

By the Committees on Governmental Oversight and Accountability;
and Judiciary; and Senator Bradley

585-03190-15

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1 A bill to be entitled
2 An act relating to justices and judges; amending s.
3 121.021, F.S.; revising the applicability of the term
4 "termination"; amending s. 121.091, F.S.; providing
5 that a retired justice or retired judge is not subject
6 to certain restrictions on employment after retirement
7 otherwise applicable to retired employees; requiring
8 the State Board of Administration and the Department
9 of Management Services to request a determination
10 letter and private letter ruling from the Internal
11 Revenue Service; adjusting employer contribution rates
12 in order to fund changes made by the act; providing a
13 directive to the Division of Law Revision and
14 Information; providing findings of an important state
15 interest; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Subsection (39) of section 121.021, Florida
20 Statutes, is amended to read:

21 121.021 Definitions.—The following words and phrases as
22 used in this chapter have the respective meanings set forth
23 unless a different meaning is plainly required by the context:

24 (39) (a) "Termination" occurs, except as provided in
25 paragraph (b), when a member ceases all employment relationships
26 with participating employers, however:

27 1. For retirements effective before July 1, 2010, if a
28 member is employed by any such employer within the next calendar
29 month, termination shall be deemed not to have occurred. A leave

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

36 2. For retirements effective on or after July 1, 2010, if a
37 member is employed by any such employer within the next 6
38 calendar months, termination shall be deemed not to have
39 occurred. A leave of absence constitutes a continuation of the
40 employment relationship, except that a leave of absence without
41 pay due to disability may constitute termination if such member
42 makes application for and is approved for disability retirement
43 in accordance with s. 121.091(4). The department or state board
44 may require other evidence of termination as it deems necessary.

45 (b) "Termination" for a member electing to participate in
46 the Deferred Retirement Option Program occurs when the program
47 participant ceases all employment relationships with
48 participating employers in accordance with s. 121.091(13),
49 however:

50 1. For termination dates occurring before July 1, 2010, if
51 the member is employed by any such employer within the next
52 calendar month, termination will be deemed not to have occurred,
53 except as provided in s. 121.091(13)(b)4.c. A leave of absence
54 shall constitute a continuation of the employment relationship.

55 2. For termination dates occurring on or after July 1,
56 2010, if the member becomes employed by any such employer within
57 the next 6 calendar months, termination will be deemed not to
58 have occurred, except as provided in s. 121.091(13)(b)4.c. A

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59 leave of absence constitutes a continuation of the employment
60 relationship.

61 (c) Effective July 1, 2011, "termination" for a member
62 receiving a refund of employee contributions occurs when a
63 member ceases all employment relationships with participating
64 employers for 3 calendar months. A leave of absence constitutes
65 a continuation of the employment relationship.

66 (d) Effective July 1, 2015, and notwithstanding paragraphs
67 (a) and (b), which void a termination if a member does not cease
68 all employment relationships with participating employers for at
69 least 6 calendar months, the termination of a retired justice or
70 retired judge is not void if he or she:

71 1. Has reached the later of his or her normal retirement
72 age or the age at which he or she is vested;

73 2. Has terminated all employment relationships with
74 employers under the Florida Retirement System for at least 3
75 calendar months after retirement; and

76 3. Returns to temporary employment only as a senior judge
77 in any court, as assigned by the Chief Justice of the Supreme
78 Court in accordance with s. 2, Art. V of the State Constitution,
79 no earlier than 4 calendar months after retirement.

80
81 This paragraph does not apply if a retired justice or retired
82 judge is employed for any other purpose by an employer
83 participating in the Florida Retirement System within 6 calendar
84 months of termination.

85 Section 2. Paragraphs (c), (d), and (e) of subsection (9)
86 of section 121.091, Florida Statutes, are amended, and paragraph
87 (f) is added to that subsection, to read:

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88 121.091 Benefits payable under the system.—Benefits may not
89 be paid under this section unless the member has terminated
90 employment as provided in s. 121.021(39) (a) or begun
91 participation in the Deferred Retirement Option Program as
92 provided in subsection (13), and a proper application has been
93 filed in the manner prescribed by the department. The department
94 may cancel an application for retirement benefits when the
95 member or beneficiary fails to timely provide the information
96 and documents required by this chapter and the department's
97 rules. The department shall adopt rules establishing procedures
98 for application for retirement benefits and for the cancellation
99 of such application when the required information or documents
100 are not received.

101 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

102 (c) Any person whose retirement is effective on or after
103 July 1, 2010, or whose participation in the Deferred Retirement
104 Option Program terminates on or after July 1, 2010, who is
105 retired under this chapter, except under the disability
106 retirement provisions of subsection (4) or as provided in s.
107 121.053, may be reemployed by an employer that participates in a
108 state-administered retirement system and receive retirement
109 benefits and compensation from that employer. However, a person
110 may not be reemployed by an employer participating in the
111 Florida Retirement System before meeting the definition of
112 termination in s. 121.021 and may not receive both a salary from
113 the employer and retirement benefits for 6 calendar months after
114 meeting the definition of termination, except as provided in
115 paragraph (f). However, a DROP participant shall continue
116 employment and receive a salary during the period of

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117 participation in the Deferred Retirement Option Program, as
118 provided in subsection (13).

119 1. The reemployed retiree may not renew membership in the
120 Florida Retirement System.

121 2. The employer shall pay retirement contributions in an
122 amount equal to the unfunded actuarial liability portion of the
123 employer contribution that would be required for active members
124 of the Florida Retirement System in addition to the
125 contributions required by s. 121.76.

126 3. A retiree initially reemployed in violation of this
127 paragraph and an employer that employs or appoints such person
128 are jointly and severally liable for reimbursement of any
129 retirement benefits paid to the retirement trust fund from which
130 the benefits were paid, including the Florida Retirement System
131 Trust Fund and the Public Employee Optional Retirement Program
132 Trust Fund, as appropriate. The employer must have a written
133 statement from the employee that he or she is not retired from a
134 state-administered retirement system. Retirement benefits shall
135 remain suspended until repayment is made. Benefits suspended
136 beyond the end of the retiree's 6-month reemployment limitation
137 period shall apply toward the repayment of benefits received in
138 violation of this paragraph.

139 (d) Except as provided in paragraph (f), this subsection
140 applies to retirees, as defined in s. 121.4501(2), of the
141 Florida Retirement System Investment Plan, subject to the
142 following conditions:

143 1. A retiree may not be reemployed with an employer
144 participating in the Florida Retirement System until such person
145 has been retired for 6 calendar months.

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146 2. A retiree employed in violation of this subsection and
147 an employer that employs or appoints such person are jointly and
148 severally liable for reimbursement of any benefits paid to the
149 retirement trust fund from which the benefits were paid. The
150 employer must have a written statement from the retiree that he
151 or she is not retired from a state-administered retirement
152 system.

153 (e) The limitations of this subsection apply to
154 reemployment in any capacity irrespective of the category of
155 funds from which the person is compensated, except as provided
156 in paragraph (f).

157 (f) Effective July 1, 2015, a retired justice or retired
158 judge who has reached the later of his or her normal retirement
159 age or the age at which he or she is vested, who has terminated
160 all employment with employers participating under the Florida
161 Retirement System for at least 3 calendar months, and who
162 subsequently returns to temporary employment only as a senior
163 judge in any court, as assigned by the Chief Justice of the
164 Supreme Court in accordance with s. 2, Art. V of the State
165 Constitution, is not subject to paragraph (c), paragraph (d), or
166 paragraph (e) while reemployed solely as a senior judge. This
167 paragraph does not apply if the retired justice or retired judge
168 is employed for any other purpose by an employer participating
169 in the Florida Retirement System within 12 calendar months of
170 termination.

171 Section 3. (1) The State Board of Administration and the
172 Department of Management Services shall request, as soon as
173 practicable, a determination letter and private letter ruling
174 from the Internal Revenue Service. If the Internal Revenue

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175 Service refuses to act upon a request for a private letter
176 ruling, a legal opinion from a qualified tax attorney or firm
177 may be substituted for such private letter ruling.

178 (2) If the state board or the department receives
179 notification from the Internal Revenue Service that this act or
180 any portion of this act will cause the Florida Retirement
181 System, or a portion thereof, to be disqualified for tax
182 purposes under the Internal Revenue Code, the portion that will
183 cause the disqualification does not apply. Upon receipt of such
184 notice, the state board and the department shall notify the
185 presiding officers of the Legislature.

186 Section 4. (1) In order to fund the benefit changes
187 provided in this act, the required employer contribution rates
188 for members of the Florida Retirement System established in s.
189 121.71(4), Florida Statutes, must be adjusted as follows:

190 (a) The Elected Officers' Class for Justices and Judges
191 must be increased by 0.45 percentage point; and

192 (b) The Deferred Retirement Option Program must be
193 increased by 0.01 percentage point.

194 (2) In order to fund the benefit changes provided in this
195 act, the required employer contribution rate for the unfunded
196 actuarial liability of the Florida Retirement System established
197 in s. 121.71(5), Florida Statutes, for the Elected Officers'
198 Class for Justices and Judges is increased by 0.91 percentage
199 point.

200 (3) The adjustments provided in subsections (1) and (2)
201 shall be in addition to all other changes to such contribution
202 rates which may be enacted into law to take effect on July 1,
203 2015, and July 1, 2016. The Division of Law Revision and

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204 Information is directed to adjust accordingly the contribution
205 rates provided in s. 121.71, Florida Statutes.

206 Section 5. (1) The Legislature finds that a proper and
207 legitimate state purpose is served if employees and retirees of
208 the state and its political subdivisions, and the dependents,
209 survivors, and beneficiaries of such employees and retirees, are
210 extended the basic protections afforded by governmental
211 retirement systems which provide fair and adequate benefits and
212 which are managed, administered, and funded in an actuarially
213 sound manner as required by s. 14, Article X of the State
214 Constitution and part VII of chapter 112, Florida Statutes.
215 Therefore, the Legislature determines and declares that this act
216 fulfills an important state interest.

217 (2) The Legislature further finds that the assignments of
218 former justices and judges to temporary employment as senior
219 judges in any court by the Chief Justice of the Supreme Court in
220 accordance with s. 2, Article V of the State Constitution assist
221 the state courts system in managing caseloads and providing
222 individuals and businesses with access to courts. Therefore, the
223 Legislature further determines and declares that this act
224 fulfills an important state interest by facilitating the ability
225 of justices and judges who retire under the Florida Retirement
226 System in a bona fide termination to return to temporary
227 employment as senior judges in a timely manner.

228 Section 6. This act shall take effect July 1, 2015.