

House Bill No. 2099

An act relating to rulemaking authority of the Department of Management Services; amending s. 112.362, F.S., relating to the minimum benefit adjustment; providing for refusal; amending s. 121.021, F.S.; revising and adding definitions; amending s. 121.051, F.S.; providing for rules relating to the submission of documents required for proper application by municipalities and special districts for Florida Retirement System participation; clarifying retention of Florida Retirement System membership for certain members; providing for furnishing of employee information upon enrollment in the Florida Retirement System; amending s. 121.0515, F.S., relating to Special Risk Class membership; providing for definitions; clarifying provisions relating to upgrading of past service to creditable service under the Special Risk Class; clarifying circumstances for retroactive coverage for Special Risk Administrative Support Class members; amending s. 121.081, F.S., relating to past service and prior service; providing for matters related to past service credit and prior service credit; creating s. 121.085, F.S., relating to claiming of creditable service; providing for submission of required information or evidence to establish a claim; providing a restriction with respect to unclaimed service; amending s. 121.091, F.S., relating to retirement benefits payable under the system; providing for retention of service credit upon termination; restricting payment of retirement benefits potentially subject to forfeiture; providing for payment of retirement benefits directly to a beneficiary, rather than a trust, in certain cases; providing requirements relative to payment of retirement benefits; amending s. 121.121, F.S., relating to authorized leaves of absence; providing that leaves under the Family Medical Leave Act are included in this provision; amending s. 287.16, F.S., relating to the acquisition, operation, and disposal of watercraft; providing legislative intent; providing an effective date.

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

Section 1. Subsection (7) is added to section 112.362, Florida Statutes, to read:

112.362 Recomputation of retirement benefits.—

(7) A member, or a joint annuitant or other beneficiary, who is receiving a monthly benefit may refuse the application of the minimum benefit adjustment to such benefit.

Section 2. Subsection (54) of section 121.021, Florida Statutes, is amended, and subsections (55) through (61) are added to said section, to read:

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

(54) “Work year” means the period of time an employee is required to work during the plan year to receive a full year of retirement credit, as provided by rule.

(55) “Benefit” means any payment, lump-sum or periodic, to a member, retiree, or beneficiary, based partially or entirely on employer contributions.

(56) “Calendar month” means one of the 12 divisions of a year as determined by the Gregorian calendar (e.g., January, April, etc.).

(57) “Calendar year” means a period of time beginning January 1 and ending on the following December 31.

(58) “Leave of absence” means a leave of absence from employment under the Florida Retirement System, subsequent to November 30, 1970, for which retirement credit may be received in accordance with s. 121.121.

(59) “Payee” means a retiree or beneficiary of a retiree who is receiving a retirement benefit payment.

(60) “Retiree” means a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member. This term also includes a person who retired and is receiving benefits under s. 112.05.

(61) “Signature” means the name or mark of a person as written by that person. When an “x” is used as a signature on a document, the document must include the printed names, signatures, and addresses of two persons who witnessed the signing, or the document must be notarized.

Section 3. Paragraphs (b) and (f) of subsection (2), and subsection (4) of section 121.051, Florida Statutes, are amended to read:

121.051 Participation in the system.—

(2) OPTIONAL PARTICIPATION.—

(b)1. The governing body of any municipality or special district in the state may elect to participate in the system upon proper application to the administrator and may cover all or any of its units as approved by the Secretary of Health and Human Services and the administrator. The department shall adopt rules establishing provisions for the submission of documents necessary for such application. Prior to being approved for participation in the Florida Retirement System, the governing body of any such municipality or special district that has a local retirement system shall submit to the administrator a certified financial statement showing the condition of the local retirement system as of a date within 3 months prior to the proposed effective date of membership in the Florida Retirement System. The statement must be certified by a recognized accounting firm that is independent of the local retirement system. All required documents necessary for extending Florida Retirement System coverage must be received by the department for consideration at least 15 days prior to the

proposed effective date of coverage. If the municipality or special district does not comply with this requirement, the department may require that the effective date of coverage be changed.

2. Any city or special district that has an existing retirement system covering the employees in the units that are to be brought under the Florida Retirement System may participate only after holding a referendum in which all employees in the affected units have the right to participate. Only those employees electing coverage under the Florida Retirement System by affirmative vote in said referendum shall be eligible for coverage under this chapter, and those not participating or electing not to be covered by the Florida Retirement System shall remain in their present systems and shall not be eligible for coverage under this chapter. After the referendum is held, all future employees shall be compulsory members of the Florida Retirement System.

3. The governing body of any city or special district complying with subparagraph 1. may elect to provide, or not provide, benefits based on past service of officers and employees as described in s. 121.081(1). However, if such employer elects to provide past service benefits, such benefits must be provided for all officers and employees of its covered group.

4. Once this election is made and approved it may not be revoked, except pursuant to subparagraphs 5. and 6., and all present officers and employees electing coverage under this chapter and all future officers and employees shall be compulsory members of the Florida Retirement System.

5. Subject to the conditions set forth in subparagraph 6., the governing body of any hospital licensed under chapter 395 which is governed by the board of a special district as defined in s. 189.403(1) or by the board of trustees of a public health trust created under s. 154.07, hereinafter referred to as "hospital district," and which participates in the system, may elect to cease participation in the system with regard to future employees in accordance with the following procedure:

a. No more than 30 days and at least 7 days before adopting a resolution to partially withdraw from the Florida Retirement System and establish an alternative retirement plan for future employees, a public hearing must be held on the proposed withdrawal and proposed alternative plan.

b. From 7 to 15 days before such hearing, notice of intent to withdraw, specifying the time and place of the hearing, must be provided in writing to employees of the hospital district proposing partial withdrawal and must be published in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031. Proof of publication of such notice shall be submitted to the Department of Management Services.

c. The governing body of any hospital district seeking to partially withdraw from the system must, before such hearing, have an actuarial report prepared and certified by an enrolled actuary, as defined in s. 112.625(3), illustrating the cost to the hospital district of providing, through the retirement plan that the hospital district is to adopt, benefits for new employees comparable to those provided under the Florida Retirement System.

d. Upon meeting all applicable requirements of this subparagraph, and subject to the conditions set forth in subparagraph 6., partial withdrawal from the system and adoption of the alternative retirement plan may be accomplished by resolution duly adopted by the hospital district board. The hospital district board must provide written notice of such withdrawal to the division by mailing a copy of the resolution to the division, postmarked no later than December 15, 1995. The withdrawal shall take effect January 1, 1996.

6. Following the adoption of a resolution under sub-subparagraph 5.d., all employees of the withdrawing hospital district who were participants in the Florida Retirement System prior to January 1, 1996, shall remain as participants in the system for as long as they are employees of the hospital district, and all rights, duties, and obligations between the hospital district, the system, and the employees shall remain in full force and effect. Any employee who is hired or appointed on or after January 1, 1996, may not participate in the Florida Retirement System, and the withdrawing hospital district shall have no obligation to the system with respect to such employees.

(f)1. Whenever an employer that participates in the Florida Retirement System undertakes the transfer, merger, or consolidation of governmental services or functions, the employer must notify the department at least 60 days prior to such action and shall provide documentation as required by the department.

2. When the agency to which a member's employing unit is transferred, merged, or consolidated does not participate in the Florida Retirement System, a member shall elect in writing to remain in the Florida Retirement System or to transfer to the local retirement system operated by such agency. If such agency does not participate in a local retirement system, the member shall continue membership in the Florida Retirement System. In either case, the membership shall continue for as long as the member is employed by the agency to which his or her unit was transferred, merged, or consolidated.

(4) INFORMATION REQUIRED.—The employer and employee shall furnish the administrator with such information as he or she may request for the proper enrollment of officers and employees in the system.

Section 4. Paragraph (c) of subsection (2), paragraph (a) of subsection (5), and paragraph (b) of subsection (7) of section 121.0515, Florida Statutes, are amended to read:

121.0515 Special risk membership; criteria; designation and removal of classification; credits for past service and prior service; retention of special risk normal retirement date.—

(2) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(c) The member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition,

the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included; however, correctional superintendents and assistant superintendents, as defined by rule, shall participate in the Special Risk Class; or

(5) CREDIT FOR PAST SERVICE.—A special risk member may purchase retirement credit in the Special Risk Class based upon past service, and may upgrade retirement credit for such past service, to the extent of 2 percent of the member's average monthly compensation as specified in s. 121.091(1)(a) for such service as follows:

(a) The member may purchase special risk credit for past service with a city or special district which has elected to join the Florida Retirement System, or with a participating agency to which a member's governmental unit was transferred, merged, or consolidated as provided in s. 121.081(1)(f), if the member was employed with the city or special district at the time it commenced participating in the Florida Retirement System or with the governmental unit at the time of its transfer, merger, or consolidation with the participating agency. The service must satisfy the criteria set forth in subsection (2) for special risk membership as a law enforcement officer, firefighter, or correctional officer; however, no certificate or waiver of certificate of compliance with s. 943.1395 or s. 633.35 shall be required for such service.

(7) RETENTION OF SPECIAL RISK NORMAL RETIREMENT DATE.—

(b) Upon application by a member, the provisions of this subsection shall apply, with respect to such member, retroactively to October 1, 1978, provided that the member was removed from the Special Risk Class effective October 1, 1978, due to a change in special risk criteria as a result of the enactment of chapter 78-308, Laws of Florida, or was reassigned or employed for training or career development or to fill a critical agency need.

Section 5. Subsection (2) of section 121.081, Florida Statutes, is amended to read:

121.081 Past service; prior service; contributions.—Conditions under which past service or prior service may be claimed and credited are:

(2) Prior service, as defined in s. 121.021(19), may be claimed as creditable service under the Florida Retirement System after a member has been reemployed for 1 complete year of creditable service within a period of 12 consecutive months, except as provided in paragraph (c). Service performed as a participant of the optional retirement program for the State University System under s. 121.35 or the Senior Management Service Optional Annuity

Program under s. 121.055 may be used to satisfy the reemployment requirement of 1 complete year of creditable service. The member shall not be permitted to make any contributions for prior service until after completion of the 1 year of creditable service. If a member does not wish to claim credit for all of his or her prior service, the service the member claims must be the most recent period of service. The required contributions for claiming the various types of prior service are:

(a) For prior service performed prior to the date the system becomes noncontributory for the member and for which the member had credit under one of the existing retirement systems and received a refund of contributions upon termination of employment, the member shall contribute 4 percent of all salary received during the period being claimed, plus 4 percent interest compounded annually from date of refund until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Retirement Trust Fund, and shall receive credit in the Regular Class. A member who elected to transfer to the Florida Retirement System from an existing system may receive credit for prior service under the existing system if he or she was eligible under the existing system to claim the prior service at the time of the transfer. Contributions for such prior service shall be determined by the applicable provisions of the system under which the prior service is claimed and shall be paid by the member, with matching contributions paid by the employer at the time the service was performed. Effective July 1, 1978, the account of a person who terminated under s. 238.05(3) may not be charged interest for contributions that remained on deposit in the Annuity Savings Trust Fund established under chapter 238, upon retirement under this chapter or chapter 238.

(b) For prior service performed prior to the date the system becomes noncontributory for the member and for which the member had credit under the Florida Retirement System and received a refund of contributions upon termination of employment, the member shall contribute at the rate that was required of him or her during the period of service being claimed, on all salary received during such period, plus 4 percent interest compounded annually from date of refund until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until the full payment is made to the Retirement Trust Fund, and shall receive credit in the membership class in which the member participated during the period claimed.

(c) For prior service as defined in s. 121.021(19)(b) and (c) during which no contributions were made because the member did not participate in a retirement system, the member shall contribute 14.38 percent of all salary received during such period or 14.38 percent of \$100 per month during such period, whichever is greater, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Retirement Trust Fund, and shall receive credit in the Regular Class.

(d) In order to claim credit for prior service as defined in s. 121.021(19)(d) for which no retirement contributions were paid during the period of such service, the member shall contribute the total employee and employer contributions which were required to be made to the Highway Patrol Pension

Trust Fund, as provided in chapter 321, during the period claimed, plus 4 percent interest compounded annually from the first year of service until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Retirement Trust Fund. However, any governmental entity which employed such member may elect to pay up to 50 percent of the contributions and interest required to purchase this prior service credit. The service shall be credited in accordance with the provisions of the Highway Patrol Pension Plan in effect during the period claimed unless the member terminated and withdrew his or her retirement contributions and was thereafter enrolled in the State and County Officers and Employees' Retirement System or the Florida Retirement System, in which case, the service shall be credited as Regular Class service.

(e) For service performed under the Florida Retirement System after December 1, 1970, that was never reported to the division or the department due to error, retirement credit may be claimed by a member of the Florida Retirement System. The department shall adopt rules establishing criteria for claiming such credit and detailing the documentation required to substantiate the error.

(f) The employer may not be required to make contributions for prior service credit for any member, except that the employer shall pay the employer portion of contributions for any legislator who elects to withdraw from the Florida Retirement System and later rejoins the system and pays any employee contributions required in accordance with s. 121.052(3)(d).

Section 6. Section 121.085, Florida Statutes, is created to read:

121.085 Creditable service.—The following provisions shall apply to creditable service as defined in s. 121.021(17):

(1) The department shall adopt rules establishing procedures for the submission of evidence or information necessary to establish a member's claim of creditable service.

(2) No creditable service which remained unclaimed at retirement may be claimed or purchased after a retirement benefit payment has been cashed or deposited.

Section 7. Subsection (5) of section 121.091, Florida Statutes, is amended, paragraph (c) is added to subsection (8), and paragraphs (e) and (f) are added to subsection (14) of said section, to read:

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

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

(5) TERMINATION BENEFITS.—A member whose employment is terminated prior to retirement retains membership rights to previously earned member-noncontributory service credit, and to member-contributory service credit, if the member leaves the member contributions on deposit in his or her retirement account. If a terminated member receives a refund of member contributions, such member may reinstate membership rights to the previously earned service credit represented by the refund by completing 1 year of creditable service and repaying the refunded member contributions, plus interest.

(a) A member whose employment is terminated for any reason other than death or retirement prior to becoming vested is entitled to the return of his or her accumulated contributions as of the date of termination.

(b) A member whose employment is terminated for any reason other than death or retirement after becoming vested may elect to receive a deferred monthly benefit which shall begin to accrue on the first day of the month of normal or early retirement and shall be payable on the last day of that month and each month thereafter during his or her lifetime. The amount of monthly benefit shall be computed in the same manner as for a normal retirement benefit in accordance with subsection (1) or early retirement benefit in accordance with s. 121.021(30), but based on average monthly compensation and creditable service as of the date of termination.

(c) In lieu of the deferred monthly benefit provided in paragraph (b), the terminated member may elect to receive a lump-sum amount equal to his or her accumulated contributions as of the date of termination.

(d) If any retired member dies without having received in benefit payments an amount equal to his or her accumulated contributions, there shall be payable to his or her designated beneficiary an amount equal to the excess, if any, of the member's accumulated contributions over the total monthly payments made to the member prior to the date of death.

(e) A member shall be deemed a terminated member when termination of employment has occurred as provided in s. 121.021(39).

(f) Any member who has been found guilty by a verdict of a jury, or by the court trying the case without a jury, of committing, aiding, or abetting any embezzlement or theft from his or her employer, bribery in connection with the employment, or other felony specified in chapter 838, except ss. 838.15 and 838.16, committed prior to retirement, or who has entered a plea of guilty or of nolo contendere to such crime, or any member whose employment is terminated by reason of the member's admitted commitment, aiding, or abetting of an embezzlement or theft from his or her employer, bribery, or other felony specified in chapter 838, except ss. 838.15 and 838.16, shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of termination.

(g) Any elected official who is convicted by the Senate of an impeachable offense shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of the conviction.

(h) Any member who, prior to retirement, is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees, or who has been found guilty by such court of violating any state law prohibiting strikes by public employees, shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of the conviction.

(i) Any beneficiary who by a verdict of a jury or by the court trying the case without a jury is found guilty, or who has entered a plea of guilty or nolo contendere, of unlawfully and intentionally killing or procuring the death of the member forfeits all rights to the deceased member's benefits under this chapter, and the benefits will be paid as if such beneficiary had predeceased the decedent.

(j) Benefits shall may not be paid by the division pending final resolution of such charges against a member or the beneficiary if the resolution of such charges could require the forfeiture of benefits as provided in paragraphs (f), (g), (h), or (i).

(8) DESIGNATION OF BENEFICIARIES.—

(c) Notwithstanding the member's designation of benefits to be paid through a trust to a beneficiary that is a natural person as provided in s. 121.021(46), and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if such person is no longer a minor or incapacitated as defined in s. 744.102(10) and (11).

(14) PAYMENT OF BENEFITS.—This subsection applies to the payment of benefits to a payee (retiree or beneficiary) under the Florida Retirement System:

(e) No benefit may be reduced for the purpose of preserving the member's eligibility for a federal program.

(f) The division shall adopt rules establishing procedures for determining that the persons to whom benefits are being paid are still living. The division shall suspend the benefits being paid to any payee when it is unable to contact such payee and to confirm that he or she is still living.

Section 8. Subsection (1) of section 121.121, Florida Statutes, is amended to read:

121.121 Authorized leaves of absence.—

(1) A member may purchase creditable service for up to 2 work years of authorized leaves of absence, including any leaves of absence covered under the Family Medical Leave Act, if:

(a) The member has completed a minimum of 10 years of creditable service, excluding periods for which a leave of absence was authorized;

(b) The leave of absence is authorized in writing by the employer of the member and approved by the administrator;

(c) The member returns to active employment performing service with a Florida Retirement System employer in a regularly established position immediately upon termination of the leave of absence and remains on the employer's payroll for 1 calendar month, except that a member who retires on disability while on a medical leave of absence shall not be required to return to employment. A member whose work year is less than 12 months and whose leave of absence terminates between school years is eligible to receive credit for the leave of absence as long as he or she returns to the employment of his or her employer at the beginning of the next school year and remains on the employer's payroll for 1 calendar month; and

(d) The member makes the required contributions for service credit during the leave of absence, which shall be 8 percent until January 1, 1975, and 9 percent thereafter of his or her rate of monthly compensation in effect immediately prior to the commencement of such leave for each month of such period, plus 4 percent interest until July 1, 1975, and 6.5 percent interest thereafter on such contributions, compounded annually each June 30 from the due date of the contribution to date of payment. Effective July 1, 1980, any leave of absence purchased pursuant to this section shall be at the contribution rates specified in s. 121.071 in effect at the time the leave is granted for the class of membership from which the leave of absence was granted; however, any member who purchased leave-of-absence credit prior to July 1, 1980, for a leave of absence from a position in a class other than the regular membership class, may pay the appropriate additional contributions plus compound interest thereon and receive creditable service for such leave of absence in the membership class from which the member was granted the leave of absence.

Section 9. Subsections (2) and (6) of section 287.16, Florida Statutes, are amended to read:

287.16 Powers and duties of department.—The Department of Management Services shall have the following powers, duties, and responsibilities:

(2) To establish and operate central facilities for the acquisition, disposal, operation, maintenance, repair, storage, supervision, control, and regulation of all state-owned or state-leased aircraft, watercraft, and motor vehicles and to operate any state facilities for those purposes. Acquisition may be by purchase, lease, loan, or in any other legal manner.

(6) To adopt and enforce rules and regulations for the efficient and safe use, operation, maintenance, repair, disposal, and replacement of all state-owned or state-leased aircraft, watercraft, and motor vehicles and to require the placement of appropriate stickers, decals, or other markings upon them ~~the aircraft and motor vehicles of the state~~. The department may delegate to the respective heads of the agencies to which aircraft, watercraft, and

motor vehicles are assigned the duty of enforcing the rules and regulations adopted by the department.

Section 10. It is the intent of the Legislature that the amendments to ss. 112.362, 121.021, 121.051, 121.0515, 121.081, 121.091, 121.121, and 287.16, Florida Statutes, made by this act are intended to be supplemental to other amendments to said sections which may be enacted at the 2000 Regular Session of the Legislature, unless a contrary intent is specifically indicated herein or in such other amendments.

Section 11. This act shall take effect July 1, 2000.

Approved by the Governor June 20, 2000.

Filed in Office Secretary of State June 20, 2000.