

1                                   A bill to be entitled  
 2           An act relating to employment after retirement of  
 3           school district personnel; amending s. 121.021, F.S.;  
 4           revising the definition of "termination" to conform to  
 5           changes made by the act; amending s. 121.091, F.S.;  
 6           establishing an exception to reemployment after  
 7           retirement limitations to authorize certain retired  
 8           staff to be employed in specified positions before  
 9           meeting the definition of termination; prohibiting the  
 10          accrual of additional retirement service credit and  
 11          renewed membership during such period of reemployment;  
 12          amending ss. 121.122 and 121.591, F.S.; conforming  
 13          provisions and a cross-reference to changes made by  
 14          the act; requiring the State Board of Administration  
 15          and the Department of Management Services to request a  
 16          determination letter and private letter ruling from  
 17          the United States Internal Revenue Service; providing  
 18          for nonapplicability of the act, or portions thereof,  
 19          under specified circumstances; providing effective  
 20          dates.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1. Subsection (39) of section 121.021, Florida  
 25   Statutes, is amended to read:

26           121.021 Definitions.—The following words and phrases as  
 27 used in this chapter have the respective meanings set forth  
 28 unless a different meaning is plainly required by the context:

29           (39) (a) "Termination" occurs, except as provided in  
 30 paragraphs (b) and (c), when a member ceases all employment,  
 31 which term includes the provision of services, with all  
 32 employers, however:

33           1. For retirements effective before July 1, 2010, if a  
 34 member is employed by any employer within the next calendar  
 35 month, termination shall be deemed not to have occurred. A leave  
 36 of absence constitutes a continuation of the employment  
 37 relationship, except that a leave of absence without pay due to  
 38 disability may constitute termination if such member makes  
 39 application for and is approved for disability retirement in  
 40 accordance with s. 121.091(4).

41           2. For retirements effective on or after July 1, 2010, if  
 42 a member is employed by any employer within the next 6 calendar  
 43 months, termination shall be deemed not to have occurred unless  
 44 the member is employed following retirement in accordance with  
 45 s. 121.091(9)(g). A leave of absence constitutes a continuation  
 46 of the employment relationship, except that a leave of absence  
 47 without pay due to disability may constitute termination if such  
 48 member makes application for and is approved for disability  
 49 retirement in accordance with s. 121.091(4).

50           (b) "Termination" for a member ending participation in the

51 Deferred Retirement Option Program occurs when the program  
52 participant ceases all employment, which term includes the  
53 provision of services, with all employers in accordance with s.  
54 121.091(13), however:

55 1. For termination dates occurring before July 1, 2010, if  
56 a member is employed by any employer within the next calendar  
57 month, termination shall be deemed not to have occurred, except  
58 as provided in s. 121.091(13)(b)4.c. A leave of absence  
59 constitutes a continuation of the employment relationship.

60 2. For termination dates occurring on or after July 1,  
61 2010, if a member becomes employed by any employer within the  
62 next 6 calendar months, termination shall be deemed not to have  
63 occurred, except as provided in s. 121.091(13)(b)4.c. or s.  
64 121.091(9)(g). A leave of absence constitutes a continuation of  
65 the employment relationship.

66 (c) Effective July 1, 2011, "termination" for a member  
67 receiving a refund of employee contributions occurs when a  
68 member ceases all employment, which term includes the provision  
69 of services, with all employers for 3 calendar months. A leave  
70 of absence constitutes a continuation of the employment  
71 relationship.

72  
73 All terminations must be a termination of employment consistent  
74 with 26 C.F.R. s. 1.409A-1(h)(1)(ii). After July 1, 2023,  
75 volunteer services do not constitute employment by, or provision

76 of services to, an employer. The department or state board may  
77 require any evidence of termination necessary to determine  
78 compliance with this chapter or the rules adopted thereunder.

79 Section 2. Paragraphs (c) and (d) of subsection (9) of  
80 section 121.091, Florida Statutes, are amended, and paragraph  
81 (g) is added to that subsection, to read:

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

95 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

96 (c) Any person whose retirement is effective on or after  
97 July 1, 2010, or whose participation in the Deferred Retirement  
98 Option Program terminates on or after July 1, 2010, who is  
99 retired under this chapter, except under the disability  
100 retirement provisions of subsection (4) or as provided in s.

101 121.053, may be reemployed by an employer that participates in a  
 102 state-administered retirement system and receive retirement  
 103 benefits and compensation from that employer. However, a person  
 104 may not be reemployed by an employer participating in the  
 105 Florida Retirement System before meeting the definition of  
 106 termination in s. 121.021 and may not receive both a salary from  
 107 the employer and retirement benefits for 6 calendar months after  
 108 meeting the definition of termination, except as provided in  
 109 paragraph (f) or paragraph (g). However, a DROP participant  
 110 shall continue employment and receive a salary during the period  
 111 of participation in the Deferred Retirement Option Program, as  
 112 provided in subsection (13).

113 1. The reemployed retiree may not renew membership in the  
 114 Florida Retirement System, except as provided in s. 121.122.

115 2. The employer shall pay retirement contributions in an  
 116 amount equal to the unfunded actuarial liability portion of the  
 117 employer contribution that would be required for active members  
 118 of the Florida Retirement System in addition to the  
 119 contributions required by s. 121.76.

120 3. A retiree initially reemployed in violation of this  
 121 paragraph and an employer that employs or appoints such person  
 122 are jointly and severally liable for reimbursement of any  
 123 retirement benefits paid to the retirement trust fund from which  
 124 the benefits were paid, including the Florida Retirement System  
 125 Trust Fund and the Florida Retirement System Investment Plan

126 Trust Fund, as appropriate. The employer must have a written  
127 statement from the employee that he or she is not retired from a  
128 state-administered retirement system. Retirement benefits shall  
129 remain suspended until repayment is made. Benefits suspended  
130 beyond the end of the retiree's 6-month reemployment limitation  
131 period shall apply toward the repayment of benefits received in  
132 violation of this paragraph.

133 (d) This subsection applies to retirees, as defined in s.  
134 121.4501(2), of the Florida Retirement System Investment Plan,  
135 subject to the following conditions:

136 1. Except as provided in subparagraph 2., a retiree may  
137 not be reemployed with an employer participating in the Florida  
138 Retirement System until such person has been retired for 6  
139 calendar months.

140 2. A retiree may be reemployed as a substitute teacher  
141 following retirement in accordance with the requirements of  
142 paragraph (g).

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

150 (g) A district school board may reemploy a retiree to work

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151 as a substitute teacher or an hourly teacher or an education  
152 paraprofessional as a nonemployee of the school system 1  
153 calendar month following retirement or DROP termination. The  
154 retiree may receive compensation from the employer and  
155 retirement benefits before meeting the definition of termination  
156 in s. 121.021(39). Reemployed instructional staff may not  
157 receive additional retirement service credit for such employment  
158 and may not renew membership in the Florida Retirement System  
159 during such period of employment.

160 Section 3. Subsection (6) is added to section 121.122,  
161 Florida Statutes, to read:

162 121.122 Renewed membership in system.—

163 (6) If a retiree otherwise eligible for renewed membership  
164 in accordance with subsections (3), (4), and (5) is reemployed  
165 pursuant to s. 121.091(9)(g) before meeting the definition of  
166 termination in s. 121.021(39), such retiree must cease all  
167 employment relationships, including service as a substitute  
168 teacher, with participating employers for 6 calendar months in  
169 order to be enrolled as a renewed member if subsequently  
170 reemployed in a regularly established position.

171 Section 4. Paragraph (a) of subsection (1) of section  
172 121.591, Florida Statutes, is amended to read:

173 121.591 Payment of benefits.—Benefits may not be paid  
174 under the Florida Retirement System Investment Plan unless the  
175 member has terminated employment as provided in s.

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176 | 121.021(39)(a) or is deceased and a proper application has been  
177 | filed as prescribed by the state board or the department.  
178 | Benefits, including employee contributions, are not payable  
179 | under the investment plan for employee hardships, unforeseeable  
180 | emergencies, loans, medical expenses, educational expenses,  
181 | purchase of a principal residence, payments necessary to prevent  
182 | eviction or foreclosure on an employee's principal residence, or  
183 | any other reason except a requested distribution for retirement,  
184 | a mandatory de minimis distribution authorized by the  
185 | administrator, or a required minimum distribution provided  
186 | pursuant to the Internal Revenue Code. The state board or  
187 | department, as appropriate, may cancel an application for  
188 | retirement benefits if the member or beneficiary fails to timely  
189 | provide the information and documents required by this chapter  
190 | and the rules of the state board and department. In accordance  
191 | with their respective responsibilities, the state board and the  
192 | department shall adopt rules establishing procedures for  
193 | application for retirement benefits and for the cancellation of  
194 | such application if the required information or documents are  
195 | not received. The state board and the department, as  
196 | appropriate, are authorized to cash out a de minimis account of  
197 | a member who has been terminated from Florida Retirement System  
198 | covered employment for a minimum of 6 calendar months. A de  
199 | minimis account is an account containing employer and employee  
200 | contributions and accumulated earnings of not more than \$5,000

201 made under the provisions of this chapter. Such cash-out must be  
202 a complete lump-sum liquidation of the account balance, subject  
203 to the provisions of the Internal Revenue Code, or a lump-sum  
204 direct rollover distribution paid directly to the custodian of  
205 an eligible retirement plan, as defined by the Internal Revenue  
206 Code, on behalf of the member. Any nonvested accumulations and  
207 associated service credit, including amounts transferred to the  
208 suspense account of the Florida Retirement System Investment  
209 Plan Trust Fund authorized under s. 121.4501(6), shall be  
210 forfeited upon payment of any vested benefit to a member or  
211 beneficiary, except for de minimis distributions or minimum  
212 required distributions as provided under this section. If any  
213 financial instrument issued for the payment of retirement  
214 benefits under this section is not presented for payment within  
215 180 days after the last day of the month in which it was  
216 originally issued, the third-party administrator or other duly  
217 authorized agent of the state board shall cancel the instrument  
218 and credit the amount of the instrument to the suspense account  
219 of the Florida Retirement System Investment Plan Trust Fund  
220 authorized under s. 121.4501(6). Any amounts transferred to the  
221 suspense account are payable upon a proper application, not to  
222 include earnings thereon, as provided in this section, within 10  
223 years after the last day of the month in which the instrument  
224 was originally issued, after which time such amounts and any  
225 earnings attributable to employer contributions shall be

226 forfeited. Any forfeited amounts are assets of the trust fund  
227 and are not subject to chapter 717.

228 (1) NORMAL BENEFITS.—Under the investment plan:

229 (a) Benefits in the form of vested accumulations as  
230 described in s. 121.4501(6) are payable under this subsection in  
231 accordance with the following terms and conditions:

232 1. Benefits are payable only to a member, an alternate  
233 payee of a qualified domestic relations order, or a beneficiary.

234 2. Benefits shall be paid by the third-party administrator  
235 or designated approved providers in accordance with the law, the  
236 contracts, and any applicable board rule or policy.

237 3. The member must be terminated from all employment with  
238 all Florida Retirement System employers, as provided in s.  
239 121.021(39).

240 4. Benefit payments may not be made until the member has  
241 been terminated for 3 calendar months, except that the state  
242 board may authorize by rule for the distribution of up to 10  
243 percent of the member's account after being terminated for 1  
244 calendar month if the member has reached the normal retirement  
245 date as defined in s. 121.021.

246 5. If a member or former member of the Florida Retirement  
247 System receives an invalid distribution, such person must either  
248 repay the full amount within 90 days after receipt of final  
249 notification by the state board or the third-party administrator  
250 that the distribution was invalid, or, in lieu of repayment, the

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251 member must terminate employment from all participating  
252 employers. If such person fails to repay the full invalid  
253 distribution within 90 days after receipt of final notification,  
254 the person may be deemed retired from the investment plan by the  
255 state board and is subject to s. 121.122. If such person is  
256 deemed retired, any joint and several liability set out in s.  
257 121.091(9)(d)3. ~~s. 121.091(9)(d)2.~~ is void, and the state board,  
258 the department, or the employing agency is not liable for gains  
259 on payroll contributions that have not been deposited to the  
260 person's account in the investment plan, pending resolution of  
261 the invalid distribution. The member or former member who has  
262 been deemed retired or who has been determined by the state  
263 board to have taken an invalid distribution may appeal the  
264 agency decision through the complaint process as provided under  
265 s. 121.4501(9)(g)3. As used in this subparagraph, the term  
266 "invalid distribution" means any distribution from an account in  
267 the investment plan which is taken in violation of this section,  
268 s. 121.091(9), or s. 121.4501.

269 Section 5. (1) Effective upon this act becoming a law,  
270 the State Board of Administration and the Department of  
271 Management Services shall request, as soon as practicable, a  
272 determination letter and private letter ruling from the United  
273 States Internal Revenue Service. If the United States Internal  
274 Revenue Service refuses to act upon a request for a private  
275 letter ruling, a legal opinion from a qualified tax attorney or

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276 firm may be substituted for the private letter ruling.

277 (2) If the State Board of Administration or the Department  
278 of Management Services receives notification from the United  
279 States Internal Revenue Service that this act or any portion of  
280 this act will cause the Florida Retirement System, or a portion  
281 thereof, to be disqualified for tax purposes under the Internal  
282 Revenue Code, the act or any portion thereof which will cause  
283 the disqualification does not apply. Upon receipt of such  
284 notice, the state board and the department shall notify the  
285 presiding officers of the Legislature.

286 Section 6. Except as otherwise expressly provided in this  
287 act and except for this section, which shall take effect upon  
288 becoming a law, this act shall take effect January 1, 2025.