

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1003 Employment After Retirement of School District Personnel

SPONSOR(S): K-12 Subcommittee, Sullivan and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	12 Y, 0 N, As CS	Brink	Fudge
2) Education Committee	17 Y, 0 N	Brink	Mizereck

SUMMARY ANALYSIS

Current law allows Florida Retirement Service (FRS) members to interrupt retirement and be reemployed as instructional personnel in any public school. In 2011, the Legislature amended requirements related to instructional personnel performance evaluations and compensation and prohibited the award of professional service contracts after July 1, 2011.

The bill clarifies that retirees may be reemployed only on a probationary or annual contractual basis consistent with the requirements of the FRS and the Student Success Act.

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

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Student Success Act

In 2011, the Legislature passed the Student Success Act (act), which amended, among other things, requirements related to instructional personnel performance evaluations, compensation, and the award of contracts.¹

Prior to the July 1, 2011, effective date of the act, instructional personnel with as little as three years of service could be granted a professional service contract, which provided for automatic renewal of the contract unless the superintendent charged the employee with unsatisfactory performance.² After passage of the act and related legislation, school districts no longer had authority to award professional service contracts and tenure to any instructional personnel hired on or after July 1, 2011.³ Only instructional personnel who held a current professional service contract could continue employment on a professional service contractual basis so long as they remained employed by the district.

The act created s. 1012.335, F.S., which provides that, as of July 1, 2011, instructional personnel under an annual contract and personnel hired thereafter may be employed only on a probationary or annual contractual basis. Initially upon hire, instructional personnel must complete a one-year probationary period, during which they may be dismissed without cause or may resign without a breach of contract. A school district may award an annual contract to instructional personnel only after successful completion of a probationary contract.⁴ The section defines an annual contract as an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause.⁵

Employment after Retirement

The Florida Retirement System (FRS) is governed by the Florida Retirement System Act.⁶ The FRS, which is a multi-employer, contributory plan, provides retirement income benefits to active members, retired members and beneficiaries, and members of the Deferred Retirement Option Program (DROP). It is the primary retirement plan for employees of state and county government agencies and the state's 67 district school boards, 28 state colleges, and 12 universities. The FRS also serves as the retirement plan for participating employees of the cities and independent hospitals and special districts that have elected to join the system.⁷

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 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.⁸ Termination is void if any FRS-participating employer reemploys a member a specified period of time.⁹

¹ Chapter 2011-1, L.O.F., *codified in pertinent part at* ss. 1012.33, 1012.335, and 1012.34, F.S.

² *See* s. 1012.33(3)(e), F.S. (2010).

³ *See* s. 13, ch. 2011-1, L.O.F. *See also* s. 19, ch. 2011-37, L.O.F. (deleting language which granted school districts authority to award professional service contracts to any instructional personnel effective July 1, 2011).

⁴ *See* s. 1012.335(2)(a) and (b), F.S.

⁵ Section 1012.335(1)(a), F.S.

⁶ Chapter 121, F.S.

⁷ Florida Retirement System Participating Employers for Plan Year 2015-16, prepared by the Department of Management Services, Division of Retirement, Revised January 2016, at 8. A copy of the document can be found online at:

http://www.dms.myflorida.com/workforce_operations/retirement/publications (last visited Jan. 22, 2016).

⁸ Section 121.021(39)(a), F.S.

⁹ *Id.*

An FRS retiree may be reemployed by an FRS employer provided certain requirements are met. A member who retired before July 1, 2010, may be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree is reemployed during months two through 12 after retiring or terminating DROP, then the retiree may not receive her or his pension benefit until month 13. However, a retiree who retired before July 1, 2010, may be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.¹⁰

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12 after retiring or terminating DROP, then the retiree may not receive her or his pension benefit until month 13.¹¹ The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire on or after July 1, 2010.

Subsection 1012.33(8), F.S., provides that a retired member may interrupt retirement and be reemployed in any public school. Further, the subsection provides that "a member reemployed by the same district from which he or she retired may be employed on a probationary contractual basis as provided in subsection (1)." However, subsection (1) of s. 1012.33 contains probationary contract provisions relating only to supervisors and school principals, and is silent as to how employment contracts are awarded after the probationary period. It is unclear what type of contract must be provided to reemployed retirees who are initially provided a probationary contract.¹²

Effect of Proposed Changes

The bill clarifies that retirees may be reemployed only on a probationary or annual contractual basis consistent with the requirements of the FRS and the Student Success Act. The bill also clarifies legislative intent concerning eligibility for professional service contracts and annual contracts based upon the Student Success Act.

B. SECTION DIRECTORY:

Section 1. Amends s. 1012.33, F.S.; revising provisions relating to reemployment of retirees as instructional personnel on a contractual basis.

Section 2. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁰ Section 121.091(9)(b), F.S.

¹¹ Section 121.091(9)(c), F.S.

¹² The award of professional service contracts to reemployed FRS members has been the subject of litigation in at least one school district. *See Orange County School Board v. Rachman and Shuman*, 87 So.3d 48 (Fla. 5th DCA 2012) (upholding court order directing the district to award a professional service contract to a reemployed retiree who, after retiring and returning to employment with the district, satisfied all of the statutory requirements for the contract before July 1, 2011). The law has not authorized the award of a professional service contract to any reemployed retiree who did not meet the statutory requirements for the contract prior to July 1, 2011.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the K-12 Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute clarifies that school districts may rehire retired instructional personnel only on a probationary or annual contract as required by the Student Success Act. The committee substitute also clarifies legislative intent concerning eligibility for professional service contracts and annual contracts based upon the Student Success Act.

This analysis is drafted to reflect the committee substitute as passed by the K-12 Subcommittee.