



939074

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/28/2013	.	
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The Committee on Appropriations (Sobel) recommended the following:

1 **Senate Amendment to Amendment (726700) (with title**
2 **amendment)**

3
4 Delete lines 432 - 1162
5 and insert:

6 Section 6. Subsection (1), paragraphs (a) and (g) of
7 subsection (4), subsection (8), and paragraphs (a), (b), (c),
8 and (h) of subsection (10) of section 121.4501, Florida
9 Statutes, are amended, and paragraph (h) is added to subsection
10 (4) of that section, to read:

11 121.4501 Florida Retirement System Investment Plan.—

12 (1) The Trustees of the State Board of Administration shall



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13 establish a defined contribution program called the "Florida
14 Retirement System Investment Plan" or "investment plan" for
15 members of the Florida Retirement System under which retirement
16 benefits will be provided for eligible employees who elect to
17 participate in the program and for employees initially enrolled
18 on or after July 1, 2014, in positions covered by the Elected
19 Officers' Class or the Senior Management Service Class and are
20 compulsory members of the investment plan unless otherwise
21 eligible to withdraw from the system under s. 121.052(3)(d) or
22 s. 121.055(1)(b)2., or to participate in an optional retirement
23 program under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35.
24 Investment plan membership continues if there is subsequent
25 employment in a position covered by another membership class.
26 The retirement benefits shall be provided through member-
27 directed investments, in accordance with s. 401(a) of the
28 Internal Revenue Code and related regulations. The employer and
29 employee shall make contributions, as provided in this section
30 and ss. 121.571 and 121.71, to the Florida Retirement System
31 Investment Plan Trust Fund toward the funding of benefits.

32 (4) PARTICIPATION; ENROLLMENT.—

33 (a)1. Effective June 1, 2002, through February 28, 2003, a
34 90-day election period was provided to each eligible employee
35 participating in the Florida Retirement System, preceded by a
36 90-day education period, permitting each eligible employee to
37 elect membership in the investment plan, and an employee who
38 failed to elect the investment plan during the election period
39 remained in the pension plan. An eligible employee who was
40 employed in a regularly established position during the election
41 period was granted the option to make one subsequent election,



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42 as provided in paragraph (g). With respect to an eligible
43 employee who did not participate in the initial election period
44 or who was initially ~~employee who is~~ employed in a regularly
45 established position after the close of the initial election
46 period but before July 1, 2014, ~~on June 1, 2002,~~ by a state
47 employer:

48 a. ~~Any such employee may elect to participate in the~~
49 ~~investment plan in lieu of retaining his or her membership in~~
50 ~~the pension plan. The election must be made in writing or by~~
51 ~~electronic means and must be filed with the third party~~
52 ~~administrator by August 31, 2002, or, in the case of an active~~
53 ~~employee who is on a leave of absence on April 1, 2002, by the~~
54 ~~last business day of the 5th month following the month the leave~~
55 ~~of absence concludes. This election is irrevocable, except as~~
56 ~~provided in paragraph (g). Upon making such election, the~~
57 ~~employee shall be enrolled as a member of the investment plan,~~
58 ~~the employee's membership in the Florida Retirement System is~~
59 ~~governed by the provisions of this part, and the employee's~~
60 ~~membership in the pension plan terminates. The employee's~~
61 ~~enrollment in the investment plan is effective the first day of~~
62 ~~the month for which a full month's employer contribution is made~~
63 ~~to the investment plan.~~

64 b. ~~Any such employee who fails to elect to participate in~~
65 ~~the investment plan within the prescribed time period is deemed~~
66 ~~to have elected to retain membership in the pension plan, and~~
67 ~~the employee's option to elect to participate in the investment~~
68 ~~plan is forfeited.~~

69 2. ~~With respect to employees who become eligible to~~
70 ~~participate in the investment plan by reason of employment in a~~



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71 ~~regularly established position with a state employer commencing~~
72 ~~after April 1, 2002:~~

73 ~~a.~~ Any such employee shall, by default, be enrolled in the
74 pension plan at the commencement of employment, and may, by the
75 last business day of the 5th month following the employee's
76 month of hire, elect to participate in the investment plan. The
77 employee's election must be made in writing or by electronic
78 means and must be filed with the third-party administrator. The
79 election to participate in the investment plan is irrevocable,
80 except as provided in paragraph (g).

81 ~~a.b.~~ If the employee files such election within the
82 prescribed time period, enrollment in the investment plan is
83 effective on the first day of employment. The retirement
84 contributions paid through the month of the employee plan change
85 shall be transferred to the investment program, and, effective
86 the first day of the next month, the employer and employee must
87 pay the applicable contributions based on the employee
88 membership class in the program.

89 ~~b.e.~~ An employee who fails to elect to participate in the
90 investment plan within the prescribed time period is deemed to
91 have elected to retain membership in the pension plan, and the
92 employee's option to elect to participate in the investment plan
93 is forfeited.

94 ~~2.3.~~ With respect to employees who become eligible to
95 participate in the investment plan pursuant to s.
96 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to
97 participate in the investment plan in lieu of retaining his or
98 her membership in the State Community College System Optional
99 Retirement Program or the State University System Optional



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100 Retirement Program. The election must be made in writing or by
101 electronic means and must be filed with the third-party
102 administrator. This election is irrevocable, except as provided
103 in paragraph (g). Upon making such election, the employee shall
104 be enrolled as a member in the investment plan, the employee's
105 membership in the Florida Retirement System is governed by the
106 provisions of this part, and the employee's participation in the
107 State Community College System Optional Retirement Program or
108 the State University System Optional Retirement Program
109 terminates. The employee's enrollment in the investment plan is
110 effective on the first day of the month for which a full month's
111 employer and employee contribution is made to the investment
112 plan.

113 3.4. For purposes of this paragraph, "state employer" means
114 any agency, board, branch, commission, community college,
115 department, institution, institution of higher education, or
116 water management district of the state, which participates in
117 the Florida Retirement System for the benefit of certain
118 employees.

119 (g) After the period during which an eligible employee had
120 the choice to elect the pension plan or the investment plan, or
121 the month following the receipt of the eligible employee's plan
122 election, if sooner, the employee shall have one opportunity, at
123 the employee's discretion, to choose to move from the pension
124 plan to the investment plan or from the investment plan to the
125 pension plan. Eligible employees may elect to move between plans
126 only if they are earning service credit in an employer-employee
127 relationship consistent with s. 121.021(17)(b), excluding leaves
128 of absence without pay. Effective July 1, 2005, such elections



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129 are effective on the first day of the month following the
130 receipt of the election by the third-party administrator and are
131 not subject to the requirements regarding an employer-employee
132 relationship or receipt of contributions for the eligible
133 employee in the effective month, except when the election is
134 received by the third-party administrator. This paragraph is
135 contingent upon approval by the Internal Revenue Service. This
136 paragraph does not apply to compulsory investment plan members
137 under paragraph (h).

138 1. If the employee chooses to move to the investment plan,
139 the provisions of subsection (3) govern the transfer.

140 2. If the employee chooses to move to the pension plan, the
141 employee must transfer from his or her investment plan account,
142 and from other employee moneys as necessary, a sum representing
143 the present value of that employee's accumulated benefit
144 obligation immediately following the time of such movement,
145 determined assuming that attained service equals the sum of
146 service in the pension plan and service in the investment plan.
147 Benefit commencement occurs on the first date the employee is
148 eligible for unreduced benefits, using the discount rate and
149 other relevant actuarial assumptions that were used to value the
150 pension plan liabilities in the most recent actuarial valuation.
151 For any employee who, at the time of the second election,
152 already maintains an accrued benefit amount in the pension plan,
153 the then-present value of the accrued benefit is deemed part of
154 the required transfer amount. The division must ensure that the
155 transfer sum is prepared using a formula and methodology
156 certified by an enrolled actuary. A refund of any employee
157 contributions or additional member payments made which exceed



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158 the employee contributions that would have accrued had the
159 member remained in the pension plan and not transferred to the
160 investment plan is not permitted.

161 3. Notwithstanding subparagraph 2., an employee who chooses
162 to move to the pension plan and who became eligible to
163 participate in the investment plan by reason of employment in a
164 regularly established position with a state employer after June
165 1, 2002; a district school board employer after September 1,
166 2002; or a local employer after December 1, 2002, must transfer
167 from his or her investment plan account, and from other employee
168 moneys as necessary, a sum representing the employee's actuarial
169 accrued liability. A refund of any employee contributions or
170 additional member ~~participant~~ payments made which exceed the
171 employee contributions that would have accrued had the member
172 remained in the pension plan and not transferred to the
173 investment plan is not permitted.

174 4. An employee's ability to transfer from the pension plan
175 to the investment plan pursuant to paragraphs (a)-(d), and the
176 ability of a current employee to have an option to later
177 transfer back into the pension plan under subparagraph 2., shall
178 be deemed a significant system amendment. Pursuant to s.
179 121.031(4), any resulting unfunded liability arising from actual
180 original transfers from the pension plan to the investment plan
181 must be amortized within 30 plan years as a separate unfunded
182 actuarial base independent of the reserve stabilization
183 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
184 direct amortization payment may not be calculated for this base.
185 During this 25-year period, the separate base shall be used to
186 offset the impact of employees exercising their second program



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187 election under this paragraph. The actuarial funded status of
188 the pension plan will not be affected by such second program
189 elections in any significant manner, after due recognition of
190 the separate unfunded actuarial base. Following the initial 25-
191 year period, any remaining balance of the original separate base
192 shall be amortized over the remaining 5 years of the required
193 30-year amortization period.

194 5. If the employee chooses to transfer from the investment
195 plan to the pension plan and retains an excess account balance
196 in the investment plan after satisfying the buy-in requirements
197 under this paragraph, the excess may not be distributed until
198 the member retires from the pension plan. The excess account
199 balance may be rolled over to the pension plan and used to
200 purchase service credit or upgrade creditable service in the
201 pension plan.

202 (h)1. All employees initially enrolled on or after July 1,
203 2014, in positions covered by the Elected Officers' Class or the
204 Senior Management Service Class are compulsory members of the
205 investment plan, except those eligible to withdraw from the
206 system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those
207 eligible for optional retirement programs under s.
208 121.051(1)(a), s. 121.051(2)(c), or s. 121.35. Employees
209 eligible to withdraw from the system under s. 121.052(3)(d) or
210 s. 121.055(1)(b)2. may choose to withdraw from the system or to
211 participate in the investment plan as provided in those
212 sections. Employees eligible for optional retirement programs
213 under s. 121.051(2)(c) or s. 121.35, except as provided in s.
214 121.051(1)(a), may choose to participate in the optional
215 retirement program or the investment plan as provided in those



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216 sections. Investment plan membership continues if there is
217 subsequent employment in a position covered by another
218 membership class. Membership in the pension plan is not
219 permitted, except as provided in s. 121.591(2). Employees
220 initially enrolled in the Florida Retirement System before July
221 1, 2014, may retain their membership in the pension plan or
222 investment plan and are eligible to use the election opportunity
223 specified in paragraph (g).

224 2. Employees initially enrolled on or after July 1, 2014,
225 are not permitted to use the election opportunity specified in
226 paragraph (g).

227 3. The amount of retirement contributions paid by the
228 employee and employer, as required under s. 121.72, shall be
229 placed in a default fund as designated by the state board until
230 an account is activated in the investment plan, at which time
231 the member may move the contributions from the default fund to
232 other funds provided in the investment plan.

233 (8) INVESTMENT PLAN ADMINISTRATION.—The investment plan
234 shall be administered by the state board and affected employers.
235 The state board may require oaths, by affidavit or otherwise,
236 and acknowledgments from persons in connection with the
237 administration of its statutory duties and responsibilities for
238 the investment plan. An oath, by affidavit or otherwise, may not
239 be required of a member at the time of enrollment.

240 Acknowledgment of an employee's election to participate in the
241 program shall be no greater than necessary to confirm the
242 employee's election, except for members initially enrolled on or
243 after July 1, 2014, as provided in paragraph (4) (h). The state
244 board shall adopt rules to carry out its statutory duties with



245 respect to administering the investment plan, including
246 establishing the roles and responsibilities of affected state,
247 local government, and education-related employers, the state
248 board, the department, and third-party contractors. The
249 department shall adopt rules necessary to administer the
250 investment plan in coordination with the pension plan and the
251 disability benefits available under the investment plan.

252 (a)1. The state board shall select and contract with a
253 third-party administrator to provide administrative services if
254 those services cannot be competitively and contractually
255 provided by the division. With the approval of the state board,
256 the third-party administrator may subcontract to provide
257 components of the administrative services. As a cost of
258 administration, the state board may compensate any such
259 contractor for its services, in accordance with the terms of the
260 contract, as is deemed necessary or proper by the board. The
261 third-party administrator may not be an approved provider or be
262 affiliated with an approved provider.

263 2. These administrative services may include, but are not
264 limited to, enrollment of eligible employees, collection of
265 employer and employee contributions, disbursement of
266 contributions to approved providers in accordance with the
267 allocation directions of members; services relating to
268 consolidated billing; individual and collective recordkeeping
269 and accounting; asset purchase, control, and safekeeping; and
270 direct disbursement of funds to and from the third-party
271 administrator, the division, the state board, employers,
272 members, approved providers, and beneficiaries. This section
273 does not prevent or prohibit a bundled provider from providing



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274 any administrative or customer service, including accounting and
275 administration of individual member benefits and contributions;
276 individual member recordkeeping; asset purchase, control, and
277 safekeeping; direct execution of the member's instructions as to
278 asset and contribution allocation; calculation of daily net
279 asset values; direct access to member account information; or
280 periodic reporting to members, at least quarterly, on account
281 balances and transactions, if these services are authorized by
282 the state board as part of the contract.

283 (b)1. The state board shall select and contract with one or
284 more organizations to provide educational services. With
285 approval of the state board, the organizations may subcontract
286 to provide components of the educational services. As a cost of
287 administration, the state board may compensate any such
288 contractor for its services in accordance with the terms of the
289 contract, as is deemed necessary or proper by the board. The
290 education organization may not be an approved provider or be
291 affiliated with an approved provider.

292 2. Educational services shall be designed by the state
293 board and department to assist employers, eligible employees,
294 members, and beneficiaries in order to maintain compliance with
295 United States Department of Labor regulations under s. 404(c) of
296 the Employee Retirement Income Security Act of 1974 and to
297 assist employees in their choice of pension plan or investment
298 plan retirement alternatives. Educational services include, but
299 are not limited to, disseminating educational materials;
300 providing retirement planning education; explaining the pension
301 plan and the investment plan; and offering financial planning
302 guidance on matters such as investment diversification,



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303 investment risks, investment costs, and asset allocation. An
304 approved provider may also provide educational information,
305 including retirement planning and investment allocation
306 information concerning its products and services.

307 (c)1. In evaluating and selecting a third-party
308 administrator, the state board shall establish criteria for
309 evaluating the relative capabilities and qualifications of each
310 proposed administrator. In developing such criteria, the state
311 board shall consider:

312 a. The administrator's demonstrated experience in providing
313 administrative services to public or private sector retirement
314 systems.

315 b. The administrator's demonstrated experience in providing
316 daily valued recordkeeping to defined contribution programs.

317 c. The administrator's ability and willingness to
318 coordinate its activities with employers, the state board, and
319 the division, and to supply to such employers, the board, and
320 the division the information and data they require, including,
321 but not limited to, monthly management reports, quarterly member
322 reports, and ad hoc reports requested by the department or state
323 board.

324 d. The cost-effectiveness and levels of the administrative
325 services provided.

326 e. The administrator's ability to interact with the
327 members, the employers, the state board, the division, and the
328 providers; the means by which members may access account
329 information, direct investment of contributions, make changes to
330 their accounts, transfer moneys between available investment
331 vehicles, and transfer moneys between investment products; and



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332 any fees that apply to such activities.

333 f. Any other factor deemed necessary by the state board.

334 2. In evaluating and selecting an educational provider, the
335 state board shall establish criteria under which it shall
336 consider the relative capabilities and qualifications of each
337 proposed educational provider. In developing such criteria, the
338 state board shall consider:

339 a. Demonstrated experience in providing educational
340 services to public or private sector retirement systems.

341 b. Ability and willingness to coordinate its activities
342 with the employers, the state board, and the division, and to
343 supply to such employers, the board, and the division the
344 information and data they require, including, but not limited
345 to, reports on educational contacts.

346 c. The cost-effectiveness and levels of the educational
347 services provided.

348 d. Ability to provide educational services via different
349 media, including, but not limited to, the Internet, personal
350 contact, seminars, brochures, and newsletters.

351 e. Any other factor deemed necessary by the state board.

352 3. The establishment of the criteria shall be solely within
353 the discretion of the state board.

354 (d) The state board shall develop the form and content of
355 any contracts to be offered under the investment plan. In
356 developing the contracts, the board shall consider:

357 1. The nature and extent of the rights and benefits to be
358 afforded in relation to the contributions required under the
359 plan.

360 2. The suitability of the rights and benefits provided and



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361 the interests of employers in the recruitment and retention of
362 eligible employees.

363 (e)1. The state board may contract for professional
364 services, including legal, consulting, accounting, and actuarial
365 services, deemed necessary to implement and administer the
366 investment plan. The state board may enter into a contract with
367 one or more vendors to provide low-cost investment advice to
368 members, supplemental to education provided by the third-party
369 administrator. All fees under any such contract shall be paid by
370 those members who choose to use the services of the vendor.

371 2. The department may contract for professional services,
372 including legal, consulting, accounting, and actuarial services,
373 deemed necessary to implement and administer the investment plan
374 in coordination with the pension plan. The department, in
375 coordination with the state board, may enter into a contract
376 with the third-party administrator in order to coordinate
377 services common to the various programs within the Florida
378 Retirement System.

379 (f) The third-party administrator may not receive direct or
380 indirect compensation from an approved provider, except as
381 specifically provided for in the contract with the state board.

382 (g) The state board shall receive and resolve member
383 complaints against the program, the third-party administrator,
384 or any program vendor or provider; shall resolve any conflict
385 between the third-party administrator and an approved provider
386 if such conflict threatens the implementation or administration
387 of the program or the quality of services to employees; and may
388 resolve any other conflicts. The third-party administrator shall
389 retain all member records for at least 5 years for use in



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390 resolving any member conflicts. The state board, the third-party
391 administrator, or a provider is not required to produce
392 documentation or an audio recording to justify action taken with
393 regard to a member if the action occurred 5 or more years before
394 the complaint is submitted to the state board. It is presumed
395 that all action taken 5 or more years before the complaint is
396 submitted was taken at the request of the member and with the
397 member's full knowledge and consent. To overcome this
398 presumption, the member must present documentary evidence or an
399 audio recording demonstrating otherwise.

400 (10) EDUCATION COMPONENT.—

401 (a) The state board, in coordination with the department,
402 shall provide for an education component for eligible employees
403 ~~system members~~ in a manner consistent with the provisions of
404 this subsection ~~section~~. ~~The education component must be~~
405 ~~available to eligible employees at least 90 days prior to the~~
406 ~~beginning date of the election period for the employees of the~~
407 ~~respective types of employers.~~

408 (b) The education component must provide system members
409 with impartial and balanced information about plan choices
410 except for members initially enrolled on or after July 1, 2014,
411 as provided in paragraph (4) (h). The education component must
412 involve multimedia formats. Program comparisons must, to the
413 greatest extent possible, be based upon the retirement income
414 that different retirement programs may provide to the member.
415 The state board shall monitor the performance of the contract to
416 ensure that the program is conducted in accordance with the
417 contract, applicable law, and the rules of the state board.

418 (c) The state board, in coordination with the department,



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419 shall provide for an initial and ongoing transfer education
420 component to provide system members, except for those members
421 initially enrolled on or after July 1, 2014, as provided in
422 paragraph (4)(h), with information necessary to make informed
423

424 ===== T I T L E A M E N D M E N T =====

425 And the title is amended as follows:

426 Delete lines 1503 - 1518

427 and insert:

428 investment plan; revising a provision relating to
429 acknowledgement of an employee's election to
430 participate in the investment plan; authorizing
431 certain employees to elect to participate in the
432 pension plan, rather than the default investment plan,
433 within a specified time; providing for the transfer of
434 certain contributions; revising the education
435 component; deleting the obligation of system employers
436 to communicate the existence of both retirement plans
437 to certain employees; conforming provisions and cross-
438 references to changes made by the act; amending s.
439 121.591, F.S.; revising provisions