

By the Committee on Governmental Oversight and Accountability;
and Senator Burton

585-02903-23

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1 A bill to be entitled
2 An act relating to the Florida Retirement System;
3 amending s. 121.021, F.S.; revising the definition of
4 the term "termination"; defining the term "volunteer
5 services"; amending s. 121.091, F.S.; authorizing
6 employers to establish post-employment volunteer
7 programs to allow retirees to provide certain services
8 during a specified timeframe; requiring such programs
9 to meet specified criteria; providing an effective
10 date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (39) of section 121.021, Florida
15 Statutes, is amended, and subsection (65) is added to that
16 section, to read:

17 121.021 Definitions.—The following words and phrases as
18 used in this chapter have the respective meanings set forth
19 unless a different meaning is plainly required by the context:

20 (39) (a) "Termination" occurs, except as provided in
21 paragraphs ~~paragraph~~ (b) and (c), when a member ceases all
22 employment, including the provision of services, ~~relationships~~
23 with all ~~participating~~ employers, however:

24 1. For retirements effective before July 1, 2010, if a
25 member is employed by any ~~such~~ employer within the next calendar
26 month, termination shall be deemed not to have occurred. A leave
27 of absence constitutes a continuation of the employment
28 relationship, except that a leave of absence without pay due to
29 disability may constitute termination if such member makes

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30 application for and is approved for disability retirement in
31 accordance with s. 121.091(4). ~~The department or state board may~~
32 ~~require other evidence of termination as it deems necessary.~~

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

42 (b) "Termination" for a member ending participation
43 ~~electing to participate~~ in the Deferred Retirement Option
44 Program occurs when the program participant ceases all
45 employment, including the provision of services, ~~relationships~~
46 with all participating employers in accordance with s.
47 121.091(13), however:

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

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

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59 of the employment relationship.

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

66

67 All terminations must be a termination of employment as defined
68 in 26 C.F.R. s. 1.409A-1(h)(1)(ii). Volunteer services do not
69 constitute employment by, or provision of services to, an
70 employer. The department or state board may require any evidence
71 of termination necessary to determine compliance with this
72 chapter or the rules adopted thereunder.

73 (65) "Volunteer services" means services provided in
74 accordance with s. 121.091(15).

75 Section 2. Subsection (15) is added to section 121.091,
76 Florida Statutes, to read:

77 121.091 Benefits payable under the system.—Benefits may not
78 be paid under this section unless the member has terminated
79 employment as provided in s. 121.021(39)(a) or begun
80 participation in the Deferred Retirement Option Program as
81 provided in subsection (13), and a proper application has been
82 filed in the manner prescribed by the department. The department
83 may cancel an application for retirement benefits when the
84 member or beneficiary fails to timely provide the information
85 and documents required by this chapter and the department's
86 rules. The department shall adopt rules establishing procedures
87 for application for retirement benefits and for the cancellation

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88 of such application when the required information or documents
89 are not received.

90 (15) VOLUNTEER SERVICES.—Employers may establish post-
91 employment volunteer programs that allow retirees to provide
92 civic, charitable, and humanitarian services during the first 12
93 calendar months following retirement without causing the retiree
94 to violate the requirement that the retiree have a termination
95 of employment as defined in 26 C.F.R. s. 1.409A-1(h)(1)(ii),
96 provided that the program meets all of the following criteria:

97 (a) Before the date of retirement, there was no agreement
98 or understanding between the employer and the retiree that the
99 retiree would provide any service to the employer.

100 (b) The employer or any third party may not provide a form
101 of compensation, including cash equivalents, to a volunteer for
102 the volunteer services.

103 (c) Except as otherwise provided in this chapter, employee
104 benefits, including health or life insurance benefits, may not
105 be provided to a volunteer. However, certain perquisites that
106 are necessary to complete tasks associated with the volunteer
107 program, such as an assigned uniform or the provision of
108 equipment, are permissible.

109 (d) The number of volunteer hours per week, including
110 training, is limited to no more than 20 percent of the amount of
111 time that was expected of the retiree per week before his or her
112 date of retirement.

113 (e) A clear distinction between the duties of a volunteer
114 and the duties of an employee is required.

115 (f) Volunteers must maintain control of their volunteer
116 schedule, including the number of hours volunteered and

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117 assignments for which they agree to volunteer.

118 (g) Adequate volunteer program record keeping must be
119 maintained by both the employer and the volunteer to document
120 adherence to the criteria listed in this subsection. The records
121 must be made available to the department upon request.

122 Section 3. This act shall take effect July 1, 2023.