 1
151 calendar month. A ~~Any~~ member who is reemployed within 1 calendar
152 month after retirement voids ~~shall void~~ his or her application
153 for retirement benefits. The Board of Trustees of the Florida
154 School for the Deaf and the Blind reemploying such teachers,
155 residential instructors, or nurses is subject to the retirement
156 contribution required in ~~by~~ subparagraph 2.

157 e. A developmental research school may reemploy a retiree
158 as a substitute or hourly teacher or an education
159 paraprofessional as defined in s. 1012.01(2) on a noncontractual
160 basis after he or she has been retired for 1 calendar month. A
161 developmental research school may reemploy the ~~a~~ retiree as
162 instructional personnel, as defined in s. 1012.01(2)(a), under a
163 1-year probationary contract as defined in s. 1012.335(1) ~~on an~~
164 ~~annual contractual basis~~ after he or she has been retired for 1
165 calendar month ~~after retirement~~. If the retiree successfully
166 completes the probationary contract, the developmental research
167 school may reemploy the retiree under an annual contract as
168 defined in s. 1012.335(1). ~~A~~ ~~Any~~ member who is reemployed within
169 1 calendar month voids his or her application for retirement
170 benefits. A developmental research school that reemploys retired
171 teachers and education paraprofessionals is subject to the
172 retirement contribution required in ~~by~~ subparagraph 2. This sub-
173 subparagraph does not allow, and has never allowed, a retiree to
174 be awarded a professional service contract under s. 1012.33.

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175 f. A charter school may reemploy a retiree as a substitute
176 or hourly teacher on a noncontractual basis after he or she has
177 been retired for 1 calendar month. A charter school may reemploy
178 the retiree ~~a retired member~~ as instructional personnel, as
179 defined in s. 1012.01(2)(a), under a 1-year probationary
180 contract as defined in s. 1012.335(1) ~~on an annual contractual~~
181 ~~basis~~ after he or she has been retired for 1 calendar month
182 after retirement. If the retiree successfully completes the
183 probationary contract, the charter school may reemploy the
184 retiree under an annual contract as defined in s. 1012.335(1). A
185 ~~Any~~ member who is reemployed within 1 calendar month voids his
186 or her application for retirement benefits. A charter school
187 that reemploys such teachers is subject to the retirement
188 contribution required in ~~by~~ subparagraph 2. This sub-
189 subparagraph does not allow, and has never allowed, a retiree to
190 be awarded a professional service contract under s. 1012.33.

191 2. The employment of a retiree or DROP participant of a
192 state-administered retirement system does not affect the average
193 final compensation or years of creditable service of the retiree
194 or DROP participant. Before July 1, 1991, upon employment of any
195 person, other than an elected officer as provided in s. 121.053,
196 who is retired under a state-administered retirement program,
197 the employer shall pay retirement contributions in an amount
198 equal to the unfunded actuarial liability portion of the
199 employer contribution which would be required for regular
200 members of the Florida Retirement System. Effective July 1,
201 1991, contributions shall be made as provided in s. 121.122 for
202 retirees who have renewed membership or, as provided in
203 subsection (13), for DROP participants.

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204 3. Any person who is holding an elective public office
205 which is covered by the Florida Retirement System and who is
206 concurrently employed in nonelected covered employment may elect
207 to retire while continuing employment in the elective public
208 office if he or she terminates his or her nonelected covered
209 employment. Such person shall receive his or her retirement
210 benefits in addition to the compensation of the elective office
211 without regard to the time limitations otherwise provided in
212 this subsection. A person who seeks to exercise the provisions
213 of this subparagraph as they existed before May 3, 1984, may not
214 be deemed to be retired under those provisions, unless such
215 person is eligible to retire under this subparagraph, as amended
216 by chapter 84-11, Laws of Florida.

217 Section 2. Paragraph (c) of subsection (2) of section
218 238.181, Florida Statutes, is amended to read:

219 238.181 Reemployment after retirement; conditions and
220 limitations.-

221 (2)

222 (c) Effective July 1, 2003, after a retired member has been
223 retired for 1 calendar month in accordance with s. 121.021(39),
224 a district school board may reemploy such retired member as a
225 substitute or hourly teacher on a noncontractual basis, or
226 reemploy such retired member as instructional personnel, as
227 defined in s. 1012.01(2)(a), under a 1-year probationary
228 contract as defined in s. 1012.335(1). If the retiree
229 successfully completes the probationary contract, the district
230 school board may reemploy the retiree under an annual contract
231 as defined in s. 1012.335(1) ~~on an annual contractual basis.~~ Any
232 other retired member who is reemployed within 1 calendar month

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233 after retirement voids ~~shall void~~ his or her application for
234 retirement benefits. All retirees reemployed under this
235 paragraph shall become renewed members of the Florida Retirement
236 System under s. 121.122, and district school boards reemploying
237 such retired members as described herein are subject to the
238 contributions as provided for renewed membership. This paragraph
239 does not allow, and has never allowed, a retiree to be awarded a
240 professional service contract under s. 1012.33.

241 Section 3. Subsection (8) of section 1012.33, Florida
242 Statutes, is amended to read:

243 1012.33 Contracts with instructional staff, supervisors,
244 and school principals.—

245 (8) In accordance with ss. 121.091 and 238.181, a district
246 school board may reemploy a retiree as instructional personnel,
247 as defined in s. 1012.01(2)(a), under a 1-year probationary
248 contract as defined in s. 1012.335(1) after the retiree has been
249 retired for 1 calendar month. If the retiree successfully
250 completes the probationary contract, the district school board
251 may reemploy the retiree under an annual contract as defined in
252 s. 1012.335(1).

253 (a) Neither this subsection nor any other law as enacted
254 before the effective date of this act allows, or was intended to
255 allow, a retiree to be awarded a professional service contract.
256 The Legislature finds that the holding in Orange County School
257 Board v. Rachman and Schuman, 87 So. 3d 48 (Fla. 5th DCA 2012),
258 which found that retirees under s. 121.091(9)(b)1.a. and this
259 subsection as enacted before the effective date of this act were
260 entitled to a professional service contract, was contrary to
261 legislative intent at the time the statutes were enacted. The

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262 Legislature finds that retirees under s. 121.091(9)(b)1.a. and
263 this subsection are not eligible, and were never eligible, to
264 receive a professional service contract under this section or
265 any other law. In a civil action or administrative proceeding,
266 if a classroom teacher was formerly retired and then reemployed
267 by the district school board pursuant to s. 121.091(9)(b)1.a.
268 and this section as enacted before the effective date of this
269 act, the Legislature intends, in accordance with the findings
270 expressed in this subsection, that a judgment be entered against
271 that classroom teacher on any claim or cause of action against
272 the district school board, the district school superintendent,
273 or a district school board employee for not awarding that
274 teacher a professional service contract.

275 (b) This subsection does not void and is not intended to
276 void or in any way impair any professional service contract
277 inadvertently awarded by a district school board to a retiree
278 before the effective date of this act ~~Notwithstanding any other~~
279 ~~provision of law, a retired member may interrupt retirement and~~
280 ~~be reemployed in any public school. A member reemployed by the~~
281 ~~same district from which he or she retired may be employed on a~~
282 ~~probationary contractual basis as provided in subsection (1).~~

283 Section 4. The Division of Law Revision and Information is
284 directed to replace the phrase "the effective date of this act"
285 wherever it occurs in this act with such date.

286 Section 5. This act shall take effect upon becoming a law.