

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**  
**Senator Ring, Chair**  
**Senator Siplin, Vice Chair**

**MEETING DATE:** Thursday, March 10, 2011  
**TIME:** 3:15 —5:15 p.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Ring, Chair; Senator Siplin, Vice Chair; Senators Benacquisto, Bogdanoff, Dean, Fasano, Flores, Garcia, Latvala, Margolis, Montford, Norman, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1130</b> Ring (Compare H 303, H 1405)	Retirement; Requires employee and employer contributions to the retirement system by a certain date. Clarifies that employer-paid employee contributions are subject to certain taxes. Amends provisions relating to the membership class of elected officers. Amends provisions relating to the optional retirement program for the State University System. Changes the name of the Public Employee Optional Retirement Program to the Florida Retirement System Investment Plan, etc.  GO 02/22/2011 Not Considered GO 02/24/2011 Workshop-Discussed GO 03/10/2011 Fav/CS BC	Fav/CS Yeas 12 Nays 1
2	<b>SB 1970</b> Thrasher (Compare H 7017, Link S 1204)	Public Records/OPPAGA; Creates an exemption from public records requirements for work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product. Provides for retroactive application. Provides a statement of public necessity.  GO 03/10/2011 Fav/CS	Fav/CS Yeas 13 Nays 0

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 1130

INTRODUCER: Senator Ring

SUBJECT: Florida Retirement System

DATE: February 10, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

This bill makes the following changes to the Florida Retirement System (FRS):

- Closes the defined benefit plan to members enrolled on or after July 1, 2011, and requires members enrolling on or after that date to enter the defined contribution plan.
- Changes vesting for members enrolled in the defined contribution plan on or after July 1, 2011. They will vest in graded increments over a five-year period.
- Changes the FRS from a noncontributory system to a contributory system and requires each active member of the FRS to contribute a percentage of gross salary to fund retirement benefits, effective July 1, 2011.
- Amends the definitions of “compensation” and “average final compensation” to exclude overtime and accumulated annual leave for all members, effective July 1, 2011.
- Creates an additional death benefit for members of the defined contribution plan who are killed in the line of duty.

The bill also:

- Establishes the required employer payroll contribution rates for each membership class and subclass of the FRS retirement plan for the fiscal year beginning July 1, 2011.
- Requires each active member of the Senior Management Service Optional Annuity Program, the State University System Optional Retirement Program, and the Community College Optional Retirement Program to contribute the same percentage of gross salary to fund retirement benefits as those contributed by FRS employees, effective July 1, 2011.
- Creates conforming and implementing provisions related to the substantive changes.

This bill substantially amends the following sections of the Florida Statutes:

110.123, 112.0801, 112.363, 112.65, 121.011, 121.021, 121.051, 121.0515, 121.052, 121.053, 121.055, 121.071, 121.081, 121.091, 121.121, 121.125, 121.35, 121.4501, 121.4502, 121.4503, 121.571, 121.591, 121.5911, 121.70, 121.71, 121.72, 121.73, 121.74, 121.77, 121.78, and 1012.875.

## **II. Present Situation:**

### **Florida Retirement System**

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to the 572,000 active and 319,000 retired members and beneficiaries of its more than 900 state and local government public employers. Originally established in 1970 as the successor to the Teachers' Retirement System and the State, and County Officers' and Employees' Retirement System, the FRS is today a combination of five previously separate pension plans. Benefit payments are administered by the Department of Management Services through its Division of Retirement while investment management is undertaken by the Board of Administration. Established as a Section 401(a) government plan under the Internal Revenue Code, its benefits are exempt from federal taxation until received by the employee.

As a defined benefit plan, the FRS "Pension Plan" provides retirement income expressed as a percent of final pay. Participants accrue retirement credits based upon their eligibility in one of several membership classes. Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus up to 500 hours of annual leave, yield a monthly annuity benefit at normal retirement. The accrual rates range from 1.60 percent for the Regular Class to 3.33 percent for Justices and Judges. For most membership classes normal retirement occurs at the earlier attainment of 30 years' service or age 62. For public safety employees in the Special Risk Retirement and Special Risk Administrative Support Classes, normal retirement is the earlier attainment of age 55 or 25 years' service. Members seeking early retirement dates receive a five percent reduction in the benefit for each year below their normal age threshold.

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DROP) under which a participant may extend employment for an additional five years - eight years for instructional personnel in district school boards - and receive a lump sum benefit at a fixed rate of interest, currently 6.5 percent, for that additional service. Enrollment in DROP requires the participant to serve the employer with a deferred resignation from employment at the end of the period. The defined benefit plan includes a fixed, annual cost-of-living adjustment of 3 percent.

The 2000 Legislature enacted sweeping changes to the FRS by creating the Public Employees Optional Retirement Program (Part II of ch. 121, F.S.), an alternative defined contribution or "Investment Plan" for its members. While a defined benefit plan provides an annuitized monthly benefit expressed as a percent of final pay, a defined contribution plan gives members an equity interest in their employer's payroll contributions and their earnings, although it does not assure a guaranteed result. DROP enrollment is unavailable in the Investment Plan due to the incompatibility of plan designs.

Reenrollment in the FRS is prohibited for retirees who are initially reemployed on or after July 1, 2010.

Management employees and instructional employees in higher educational units are also permitted to enroll in one of three other separate optional retirement programs that exist outside of FRS authority.

*Employer Contribution Rates*

FRS employers are responsible for contributing a set percentage of their employee's monthly compensation to the Division of Retirement to be distributed into the Florida Retirement System Contributions Clearing Trust Fund. The employer is required to make these contributions no later than the fifth working day of the month following the end of the payroll period.<sup>1</sup>

The employer contribution rate is a "blended contribution rate" set by statute, which is the same percentage regardless of which plan their employee participates in. The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.<sup>2</sup> The current employer contribution rate for each membership class is:

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<sup>1</sup> Section 121.78, F.S.

<sup>2</sup> Section 112.63, F.S.

<b>Membership Class</b>	<b>Effective July 1, 2009</b>	<b>Effective July 1, 2010</b>
Regular Class	8.69 %	9.63 %
Special Risk Class	19.76 %	22.11 %
Special Risk Administrative Support Class	11.39 %	12.10 %
Elected Officer's Class <ul style="list-style-type: none"> <li>• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders</li> <li>• Justices and Judges</li> <li>• County Officers</li> </ul>	13.32 % 18.40 % 15.37 %	15.20 % 20.65 % 17.50 %
Senior Management Class	11.96 %	13.43 %

3

After employer contributions are placed into the FRS Contributions Clearing Trust Fund, benefits under the Investment Plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas benefits under the Pension Plan are placed into the FRS Trust Fund.<sup>4</sup>

Calculation of Pension Plan Benefits

Benefits payable to a pension plan retiree are calculated using formulas that include the average final compensation. "Average final compensation" means the average of the 5 highest fiscal years of compensation for creditable service prior to retirement, termination, or death. The average final compensation includes accumulated annual leave payments, not to exceed 500 hours, and all payments defined as compensation in s. 121.021(22). The average final compensation does not include compensation paid to professional persons for special or particular services; payments for accumulated sick leave made due to retirement or termination; payments for accumulated annual leave in excess of 500 hours; bonuses as defined in s. 121.021(47); third party payments made on or after July 1, 1990; or fringe benefits such as automobile or housing allowances.<sup>5</sup>

"Compensation" means the monthly salary paid a member by his or her employer for work performed arising from that employment. Compensation includes overtime payments paid from a salary fund; accumulated annual leave payments; payments in addition to the employee's base rate of pay if specified conditions apply; amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.<sup>6</sup>

<sup>3</sup> Section 121.71, F.S.

<sup>4</sup> See ss. 121.4503 and 121.72, F.S.

<sup>5</sup> Section 121.021(24), F.S.

<sup>6</sup> Section 121.021(22), F.S.

### Investment Plan Death Benefit

In the event of the death of a participant in the investment plan, vested benefits will be paid to the participant's designated beneficiary or beneficiaries.<sup>7</sup>

### **Optional Retirement Programs**

Eligible employees may elect to participate in one of three optional retirement programs in lieu of participation in the FRS.

Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program.<sup>8</sup> Employees in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program.<sup>9</sup> Eligible employees of a community college may elect to enroll in the Community College Optional Retirement Program.<sup>10</sup>

### **III. Effect of Proposed Changes:**

Section 1 amends s. 110.123, F.S., to make technical drafting changes and to make a conforming change to the name change to the FRS defined contribution program.

Section 2 amends 112.0801, F.S., to make technical drafting changes.

Section 3 amends s. 112.363, F.S., to make technical drafting changes and to make conforming changes to the name change to the FRS defined contribution program.

Section 4 amends 112.65, F.S., to make technical drafting changes and to make a conforming change to the name change to the FRS defined contribution program.

Section 5 amends s. 121.011, F.S., to require employee contributions effective July 1, 2011.

Section 6 amends s. 121.021, F.S., to:

- Amend the definition of "compensation" for purposes of the FRS defined benefit program to exclude overtime payments paid from a salary fund and accumulated annual leave payments.
- Amend the definition of "average final compensation" for purposes of the FRS defined benefit program to exclude accumulated annual leave payments and overtime payments paid from a salary fund.
- Make technical drafting changes; make a conforming change to the name change to the FRS defined contribution program; and make conforming changes to the implementation of employee contributions.

Section 7 amends s. 121.051, F.S., to:

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<sup>7</sup> Section 121.591(3), F.S.

<sup>8</sup> Section 121.055(6), F.S.

<sup>9</sup> Section 121.35, F.S.

<sup>10</sup> Section 1012.875, F.S.

- Make technical drafting changes and to make a conforming change to the name change to the FRS defined contribution program.
- Provide that the governing body of a charter school joining the FRS prior to July 1, 2011, may elect to provide or not provide benefits based on the past service of officers and employees as described in s. 121.081(1).
- Require employees eligible to elect to join the FRS who choose to do so on or after July 1, 2011, to enter the defined contribution program. Such employees may not use the second election opportunity specified in s. 121.4501(4)(e).
- Clarify that the employer-paid employee contributions specified in s. 121.71(2) are subject to taxes imposed under the Federal Insurance Contributions Act.

Section 8 amends s. 121.0515, F.S., to make technical drafting changes and to make a conforming change to the implementation of employee contributions.

Section 9 amends s. 121.052, F.S., to:

- Specify that effective July 1, 2011, members of the Elected Officers' Class hired on or after that date will begin paying contributions. If a member ceases to fill the office for 3 consecutive months for any reason other than retirement and has not been employed in any capacity with any participating employer for 3 calendar months, the member is eligible for a refund of the employee contributions; however, by taking such refund the member waives all rights to the service credit under the FRS represented by the refunded contributions, except the right to purchase prior service credit in accordance with s. 121.081(2). A member may not receive a refund if a qualified domestic relations order is filed against the member's retirement account. Partial refunds are not permitted.
- Make technical drafting changes.

Section 10 amends s. 121.053, F.S., to:

- Specify that members and employers of members in the Elected Officers' Class who are enrolled in DROP must pay unfunded actuarial liability and health insurance subsidy contributions required by ss. 121.75(5) and 121.76.
- Make a conforming change to the implementation of employee contributions.

Section 11 amends s. 121.055, F.S., to:

- Specify that members of the Senior Management Service Class will begin paying contributions July 1, 2011. If a member ceases to fill the office for 3 consecutive months for any reason other than retirement, the member is eligible for a refund of the employee contributions; however, by taking such refund the member waives all rights to the service credit under the FRS represented by the refunded contributions, except the right to purchase prior service credit in accordance with s. 121.081(2). A member may not receive a refund if a qualified domestic relations order is filed against the member's retirement account. Partial refunds are not permitted.
- Specify that members of the Senior Management Service class who are participating in the Senior Management Service Class optional annuity program will begin paying contributions July 1, 2011. The member will pay the amount of the employee contribution required in s. 121.71(3). The member's employer will pay the difference between 12.49 percent of the member's gross monthly compensation and the amount of the member's contribution.

- Make technical drafting changes and conforming changes to the implementation of employee contributions.

Section 12 amends s. 121.071, F.S., to:

- Specify that employees and employers will pay retirement contributions as specified in s. 121.71 on July 1, 2011.
- Specify that three months after termination, a member is entitled to a refund of contributions he or she made before or after participating in the FRS. Partial refunds are not permitted. Employer contributions made on behalf of the member are not refundable. The refund may not include interest earnings on contributions for a member of the defined benefit program. A member may not receive a refund if a qualified domestic relations order is filed against his or her retirement account. By obtaining a refund of contributions, a member waives all rights under the FRS and the health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit.
- Specify that if a member or former member of the defined benefit program receives an invalid refund from the FRS Trust Fund, such person must repay the full amount of the refund, plus interest at 6.5 percent compounded annually on each June 30 from the date of refund until full repayment is made. The invalid refund must be repaid before the member retires or, if applicable, transfers to the defined contribution plan.
- Make technical drafting changes and conforming changes to the implementation of employee contributions.

Section 13 amends s. 121.081, F.S., to:

- Make a conforming change due to the closure of the defined benefit plan to specify that no past service can be purchased in the defined contribution plan.
- Make technical drafting changes and a conforming change to the implementation of employee contributions.
- Specify that for prior service performed on or after July 1, 2011, for which the member had credit under the Florida Retirement System and received a refund of contributions 3 months after termination of employment, the member shall contribute at the rate that was required during the period of service being claimed, plus 6.5 percent interest, compounded annually on each June 30 from date of refund until the full payment is made to the Florida Retirement System Trust Fund, and shall receive credit in the membership class in which the member participated during the period claimed.

Section 14 amends s. 121.091, F.S., to:

- Specify that effective July 1, 2011, upon termination from all participating employers for 3 calendar months for any reason other than retirement, a member may receive a refund of all contributions he or she made to the defined benefit program. Partial refunds are not permitted. The refund may not include any interest earnings on the contributions for a member of the defined benefit program. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a qualified domestic relations order is filed against his or her retirement account. By obtaining a refund of contributions, a member waives all rights under the FRS and the health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit.



- Make technical drafting changes.

Section 15 amends s. 121.091, F.S., to:

- Make technical drafting changes.
- Raise the age by which a member must enroll in DROP.

Section 16 amends s. 121.121, F.S., to:

- Specify that effective July 1, 2011, any leave of absence purchased pursuant to the section shall be at the employee and employer contribution rates specified in s. 121.71 in effect during the leave for the class of membership from which the leave of absence was granted.
- Make technical drafting changes.

Section 17 amends s. 121.125, F.S., to make technical drafting changes and to make a conforming change to the implementation of employee contributions.

Section 18 amends s. 121.35, F.S., to:

- Make technical drafting changes and conforming changes to the implementation of employee contributions.
- Specify that members of the State University System Optional Retirement Program will begin paying contributions July 1, 2011. The member will pay the amount of the employee contribution required in s. 121.71(3). The member's employer will pay the difference between 10.43 percent of the member's gross monthly compensation and the amount of the member's contribution.

Section 19 amends s. 121.4501, F.S., to:

- Change the name of the "Public Employee Optional Retirement Program" to the "Florida Retirement System Investment Plan."
- Specify that enrollment in the defined contribution plan is compulsory for members enrolled on or after July 1, 2011.
- Make technical drafting changes; changes to conform to the program name change; changes to conform to the implementation of employee contributions; and changes to conform to the closure of the defined benefit program.
- Create definitions for "district school board employer," "investment plan," "local employer," and "state employer."
- Specify that if contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred, the participant is entitled to the additional contributions or is responsible for returning any excess contributions resulting from the correction if the return of such contributions by the plan is made within 1 year after the making of the erroneous contributions or such other period allowed by applicable Internal Revenue Service guidance. The present value of the member's accumulated benefit obligation may not be recalculated.
- Clarify that the state board shall establish transfer procedures by rule.
- Delete obsolete language regarding old choices.
- Specify that on or after July 1, 2011, a member of the defined benefit program who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.

- Specify that a member of the defined contribution plan who takes a distribution of any contributions from his investment plan account is considered a retiree.
- Specify that a refund of any employee contributions or additional employee payments which exceed the employee contributions that would have accrued had an employee enrolled before July 1, 2011 not elected to change plans is not permitted.
- Specify that participant contributions shall be paid on a pretax basis, as provided in s. 401 of the Internal Revenue Code. Such contributions may not exceed federal limitations. A participant is responsible for monitoring his or her individual contributions to ensure that he or she does not exceed the maximum deferral amounts permitted under the Internal Revenue Code. A participant's total contribution equals the sum all amounts deducted from the participant's salary by his or her employer in accordance with s. 121.71(2) and credited to his or her individual account in the investment plan, plus any earnings on such amounts and any specified contributions.
- Specify that a participant is fully and immediately vested in all participant contributions paid to the investment plan, plus interest and earnings thereon and less investment fees and administrative charges.
- Create a new vesting schedule for employees enrolled in the FRS investment plan on or after July 1, 2011. Such employees vest at 40% upon completion of three years of service, 80% upon 4 years of service, and 100% upon 5 years of service.
- Specify that if the participant elects to receive any of his or her vested employer or participant contributions upon termination of employment as defined in s. 121.021, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided by s. 401(a)(9) of the Internal Revenue Code, the participant shall forfeit all nonvested employer contributions and accompanying service credit paid on behalf of the participant to the investment plan.

Section 20 amends s. 121.4501, F.S., to make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the name change of the FRS defined contribution program.

Section 21 amends s. 121.4503, F.S., to make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the name change of the FRS defined contribution program.

Section 22 amends s. 121.571, F.S., to make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the name change of the FRS defined contribution program.

Section 23 amends s. 121. 591, F.S., to:

- Make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the name change of the FRS defined contribution program.
- Specify that benefits are not payable under the investment plan before termination of employment as provided in s. 121.021(39)(a) for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal

residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or for any other reason.

- Codify and clarify current policy regarding retirement.
- Create an additional death benefit for members of the defined contribution plan who are killed in the line of duty. The surviving spouse of a participant killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the participant at the time of death for the rest of the surviving spouse's lifetime. If the surviving spouse of a participant killed in the line of duty dies, the monthly payments that would have been payable to the surviving spouse had such surviving spouse lived shall be paid for the use and benefit of such participant's children under 18 years of age and unmarried until the 18<sup>th</sup> birthday of the participant's youngest child. If a participant killed in the line of duty leaves no surviving spouse but is survived by children under 18 years of age, the benefits provided shall be paid for the use and benefit of the participant's child or children under 18 years of age and unmarried until the 18<sup>th</sup> birthday of the participant's youngest child.

Section 24 amends s. 121.5911, F.S., to make technical drafting changes and conforming changes to the name change of the FRS defined contribution program.

Section 25 amends s. 121.70, F.S., to make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the name change of the FRS defined contribution program.

Section 26 amends s. 121.71, F.S., to:

- Make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the program name change of the FRS defined contribution plan.
- Specify administrative and tax provisions regarding employee contributions.
- Create a statutory column for employee contribution rates.
- Provide that if a member is reported under an incorrect membership class and the amount of contributions reported and remitted are less than the amount required, the employer shall owe the difference, plus the delinquent fee, of 1 percent for each calendar month or part thereof that the contributions should have been paid.
- Set out the employee rates, the employer rates and the rates to fund any unfunded actuarial liabilities payable by the employers. The employers are permitted to deduct the employee contributions from the employee's monthly gross salary on a pretax basis. Employee contributions are set at an undefined percentage of gross salary beginning July 1, 2011. The employer contributions are set to meet the blended normal costs of the FRS (the defined benefit and defined contribution plans combined). The contribution rates for the unfunded actuarial liability are set at 0% for FY 2011-2012 and at the blended UAL rate beginning July 1, 2012. Under current law, the UAL rates will also be imposed upon the optional retirement programs offered for the state university system, the community colleges and the Senior Management Service.

Section 27 amends s. 121.72, F.S., to make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the name change of the FRS defined contribution program.

Section 28 amends s. 121.73, F.S., to:

- Make technical drafting changes and conforming changes to the program name change of the FRS defined contribution plan.
- Specify that effective July 1, 2011, allocations from the FRS Contribution Clearing Fund to provide disability coverage for participants in the investment plan and to offset the costs of administering such coverage shall be the actuarially indicated amount necessary to fund the statutorily authorized benefit for the plan year as determined by the department's actuary.

Section 29 amends s. 121.74, F.S., to make technical drafting changes and conforming changes to the name change of the FRS defined contribution program.

Section 30 amends s. 121.77, F.S., to make technical drafting changes and conforming changes to the name change of the FRS defined contribution program.

Section 31 amends s. 121.78, F.S., to:

- Make technical drafting changes; conforming changes to the implementation of employee contributions; and conforming changes to the name change of the FRS defined contribution program.
- Specify that retirement contributions paid for a prior period shall be charged a delinquent fee of 1 percent for each calendar month or part thereof that the contributions should have been paid. This includes prior period contributions due to incorrect wages, contributions from an earlier report or wages, and contributions that should have been reported but were not. The delinquent assessments may not be waived.
- Specify that if employee contributions reported by an employer on behalf of participants are reduced as a result of employer errors or corrections and the participant has terminated employment and taken a refund or distribution, the employer shall be billed and is responsible for recovering from the participant any excess contributions erroneously provided by the employer.
- Specify that if the employer submits excess employer or employee contributions, the employer shall receive a credit to be applied against future contributions owed. The employer is responsible for reimbursing the employee for any excess contributions submitted if any return of such an erroneous excess pretax contribution by the program is made within 1 year after making erroneous contributions or such other period as allowed under applicable Internal Revenue guidance.

Section 32 amends s. 1012.875, F.S., to:

- Make technical drafting changes and changes to conform to the implementation of employee contributions.
- Specify that effective July 1, 2011, each participant in the State Community College System Optional Retirement Program shall contribute an amount equal to the employee contribution required under s. 121.71(3). Effective July 1, 2011, each employer shall contribute on behalf of each program participant an amount equal to the difference between 10.43 percent of the participant's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

Section 33 requires an actuarial study of alternative DROP funding.

Section 34 provides a statement of legitimate state interest as required by Article VII, s. 18(a) of the State Constitution and requires that all benefits be funded on a sound actuarial basis as required by Article X, s.14 of the State Constitution, and Part VII of ch. 112, F.S.

Section 35 requests the Division of Statutory Revision to rename the title of part II of chapter 121, Florida Statutes, as “Florida Retirement System Investment Plan.”

Section 36 appropriates and authorizes the following for the Division of Retirement within the Department of Management Services for the purposes of implementing the act:

- \$414,109 of recurring funds and \$31,016 of nonrecurring funds from the FRS Operating Trust Fund, and
- Eight full-time equivalent positions and salary rate or \$265,621.

Section 37 specifies that effective upon the act becoming a law, the State Board of Administration and the Department of Management Services shall, as soon as practicable, request a determination letter and private letter ruling from the United States Internal Revenue Service. If the Internal Revenue Service refuses to act upon a request for a private letter ruling, the legal opinion from a qualified tax attorney or firm may be substituted for the private letter ruling. If the board or the department receives notification from the United States Internal Revenue Service that this act or any portion of this act will cause the Florida Retirement System, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, then that portion does not apply. Upon such notice, the state board and the department shall notify the presiding officers of the Legislature.

Section 38 specifies that except as otherwise expressly provided in the act, the effective date is June 30, 2011.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds ... unless the legislature has determined that such law fulfills an important state interest and unless: ... the expenditure is required to comply with a law that applies to all persons similarly situated ....”

This bill includes a legislative finding that the bill fulfills an important state interest.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.<sup>11</sup> The “Florida Protection of Public Employee Retirement Benefits Act” prohibits “the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”<sup>12</sup>

Provisions in the bill that create additional benefits may require an actuarial study.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:****Employee Contribution**

Each active employee of the FRS, the Senior Management Service Optional Annuity Plan, the State University System Optional Retirement Plan and the Community College Optional Retirement Plan will contribute a percentage of his/her gross salary on a pretax basis.

**C. Government Sector Impact:****Closing Defined Benefit Plan**

Closing the defined benefit plan to new members will result in increased funding requirements for a period of approximately 25 years as liabilities in benefit payments continue but employer contributions for new members are not incoming.<sup>13</sup> Closing the defined benefit plan to new members will also result in increased funding requirements for the disability program for the same reason.

**Death Benefit for Defined Contribution Plan**

Creating a monthly death benefit for survivors of a defined contribution plan participant killed in the line of duty will result in indeterminate increased funding requirements.

<sup>11</sup> Article X, Section 14, Florida Constitution.

<sup>12</sup> Section 112.61, F.S.

<sup>13</sup> Actuarial study, “Study Reflecting the Impact of Closing the Florida Retirement System Pension Plan Including Projected Blended Rates for the next 30 Fiscal Years,” July 8, 2010, on file with the Committee on Governmental Oversight and Accountability.

**Requiring Employee Contributions**

Requiring employee contributions to the FRS will result in an indeterminate increase in cash flow.

**Administrative Costs**

The changes made in the bill may result in increased administrative costs incurred by the Division of Retirement within the Department of Management Services.

**VI. Technical Deficiencies:**

The Legislature may wish to clarify that the change in definitions of “compensation” and “average final compensation” in s. 121.021, F.S., are prospective for service earned.

The Legislature may wish to consider making terminology regarding the names of the two FRS plan options and the term used for participants consistent throughout the bill.

The date in line 2490 should be July 1, 2010.

The terms of the actuarial study required in Section 33 have already been completed.

**VII. Related Issues:**

Other economic factors and policy considerations could result in a change to the employer contribution rates listed in the bill.

The Division of Retirement within the Department of Management Services anticipates that it will require two additional full-time equivalent positions for the purpose of implementing this act.

**VIII. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.



200064

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (g) of subsection (2) of section  
110.123, Florida Statutes, is amended to read:

110.123 State group insurance program.—

(2) DEFINITIONS.—As used in this section, the term:

(g) "Retired state officer or employee" or "retiree" means  
a any state, or state university, officer or employee who  
retires under a state retirement system or a state optional  
annuity or retirement program or is placed on disability





200064

13 retirement, ~~and~~ who was insured under the state group insurance  
14 program at the time of retirement, and who begins receiving  
15 retirement benefits immediately after retirement from state or  
16 state university office or employment. The term also includes ~~In~~  
17 ~~addition to these requirements,~~ any state officer or ~~state~~  
18 employee who retires under the investment plan ~~Public Employee~~  
19 ~~Optional Retirement~~ program established under part II of chapter  
20 121 ~~shall be considered a "retired state officer or employee" or~~  
21 ~~"retiree" as used in this section~~ if he or she:

- 22 1. Meets the age and service requirements to qualify for  
23 normal retirement as set forth in s. 121.021(29); or  
24 2. Has attained the age specified by s. 72(t)(2)(A)(i) of  
25 the Internal Revenue Code and has 6 years of creditable service.

26 Section 2. Section 112.0801, Florida Statutes, is amended  
27 to read:

28 112.0801 Group insurance; participation by retired  
29 employees.-

30 ~~(1)~~ Any state agency, county, municipality, special  
31 district, community college, or district school board that ~~which~~  
32 provides life, health, accident, hospitalization, or annuity  
33 insurance, or all of any kinds of such insurance, for its  
34 officers and employees and their dependents upon a group  
35 insurance plan or self-insurance plan shall allow all former  
36 personnel who ~~have~~ retired before ~~prior to~~ October 1, 1987, as  
37 well as those who retire on or after such date, and their  
38 eligible dependents, the option of continuing to participate in  
39 the ~~such~~ group insurance plan or self-insurance plan. Retirees  
40 and their eligible dependents shall be offered the same health  
41 and hospitalization insurance coverage as is offered to active



200064

42 employees at a premium cost of no more than the premium cost  
43 applicable to active employees. For ~~the~~ retired employees and  
44 their eligible dependents, the cost of ~~any such~~ continued  
45 participation ~~in any type of plan or any of the cost thereof~~ may  
46 be paid by the employer or by the retired employees. To  
47 determine health and hospitalization plan costs, the employer  
48 shall commingle the claims experience of the retiree group with  
49 the claims experience of the active employees; and, for other  
50 types of coverage, the employer may commingle the claims  
51 experience of the retiree group with the claims experience of  
52 active employees. Retirees covered under Medicare may be  
53 experience-rated separately from the retirees not covered by  
54 Medicare and from active employees ~~if, provided that~~ the total  
55 premium does not exceed that of the active group and coverage is  
56 basically the same as for the active group.

57 ~~(2) For purposes of this section, the term "retiree" has~~  
58 ~~the same meaning as in s. 110.123(2) means any officer or~~  
59 ~~employee who retires under a state retirement system or a state~~  
60 ~~optional annuity or retirement program or is placed on~~  
61 ~~disability retirement and who begins receiving retirement~~  
62 ~~benefits immediately after retirement from employment. In~~  
63 ~~addition to these requirements, any officer or employee who~~  
64 ~~retires under the Public Employee Optional Retirement Program~~  
65 ~~established under part II of chapter 121 shall be considered a~~  
66 ~~"retired officer or employee" or "retiree" as used in this~~  
67 ~~section if he or she:~~

68 ~~(a) Meets the age and service requirements to qualify for~~  
69 ~~normal retirement as set forth in s. 121.021(29); or~~

70 ~~(b) Has attained the age specified by s. 72(t)(2)(A)(i) of~~



200064

71 ~~the Internal Revenue Code and has 6 years of creditable service.~~

72 Section 3. Paragraphs (b) and (c) of subsection (2) and  
73 paragraph (e) of subsection (3) of section 112.363, Florida  
74 Statutes, are amended to read:

75 112.363 Retiree health insurance subsidy.—

76 (2) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—

77 (b) For purposes of this section, a person is deemed  
78 retired from a state-administered retirement system when he or  
79 she terminates employment with all employers participating in  
80 the Florida Retirement System as described in s. 121.021(39)  
81 and:

82 1. For a member participant of the investment plan Public  
83 ~~Employee Optional Retirement program~~ established under part II  
84 of chapter 121, the member participant meets the age or service  
85 requirements to qualify for normal retirement as set forth in s.  
86 121.021(29) and meets the definition of retiree in s.  
87 121.4501(2).

88 2. For a member of the pension plan Florida Retirement  
89 ~~System defined benefit program~~, or any employee who maintains  
90 creditable service under ~~both~~ the pension plan and the  
91 investment plan defined benefit program and the Public Employee  
92 ~~Optional Retirement program~~, the member begins drawing  
93 retirement benefits from the pension plan defined benefit  
94 ~~program of the Florida Retirement System.~~

95 (c)~~1~~. Effective July 1, 2001, any person retiring on or  
96 after that ~~such~~ date as a member of the Florida Retirement  
97 System, including a member any participant of the investment  
98 plan defined contribution program administered pursuant to part  
99 II of chapter 121, must have satisfied the vesting requirements



200064

100 for his or her membership class under the pension plan Florida  
101 ~~Retirement System defined benefit program~~ as administered under  
102 part I of chapter 121. However,

103 ~~2. Notwithstanding the provisions of subparagraph 1.,~~ a  
104 person retiring due to disability must ~~either~~ qualify for a  
105 regular or in-line-of-duty disability benefit as provided in s.  
106 121.091(4) or qualify for a disability benefit under a  
107 disability plan established under part II of chapter 121, as  
108 appropriate.

109 (3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—

110 (e)1. Beginning July 1, 2001, each eligible retiree of the  
111 pension plan defined benefit program of the Florida Retirement  
112 System, or, if the retiree is deceased, his or her beneficiary  
113 who is receiving a monthly benefit from such retiree's account  
114 and who is a spouse, or a person who meets the definition of  
115 joint annuitant in s. 121.021~~(28)~~, shall receive a monthly  
116 retiree health insurance subsidy payment equal to the number of  
117 years of creditable service, as defined in s. 121.021~~(17)~~,  
118 completed at the time of retirement multiplied by \$5; however,  
119 an ~~ne~~ eligible retiree or beneficiary may not receive a subsidy  
120 payment of more than \$150 or less than \$30. If there are  
121 multiple beneficiaries, the total payment may ~~must~~ not be  
122 greater than the payment to which the retiree was entitled. The  
123 health insurance subsidy amount payable to any person receiving  
124 the retiree health insurance subsidy payment on July 1, 2001,  
125 may ~~shall~~ not be reduced solely by operation of this  
126 subparagraph.

127 2. Beginning July 1, 2002, each eligible member participant  
128 of the investment plan under part II of chapter 121 Public



200064

129 ~~Employee Optional Retirement program of the Florida Retirement~~  
130 ~~System~~ who has met the requirements of this section, or, if the  
131 ~~member participant~~ is deceased, his or her spouse who is the  
132 ~~member's participant's~~ designated beneficiary, shall receive a  
133 monthly retiree health insurance subsidy payment equal to the  
134 number of years of creditable service, as provided in this  
135 subparagraph, completed at the time of retirement, multiplied by  
136 \$5; however, an ~~ne~~ eligible retiree or beneficiary may not  
137 receive a subsidy payment of more than \$150 or less than \$30.  
138 For purposes of determining a ~~member's participant's~~ creditable  
139 service used to calculate the health insurance subsidy, the  
140 ~~member's a participant's~~ years of service credit or fraction  
141 thereof must ~~shall~~ be based on the ~~member's participant's~~ work  
142 year as defined in s. 121.021(54). Credit must ~~shall~~ be awarded  
143 for a full work year if ~~whenever~~ health insurance subsidy  
144 contributions have been made ~~as required by law~~ for each month  
145 in the ~~member's participant's~~ work year. In addition, all years  
146 of creditable service retained under the Florida Retirement  
147 System pension plan must ~~defined benefit program shall~~ be  
148 included as creditable service for purposes of this section.  
149 Notwithstanding any other provision in this section ~~to the~~  
150 ~~contrary~~, the spouse at the time of death is ~~shall be~~ the  
151 ~~member's participant's~~ beneficiary unless such member  
152 ~~participant~~ has designated a different beneficiary subsequent to  
153 the ~~member's participant's~~ most recent marriage.

154 Section 4. Subsection (1) of section 112.65, Florida  
155 Statutes, is amended to read:

156 112.65 Limitation of benefits.—

157 (1) ESTABLISHMENT OF PROGRAM.—The normal retirement benefit



200064

158 or pension payable to a retiree who becomes a member of a any  
159 retirement system or plan and who has not previously  
160 participated in such plan, on or after January 1, 1980, may  
161 ~~shall~~ not exceed 100 percent of his or her average final  
162 compensation. However, ~~nothing contained in this section~~ does  
163 not shall apply to supplemental retirement benefits or to  
164 pension increases attributable to cost-of-living increases or  
165 adjustments. For the purposes of this section, benefits accruing  
166 in individual member participant accounts established under the  
167 investment plan ~~Public Employee Optional Retirement program~~  
168 established in part II of chapter 121 are considered  
169 supplemental benefits. As used in this section, the term  
170 "average final compensation" means the average of the member's  
171 earnings over a period of time which the governmental entity  
172 establishes ~~has established~~ by statute, charter, or ordinance.

173 Section 5. Paragraph (h) is added to subsection (3) of  
174 section 121.011, Florida Statutes, to read:

175 121.011 Florida Retirement System.—

176 (3) PRESERVATION OF RIGHTS.—

177 (h) Effective July 1, 2011, the retirement system shall  
178 require employee and employer contributions as provided in s.  
179 121.071 and part III of this chapter.

180 Section 6. Subsection (3), paragraph (a) of subsection  
181 (19), paragraphs (a) and (b) of subsection (22), subsection  
182 (24), paragraph (b) of subsection (45), subsection (55), and  
183 subsection (59) of section 121.021, Florida Statutes, are  
184 amended to read:

185 121.021 Definitions.—The following words and phrases as  
186 used in this chapter have the respective meanings set forth



200064

187 unless a different meaning is plainly required by the context:

188 (3) "Florida Retirement System" or "system" means the  
189 general retirement system established by this chapter, ~~to be~~  
190 ~~known and cited as the "Florida Retirement System,"~~ including,  
191 but not limited to, the defined benefit ~~retirement~~ program or  
192 pension plan administered under ~~the provisions of part I of this~~  
193 ~~part chapter~~ and the defined contribution ~~retirement~~ program or  
194 investment plan ~~known as the Public Employee Optional Retirement~~  
195 ~~Program and~~ administered under ~~the provisions of part II of this~~  
196 chapter.

197 (19) "Prior service" ~~under this chapter~~ means:

198 (a) Service for which the member had credit under one of  
199 the existing systems and received a refund of his or her  
200 contributions upon termination of employment. Prior service  
201 ~~shall also~~ includes ~~include that service between December 1,~~  
202 ~~1970, and the date the system becomes noncontributory~~ for which  
203 the member had credit under the Florida Retirement System and  
204 received a refund of his or her contributions upon termination  
205 of employment.

206 (22) "Compensation" means the monthly salary paid a member  
207 by his or her employer for work performed arising from that  
208 employment.

209 (a) For service earned before July 1, 2011, compensation  
210 includes ~~shall include~~:

- 211 1. Overtime payments paid from a salary fund.  
212 2. Accumulated annual leave payments.  
213 3. Payments in addition to the employee's base rate of pay  
214 if ~~all~~ the following apply:  
215 a. The payments are paid according to a formal written



200064

216 policy that applies to all eligible employees equally;  
217       b. The policy provides that payments ~~shall~~ commence by ~~no~~  
218 ~~later than~~ the 11th year of employment;  
219       c. The payments are paid for as long as the employee  
220 continues his or her employment; and  
221       d. The payments are paid at least annually.  
222       4. Amounts withheld for tax sheltered annuities or deferred  
223 compensation programs, or any other type of salary reduction  
224 plan authorized under the Internal Revenue Code.  
225       5. Payments made in lieu of a permanent increase in the  
226 base rate of pay, whether made annually or in 12 or 26 equal  
227 payments within a 12-month period, if ~~when~~ the member's base pay  
228 is at the maximum of his or her pay range. If ~~When~~ a portion of  
229 a member's annual increase raises his or her pay range and the  
230 excess is paid as a lump sum payment, the ~~such~~ lump sum payment  
231 is considered ~~shall be~~ compensation for retirement purposes.  
232       (b) For service earned on or after July 1, 2011,  
233 compensation includes:  
234       1. Payments in addition to the employee's base rate of pay  
235 if the following apply:  
236       a. The payments are paid according to a formal written  
237 policy that applies to all eligible employees equally;  
238       b. The policy provides that payments shall commence by 11th  
239 year of employment; and  
240       c. The payments are paid at least annually.  
241       2. Amounts withheld for tax sheltered annuities, deferred  
242 compensation programs, or any other type of salary reduction  
243 plan authorized under the Internal Revenue Code.  
244       3. Payments made in lieu of a permanent increase in the





200064

245 base rate of pay, whether made annually or in 12 or 26 equal  
246 payments within a 12-month period, if the member's base pay is  
247 at the maximum of his or her pay range. If a portion of a  
248 member's annual increase raises his or her pay range and the  
249 excess is paid as a lump sum payment, such lump sum payment is  
250 compensation for retirement purposes.

251 (c)(b) Under no circumstances shall Compensation for a  
252 member participating in the pension plan ~~defined benefit~~  
253 ~~retirement program~~ or the investment plan ~~Public Employee~~  
254 ~~Optional Retirement Program~~ of the Florida Retirement System may  
255 not include:

256 1. Fees paid professional persons for special or particular  
257 services or ~~include~~ salary payments made from a faculty practice  
258 plan authorized by the Board of Governors of the State  
259 University System for eligible clinical faculty at a college in  
260 a state university that has a faculty practice plan; or

261 2. Any bonuses or other payments prohibited from inclusion  
262 in the member's average final compensation ~~and defined in~~  
263 ~~subsection (47).~~

264 (24) "Average final compensation" means the average of the  
265 5 highest fiscal years of compensation for creditable service  
266 prior to retirement, termination, or death. For in-line-of-duty  
267 disability benefits, if less than 5 years of creditable service  
268 have been completed, the term ~~"average final compensation"~~ means  
269 the average annual compensation of the total number of years of  
270 creditable service. Each year used to calculate ~~in the~~  
271 ~~calculation of~~ average final compensation commences ~~shall~~  
272 ~~commence~~ on July 1.

273 (a) For service earned before July 1, 2011:



200064

274           1. The average final compensation includes ~~shall include~~:

275           a.1. ~~Accumulated annual leave payments, not to exceed 500~~

276 hours; and

277           b.2. All payments defined as compensation under this

278 section in subsection (22).

279           2.(b) The average final compensation does ~~shall~~ not

280 include:

281           a.1. Compensation paid to professional persons for special

282 or particular services;

283           b.2. Payments for accumulated sick leave made due to

284 retirement or termination;

285           c.3. Payments for accumulated annual leave ~~in excess of 500~~

286 hours;

287           d.4. Bonuses ~~as defined in subsection (47);~~

288           e.5. Third-party ~~Third party~~ payments made on and after

289 July 1, 1990; or

290           f.6. Fringe benefits, such as ~~(for example,~~ automobile

291 allowances or housing allowances).

292           (b) For service earned on or after July 1, 2011:

293           1. The average final compensation includes all payments

294 defined as compensation under this section.

295           2. The average final compensation does not include:

296           a. Compensation paid to professional persons for special or

297 particular services;

298           b. Payments for accumulated sick leave made due to

299 retirement or termination;

300           c. Payments for accumulated annual leave;

301           d. Overtime payments paid from a salary fund;

302           e. Bonuses;



200064

303 f. Third-party payments made on and after July 1, 1990; or  
304 g. Fringe benefits, such as automobile allowances or  
305 housing allowances.

306 (45)

307 (b) Effective July 1, 2001, a 6-year vesting requirement  
308 shall be implemented for the ~~defined benefit program of the~~  
309 Florida Retirement System's pension plan System. Pursuant  
310 ~~thereto:~~

311 1. Any member employed in a regularly established position  
312 on July 1, 2001, who completes or has completed a total of 6  
313 years of creditable service is ~~shall be considered~~ vested as  
314 described in paragraph (a).

315 2. Any member not employed in a regularly established  
316 position on July 1, 2001, shall be deemed vested upon completion  
317 of 6 years of creditable service if, ~~provided that~~ such member  
318 is employed in a covered position for at least 1 work year after  
319 July 1, 2001. However, a ~~no~~ member may not ~~shall~~ be required to  
320 complete more years of creditable service than would have been  
321 required for that member to vest under retirement laws in effect  
322 before July 1, 2001.

323 (55) "Benefit" means any pension payment, lump-sum or  
324 periodic, to a member, retiree, or beneficiary, based ~~partially~~  
325 ~~or entirely~~ on employer and employee contributions as  
326 applicable.

327 (59) "Payee" means a retiree or beneficiary of a retiree  
328 who has received or is receiving a retirement benefit payment.

329 Section 7. Paragraphs (b), (c), and (d) of subsection (2)  
330 of section 121.051, Florida Statutes, are amended, present  
331 paragraphs (e) and (f) of that subsection are redesignated as



200064

332 subsections (f) and (g), respectively, a new subsection (e) is  
333 added to that subsection, and subsection (3) of that section is  
334 amended, to read:

335 121.051 Participation in the system.—

336 (2) OPTIONAL PARTICIPATION.—

337 (b)1. The governing body of any municipality, metropolitan  
338 planning organization, or special district in the state may  
339 elect to participate in the Florida Retirement System upon  
340 proper application to the administrator and may cover all ~~or any~~  
341 of its units as approved by the Secretary of Health and Human  
342 Services and the administrator. The department shall adopt rules  
343 establishing procedures ~~provisions~~ for the submission of  
344 documents necessary for such application. Before ~~Prior to~~ being  
345 approved for participation ~~in the Florida Retirement System~~, the  
346 governing body of a ~~any such~~ municipality, metropolitan planning  
347 organization, or special district that has a local retirement  
348 system must ~~shall~~ submit to the administrator a certified  
349 financial statement showing the condition of the local  
350 retirement system ~~as of a date~~ within 3 months before ~~prior to~~  
351 the proposed effective date of membership in the Florida  
352 ~~Retirement~~ system. The statement must be certified by a  
353 recognized accounting firm that is independent of the local  
354 retirement system. All required documents ~~necessary for~~  
355 ~~extending Florida Retirement System coverage~~ must be received by  
356 the department for consideration at least 15 days before ~~prior~~  
357 ~~to~~ the proposed effective date of coverage. If the governing  
358 body ~~municipality, metropolitan planning organization, or~~  
359 ~~special district~~ does not comply with this requirement, the  
360 department may require that the effective date of coverage be



200064

361 changed.

362       2. A municipality ~~Any city~~, metropolitan planning  
363 organization, or special district that has an existing  
364 retirement system covering the employees in the units that are  
365 to be brought under the Florida Retirement System may  
366 participate only after holding a referendum in which all  
367 employees in the affected units have the right to participate.  
368 Only those employees electing coverage under the Florida  
369 Retirement System by affirmative vote in the ~~said~~ referendum are  
370 ~~shall be~~ eligible for coverage under this chapter, and those not  
371 participating or electing not to be covered by the Florida  
372 Retirement System shall remain in their present systems and are  
373 ~~shall not be~~ eligible for coverage under this chapter. After the  
374 referendum is held, all future employees are ~~shall be~~ compulsory  
375 members of the Florida Retirement System.

376       3. At the time of joining the Florida Retirement System,  
377 the governing body of a municipality ~~any city~~, metropolitan  
378 planning organization, or special district complying with  
379 subparagraph 1. may elect to provide, or not provide, benefits  
380 based on past service of officers and employees as described in  
381 s. 121.081(1). However, if such employer elects to provide past  
382 service benefits, such benefits must be provided for all  
383 officers and employees of its covered group.

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

389       5. Subject to ~~the conditions set forth in~~ subparagraph 6.,



200064

390 the governing body of a any hospital licensed under chapter 395  
391 which is governed by the board of a special district as defined  
392 in s. 189.403~~(1)~~ or by the board of trustees of a public health  
393 trust created under s. 154.07, hereinafter referred to as  
394 "hospital district," and which participates in the Florida  
395 Retirement System, may elect to cease participation in the  
396 system with regard to future employees in accordance with the  
397 following ~~procedure~~:

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

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

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



200064

419           d. Upon meeting all applicable requirements of this  
420 subparagraph, and subject to ~~the conditions set forth in~~  
421 subparagraph 6., partial withdrawal from the system and adoption  
422 of the alternative retirement plan may be accomplished by  
423 resolution ~~duy~~ adopted by the hospital district board. The  
424 hospital district board must provide written notice of such  
425 withdrawal to the Division of Retirement by mailing a copy of  
426 the resolution to the division, postmarked by ~~no later than~~  
427 December 15, 1995. The withdrawal shall take effect January 1,  
428 1996.

429           6. Following the adoption of a resolution under sub-  
430 subparagraph 5.d., all employees of the withdrawing hospital  
431 district who were members of ~~participants in the Florida~~  
432 ~~Retirement~~ system before ~~prior to~~ January 1, 1996, shall remain  
433 as members of ~~participants in~~ the system for as long as they are  
434 employees of the hospital district, and all rights, duties, and  
435 obligations between the hospital district, the system, and the  
436 employees ~~shall~~ remain in full force and effect. Any employee  
437 who is hired or appointed on or after January 1, 1996, may not  
438 participate in the ~~Florida Retirement~~ system, and the  
439 withdrawing hospital district has ~~shall have~~ no obligation to  
440 the system with respect to such employees.

441           (c) Employees of public community colleges or charter  
442 technical career centers sponsored by public community colleges,  
443 designated in s. 1000.21(3), who are members of the Regular  
444 Class of the Florida Retirement System and who comply with the  
445 criteria set forth in this paragraph and s. 1012.875 may, in  
446 lieu of participating in the Florida Retirement System, elect to  
447 withdraw from the system altogether and participate in the State



200064

448 Community College System Optional Retirement Program provided by  
449 the employing agency under s. 1012.875.

450 1. Through June 30, 2001, the cost to the employer for a  
451 benefit under the optional retirement program ~~such annuity~~  
452 equals the normal cost portion of the employer retirement  
453 contribution which would be required if the employee were a  
454 member of the Regular Class pension plan ~~defined benefit~~  
455 ~~program~~, plus the portion of the contribution rate required by  
456 s. 112.363(8) which would otherwise be assigned to the Retiree  
457 Health Insurance Subsidy Trust Fund. Effective July 1, 2001,  
458 each employer shall contribute on behalf of each member of  
459 ~~participant in~~ the optional program an amount equal to 10.43  
460 percent of the employee's ~~participant's~~ gross monthly  
461 compensation. The employer shall deduct an amount for the  
462 administration of the program. The employer shall contribute an  
463 additional amount to the Florida Retirement System Trust Fund  
464 equal to the unfunded actuarial accrued liability portion of the  
465 Regular Class contribution rate.

466 2. The decision to participate in the ~~an~~ optional  
467 retirement program is irrevocable as long as the employee holds  
468 a position eligible for participation, except as provided in  
469 subparagraph 3. Any service creditable under the Florida  
470 Retirement System is retained after the member withdraws from  
471 the system; however, additional service credit in the system may  
472 not be earned while a member of the optional retirement program.

473 3. An employee who has elected to participate in the  
474 optional retirement program shall have one opportunity, at the  
475 employee's discretion, to transfer from the optional retirement  
476 program to the ~~defined benefit program of the~~ Florida Retirement





200064

477 System's pension plan ~~System~~ or to the investment plan  
478 established under part II of this chapter ~~Public Employee~~  
479 ~~Optional Retirement Program~~, subject to the terms of the  
480 applicable optional retirement program contracts.

481 a. If the employee chooses to move to the investment plan  
482 ~~Public Employee Optional Retirement~~ program, any contributions,  
483 interest, and earnings creditable to the employee under the  
484 ~~State Community College System~~ optional retirement program are  
485 retained by the employee in the ~~State Community College System~~  
486 optional retirement program, and the applicable provisions of s.  
487 121.4501(4) govern the election.

488 b. If the employee chooses to move to the pension plan  
489 ~~defined benefit program of the Florida Retirement System~~, the  
490 employee shall receive service credit equal to his or her years  
491 of service under the ~~State Community College System~~ optional  
492 retirement program.

493 (I) The cost for such credit is the amount representing the  
494 present value of the employee's accumulated benefit obligation  
495 for the affected period of service. The cost shall be calculated  
496 as if the benefit commencement occurs on the first date the  
497 employee becomes eligible for unreduced benefits, using the  
498 discount rate and other relevant actuarial assumptions that were  
499 used to value the pension ~~Florida Retirement System defined~~  
500 ~~benefit~~ plan liabilities in the most recent actuarial valuation.  
501 The calculation must include any service already maintained  
502 under the pension ~~defined benefit~~ plan in addition to the years  
503 under the ~~State Community College System~~ optional retirement  
504 program. The present value of any service already maintained  
505 must be applied as a credit to total cost resulting from the



200064

506 calculation. The division shall ensure that the transfer sum is  
507 prepared using a formula and methodology certified by an  
508 enrolled actuary.

509 (II) The employee must transfer from his or her ~~State~~  
510 ~~Community College System~~ optional retirement program account and  
511 from other employee moneys as necessary, a sum representing the  
512 present value of the employee's accumulated benefit obligation  
513 immediately following the time of such movement, determined  
514 assuming that attained service equals the sum of service in the  
515 pension plan ~~defined benefit program~~ and service in the ~~State~~  
516 ~~Community College System~~ optional retirement program.

517 4. Participation in the optional retirement program is  
518 limited to employees who satisfy the following eligibility  
519 criteria:

520 a. The employee is ~~must be~~ otherwise eligible for  
521 membership or renewed membership in the Regular Class of the  
522 Florida Retirement System, as provided in s. 121.021(11) and  
523 (12) or s. 121.122.

524 b. The employee is ~~must be~~ employed in a full-time position  
525 classified in the Accounting Manual for Florida's Public  
526 Community Colleges as:

527 (I) Instructional; or

528 (II) Executive Management, Instructional Management, or  
529 Institutional Management and the, ~~if a~~ community college  
530 determines that recruiting to fill a vacancy in the position is  
531 to be conducted in the national or regional market, and the  
532 duties and responsibilities of the position include the  
533 formulation, interpretation, or implementation of policies, or  
534 the performance of functions that are unique or specialized



200064

535 within higher education and that frequently support the mission  
536 of the community college.

537 c. The employee is ~~must be~~ employed in a position not  
538 included in the Senior Management Service Class of the Florida  
539 Retirement System, as described in s. 121.055.

540 5. Members of ~~Participants in~~ the program are subject to  
541 the same reemployment limitations, renewed membership  
542 provisions, and forfeiture provisions ~~as are~~ applicable to  
543 regular members of the Florida Retirement System under ss.  
544 121.091(9), 121.122, and 121.091(5), respectively. A member  
545 ~~participant~~ who receives a program distribution funded by  
546 employer contributions is ~~shall be~~ deemed to be retired from a  
547 state-administered retirement system if the retiree ~~participant~~  
548 is subsequently employed with an employer that participates in  
549 the Florida Retirement System.

550 6. Eligible community college employees are compulsory  
551 members of the Florida Retirement System until, pursuant to s.  
552 1012.875, a written election to withdraw from the system and  
553 participate in the ~~State Community College System~~ optional  
554 retirement program is filed with the program administrator and  
555 received by the division.

556 a. A community college employee whose program eligibility  
557 results from initial employment shall ~~must~~ be enrolled in the  
558 ~~State Community College System~~ optional retirement program  
559 retroactive to the first day of eligible employment. The  
560 employer retirement contributions paid through the month of the  
561 employee plan change shall be transferred to the community  
562 college to the employee's optional program account, and,  
563 effective the first day of the next month, the employer shall



200064

564 pay the applicable contributions based upon subparagraph 1.

565       b. A community college employee whose program eligibility  
566 is due to the subsequent designation of the employee's position  
567 as one of those specified in subparagraph 4., or due to the  
568 employee's appointment, promotion, transfer, or reclassification  
569 to a position specified in subparagraph 4., must be enrolled in  
570 the program on the first day of the first full calendar month  
571 that such change in status becomes effective. The employer  
572 retirement contributions paid from the effective date through  
573 the month of the employee plan change must be transferred to the  
574 community college to the employee's optional program account,  
575 and, effective the first day of the next month, the employer  
576 shall pay the applicable contributions based upon subparagraph  
577 1.

578       7. Effective July 1, 2003, through December 31, 2008, any  
579 member participant of the ~~State Community College System~~  
580 optional retirement program who has service credit in the  
581 pension defined benefit plan of the Florida Retirement System  
582 for the period between his or her first eligibility to transfer  
583 from the pension defined benefit plan to the optional retirement  
584 program and the actual date of transfer may, during employment,  
585 transfer to the optional retirement program a sum representing  
586 the present value of the accumulated benefit obligation under  
587 the pension plan defined benefit retirement program for the  
588 period of service credit. Upon transfer, all service credit  
589 previously earned under the pension plan defined benefit program  
590 ~~of the Florida Retirement System~~ during this period is nullified  
591 for purposes of entitlement to a future benefit under the  
592 pension plan defined benefit program of the Florida Retirement



200064

593 ~~System.~~

594 (d) The governing body of a charter school or a charter  
595 technical career center may elect to participate in the system  
596 upon proper application to the administrator and shall cover its  
597 units as approved by the Secretary of Health and Human Services  
598 and the administrator. At the time of joining the Florida  
599 Retirement System, but before July 1, 2011, the governing body  
600 of the charter school may elect to provide, or not provide,  
601 benefits based on the past service of officers and employees as  
602 described in s. 121.081(1). Once this election is made and  
603 approved, it may not be revoked, and all present officers and  
604 employees selecting coverage under this chapter and all future  
605 officers and employees shall be compulsory members of the  
606 Florida Retirement System.

607 (e) All eligible employees initially enrolled on or after  
608 July 1, 2011, except those who are eligible to and elect to  
609 enroll in an optional retirement program established under s.  
610 121.055(6), s. 121.35, or s. 1012.875, become compulsory members  
611 of the investment plan and membership in the pension plan is not  
612 permitted. Employees initially enrolled on or after July 1,  
613 2011, may not use the election opportunity specified in s.  
614 121.4501(4)(e).

615 (3) SOCIAL SECURITY COVERAGE.—Social security coverage  
616 shall be provided for all officers and employees who become  
617 members under ~~the provisions of~~ subsection (1) or subsection  
618 (2). Any modification of the present agreement with the Social  
619 Security Administration, or referendum required under the Social  
620 Security Act, for the purpose of providing social security  
621 coverage for any member shall be requested by the state agency



200064

622 in compliance with the applicable provisions of the Social  
623 Security Act governing such coverage. However, retroactive  
624 social security coverage for service ~~prior to December 1, 1970,~~  
625 with the employer before December 1, 1970, may ~~shall~~ not be  
626 provided for a ~~any~~ member who was not covered under the  
627 agreement as of November 30, 1970.

628 Section 8. Paragraph (b) of subsection (5), paragraph (a)  
629 of subsection (7), and paragraph (c) of subsection (9) of  
630 section 121.0515, Florida Statutes, are amended to read:

631 121.0515 Special risk membership.—

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

638 (b) Contributions for upgrading the additional special risk  
639 credit are pursuant to this subsection shall be equal to the  
640 difference in the employer and, if applicable, employee  
641 contributions paid and the special risk percentage rate of gross  
642 salary in effect at the time of purchase for the period being  
643 claimed, plus interest thereon at the rate of 4 percent a year  
644 compounded annually from the date of such service until July 1,  
645 1975, and 6.5 percent a year thereafter until the date of  
646 payment. ~~This~~ Past service may be purchased by the member or by  
647 the employer on behalf of the member.

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

649 (a) A special risk member who is moved or reassigned to a  
650 nonspecial risk law enforcement, firefighting, correctional, or



200064

651 emergency medical care administrative support position within  
652 ~~with~~ the same agency, or who is subsequently employed in such a  
653 position with any law enforcement, firefighting, correctional,  
654 or emergency medical care agency under the Florida Retirement  
655 System, shall participate in the Special Risk Administrative  
656 Support Class and ~~shall~~ earn credit for such service at the same  
657 percentage rate as that earned by a regular member.  
658 Notwithstanding ~~the provisions of~~ subsection (4), service in  
659 ~~such~~ an administrative support position ~~shall~~, for purposes of  
660 s. 121.091, applies ~~apply~~ toward satisfaction of the special  
661 risk normal retirement date, as defined in s. 121.021(29)(b) if,  
662 ~~provided that~~, while in such position, the member remains  
663 certified as a law enforcement officer, firefighter,  
664 correctional officer, emergency medical technician, or  
665 paramedic; remains subject to reassignment at any time to a  
666 position qualifying for special risk membership; and completes  
667 an aggregate of 6 or more years of service as a designated  
668 special risk member before ~~prior to~~ retirement.

669 (9) CREDIT FOR UPGRADED SERVICE.—

670 (c) Any member of the Special Risk Class who has earned  
671 creditable service in another membership class of the Florida  
672 Retirement System in a position with the Department of Law  
673 Enforcement or the Division of State Fire Marshal and became  
674 covered by the Special Risk Class as described in paragraph  
675 (2)(i), or with a local government law enforcement agency or  
676 medical examiner's office and became covered by the Special Risk  
677 Class as described in paragraph (2)(j), which service is within  
678 the purview of the Special Risk Class, and is employed in such  
679 position on or after July 1, 2008, may purchase additional



200064

680 retirement credit to upgrade such service to Special Risk Class  
681 service, to the extent of the percentages of the member's  
682 average final compensation provided in s. 121.091(1)(a)2. The  
683 cost for such credit must ~~shall~~ be an amount representing the  
684 actuarial accrued liability for the difference in accrual value  
685 during the affected period of service. The cost shall be  
686 calculated using the discount rate and other relevant actuarial  
687 assumptions that were used to value the Florida Retirement  
688 System's pension System ~~defined benefit~~ plan liabilities in the  
689 most recent actuarial valuation. The Division of Retirement  
690 shall ensure that the transfer sum is prepared using a formula  
691 and methodology certified by an enrolled actuary. The cost must  
692 be paid immediately upon notification by the division. The local  
693 government employer may purchase the upgraded service credit on  
694 behalf of the member if the member has been employed by that  
695 employer for at least 3 years.

696 Section 9. Paragraphs (a) and (d) of subsection (4) and  
697 paragraph (b) of subsection (7) of section 121.052, Florida  
698 Statutes, are amended, present paragraph (c) of subsection (7)  
699 of that section is redesignated as paragraph (d), a new  
700 paragraph (c) is added to that subsection, and subsection (8) of  
701 that section is amended, to read:

702 121.052 Membership class of elected officers.—

703 (4) PARTICIPATION BY ELECTED OFFICERS SERVING A SHORTENED  
704 TERM DUE TO APPORTIONMENT, FEDERAL INTERVENTION, ETC.—

705 (a) An ~~Any~~ ~~duly~~ elected officer whose term of office was  
706 shortened by legislative or judicial apportionment pursuant to  
707 ~~the provisions of~~ s. 16, Art. III of the State Constitution may,  
708 after the term of office to which he or she was elected is





200064

709 completed, pay into the Florida Retirement System Trust Fund the  
710 amount of contributions that would have been made by the officer  
711 or the officer's employer on his or her behalf, plus 4 percent  
712 interest compounded annually from the date he or she left office  
713 until July 1, 1975, and 6.5 percent interest compounded annually  
714 thereafter, and may receive service credit for the length of  
715 time the officer would have served if such term had not been  
716 shortened by apportionment.

717 (d)1. Any justice or judge, or any retired justice or judge  
718 who retired before July 1, 1993, who has attained the age of 70  
719 years and who is prevented under s. 8, Art. V of the State  
720 Constitution from completing his or her term of office because  
721 of age may elect to purchase credit for all or a portion of the  
722 months he or she would have served during the remainder of the  
723 term of office; however, ~~but~~ he or she may claim those months  
724 only after the date the service would have occurred. The justice  
725 or judge must pay into the Florida Retirement System Trust Fund  
726 the amount of contributions that would have been made by the  
727 employer on his or her behalf for the period of time being  
728 claimed, plus 6.5 percent interest thereon compounded each June  
729 30 from the date he or she left office, in order to receive  
730 service credit in this class for the period of time being  
731 claimed. After the date the service would have occurred, and  
732 upon payment of the required contributions, the retirement  
733 benefit of a retired justice or judge shall ~~will~~ be adjusted  
734 prospectively to include the ~~this~~ additional creditable service;  
735 however, such adjustment may be made only once.

736 2. Any justice or judge who does not seek election to a  
737 subsequent term of office because he or she would be prevented



200064

738 under s. 8, Art. V of the State Constitution from completing  
739 such term of office upon attaining the age of 70 years may elect  
740 to purchase service credit for service as a temporary judge as  
741 assigned by the court if the temporary assignment ~~follows~~  
742 immediately follows the last full term of office served and the  
743 purchase is limited to the number of months of service needed to  
744 vest retirement benefits. To receive retirement credit for ~~such~~  
745 temporary service beyond termination, the justice or judge must  
746 pay into the Florida Retirement System Trust Fund the amount of  
747 contributions that would have been made by the justice or judge  
748 and the employer on his or her behalf had he or she continued in  
749 office for the period of time being claimed, plus 6.5 percent  
750 interest thereon compounded each June 30 from the date he or she  
751 left office.

752 (7) CONTRIBUTIONS.—

753 (b) The employer paying the salary of a member of the  
754 Elected Officers' Class shall contribute an amount as specified  
755 in this subsection or s. 121.71, as appropriate, which shall  
756 constitute the ~~entire~~ employer retirement contribution with  
757 respect to such member. The employer shall also withhold one-  
758 half of the entire contribution of the member required for  
759 social security coverage. Effective July 1, 2011, members of the  
760 Elected Officers' Class shall pay retirement contributions as  
761 specified in s. 121.71.

762 (c) If a member of the Elected Officers' Class ceases to  
763 fill an office covered by this class for 3 calendar months for  
764 any reason other than retirement and has not been employed in  
765 any capacity with any participating employer for 3 calendar  
766 months, the member is entitled to receive a refund of all



200064

767 contributions he or she made to the pension plan, subject to the  
768 restrictions otherwise provided in this chapter. Partial refunds  
769 are not permitted. The refund may not include any interest  
770 earnings on contributions to the pension plan. Employer  
771 contributions made on behalf of the member are not refundable. A  
772 member may not receive a refund of employee contributions if a  
773 pending or an approved qualified domestic relations order is  
774 filed against the member's retirement account. By obtaining a  
775 refund of contributions, a member waives all rights under the  
776 Florida Retirement System, including the health insurance  
777 subsidy under this subsection, to the service credit represented  
778 by the refunded contributions, except the right to purchase  
779 prior service credit in accordance with s. 121.081(2).

780 (8) NORMAL RETIREMENT DATE; VESTING REQUIREMENT.—A member  
781 of the Elected Officers' Class has ~~shall have~~ the same normal  
782 retirement date as defined in s. 121.021(29) for a member of the  
783 regular class of the Florida Retirement System. A ~~Any~~ public  
784 service commissioner who was removed from the Elected State  
785 Officers' Class on July 1, 1979, after attaining at least 8  
786 years of creditable service in that class is ~~shall be~~ considered  
787 to have reached the normal retirement date upon attaining the  
788 required age as provided ~~62 as required~~ in s. 121.021(29)(a).

789 Section 10. Paragraph (a) of subsection (7) of section  
790 121.053, Florida Statutes, is amended to read:

791 121.053 Participation in the Elected Officers' Class for  
792 retired members.—

793 (7) A member who is elected or appointed to an elective  
794 office and who is participating in the Deferred Retirement  
795 Option Program is not subject to termination as defined in s.



796 121.021, or reemployment limitations as provided in s.  
797 121.091(9), until the end of his or her current term of office  
798 or, if the officer is consecutively elected or reelected to an  
799 elective office eligible for coverage under the Florida  
800 Retirement System, until he or she no longer holds an elective  
801 office, as follows:

802 (a) At the end of the 60-month DROP period:

803 1. The officer's DROP account may not accrue additional  
804 monthly benefits, but does continue to earn interest as provided  
805 in s. 121.091(13). However, an officer whose DROP participation  
806 begins on or after July 1, 2010, may not continue to earn such  
807 interest.

808 2. Retirement contributions are not required of the officer  
809 or the employer of the elected officer and additional retirement  
810 credit may not be earned under the Florida Retirement System.

811 Section 11. Paragraphs (b) and (j) of subsection (1),  
812 paragraph (b) of subsection (3), and paragraphs (c), (d), and  
813 (e) of subsection (6) of section 121.055, Florida Statutes, are  
814 amended, present paragraph (c) of subsection (3) of that section  
815 is redesignated as paragraph (d), and a new paragraph (c) is  
816 added to that subsection, to read:

817 121.055 Senior Management Service Class.—There is hereby  
818 established a separate class of membership within the Florida  
819 Retirement System to be known as the "Senior Management Service  
820 Class," which shall become effective February 1, 1987.

821 (1)

822 (b)1. Except as provided in subparagraph 2., effective  
823 January 1, 1990, participation in the Senior Management Service  
824 Class is ~~shall be~~ compulsory for the president of each community



200064

825 college, the manager of each participating city or county, and  
826 all appointed district school superintendents. Effective January  
827 1, 1994, additional positions may be designated for inclusion in  
828 the Senior Management Service Class if ~~of the Florida Retirement~~  
829 ~~System, provided that:~~

830 a. Positions to be included in the class are ~~shall be~~  
831 designated by the local agency employer. Notice of intent to  
832 designate positions for inclusion in the class must ~~shall~~ be  
833 published once a week for 2 consecutive weeks in a newspaper of  
834 general circulation published in the county or counties  
835 affected, as provided under ~~in~~ chapter 50.

836 b. Up to 10 nonelective full-time positions may be  
837 designated for each local agency employer reporting to the  
838 department ~~of Management Services~~; for local agencies with 100  
839 or more regularly established positions, additional nonelective  
840 full-time positions may be designated, up to ~~not to exceed~~ 1  
841 percent of the regularly established positions within the  
842 agency.

843 c. Each position added to the class must be a managerial or  
844 policymaking position filled by an employee who is not subject  
845 to continuing contract and serves at the pleasure of the local  
846 agency employer without civil service protection, and who:

847 (I) Heads an organizational unit; or

848 (II) Has responsibility to effect or recommend personnel,  
849 budget, expenditure, or policy decisions in his or her areas of  
850 responsibility.

851 2. In lieu of participation in the Senior Management  
852 Service Class, members of the ~~Senior Management Service class,~~  
853 pursuant to ~~the provisions of~~ subparagraph 1., may withdraw from



200064

854 the Florida Retirement System altogether. The decision to  
855 withdraw from the ~~Florida Retirement~~ system ~~is shall be~~  
856 irrevocable ~~for~~ as long as the employee holds the ~~such a~~  
857 position. Any service creditable under the Senior Management  
858 Service Class shall be retained after the member withdraws from  
859 the ~~Florida Retirement~~ system; however, additional service  
860 credit in the Senior Management Service Class ~~may shall~~ not be  
861 earned after such withdrawal. Such members are ~~shall~~ not be  
862 eligible to participate in the Senior Management Service  
863 Optional Annuity Program.

864 3. Effective January 1, 2006, through June 30, 2006, an  
865 employee who has withdrawn from the Florida Retirement System  
866 under subparagraph 2. has one opportunity to elect to  
867 participate in ~~either~~ the pension plan or investment plan  
868 ~~defined benefit program or the Public Employee Optional~~  
869 ~~Retirement Program~~ of the Florida Retirement System.

870 a. If the employee elects to participate in the investment  
871 plan ~~Public Employee Optional Retirement Program~~, membership is  
872 ~~shall be~~ prospective, and the applicable provisions of s.  
873 121.4501(4) shall govern the election.

874 b. If the employee elects to participate in the pension  
875 plan ~~defined benefit program of the Florida Retirement System~~,  
876 the employee shall, upon payment to the system trust fund of the  
877 amount calculated under sub-sub-subparagraph (I), receive  
878 service credit for prior service based upon the time during  
879 which the employee had withdrawn from the system.

880 (I) The cost for such credit shall be an amount  
881 representing the actuarial accrued liability for the affected  
882 period of service. The cost shall be calculated using the



200064

883 discount rate and other relevant actuarial assumptions that were  
884 used to value pension ~~the Florida Retirement System defined~~  
885 ~~benefit~~ plan liabilities in the most recent actuarial valuation.  
886 The calculation must ~~shall~~ include any service already  
887 maintained under the pension ~~defined benefit~~ plan in addition to  
888 the period of withdrawal. The actuarial accrued liability  
889 attributable to any service already maintained under the pension  
890 ~~defined benefit~~ plan shall be applied as a credit to the total  
891 cost resulting from the calculation. The division must ~~shall~~  
892 ensure that the transfer sum is prepared using a formula and  
893 methodology certified by an actuary.

894 (II) The employee must transfer a sum representing the net  
895 cost owed for the actuarial accrued liability in sub-sub-  
896 subparagraph (I) immediately following the time of such  
897 movement, determined assuming that attained service equals the  
898 sum of service in the pension plan ~~defined benefit program~~ and  
899 the period of withdrawal.

900 (j) Except as may otherwise be provided, a ~~any~~ member of  
901 the Senior Management Service Class may purchase additional  
902 retirement credit in such class for creditable service within  
903 the purview of the Senior Management Service Class retroactive  
904 to February 1, 1987, and may upgrade retirement credit for such  
905 service, to the extent of 2 percent of the member's average  
906 monthly compensation as specified in paragraph (4) (d) for such  
907 service. Contributions for upgrading ~~the~~ additional Senior  
908 Management Service credit are ~~pursuant to this paragraph shall~~  
909 ~~be~~ equal to the difference in the employer and, if applicable,  
910 employee contributions paid and the Senior Management Service  
911 Class contribution rate as a percentage of gross salary in



200064

912 effect for the period being claimed, plus interest thereon at  
913 the rate of 6.5 percent a year, compounded annually until the  
914 date of payment. ~~The This~~ service credit may be purchased by the  
915 employer on behalf of the member.

916 (3)

917 (b) The employer or member of the Senior Management Service  
918 Class, as applicable, paying the salary of a member of the  
919 Senior Management Service Class shall contribute an amount as  
920 specified in this section or s. 121.71, as appropriate, which  
921 shall constitute the entire ~~employer~~ retirement contribution  
922 with respect to such member. The employer shall also withhold  
923 one-half of the entire contribution of the member required for  
924 social security coverage. Effective July 1, 2011, each member  
925 shall pay employee contributions as specified in s. 121.71.

926 (c) Three months after termination of employment from all  
927 participating of employers for any reason other than retirement,  
928 a member is entitled to a refund of all contributions he or she  
929 made before or after participation in the noncontributory plan,  
930 subject to the restrictions otherwise provided in this chapter.  
931 Employer contributions made on behalf of the member are not  
932 refundable. The refund may not include any interest earnings on  
933 the contributions to the pension plan. A member may not receive  
934 a refund of employee contributions if a pending or an approved  
935 qualified domestic relations order is filed against the member's  
936 retirement account. By obtaining a refund of contributions, a  
937 member waives all rights under the Florida Retirement System,  
938 including the health insurance subsidy under paragraph (d), to  
939 the service credit represented by the refunded contributions,  
940 except the right to purchase his or her prior service credit in





200064

941 accordance with s. 121.081(2).

942 (6)

943 (c) *Participation.*—

944 1. An eligible employee who is employed on or before  
945 February 1, 1987, may elect to participate in the optional  
946 annuity program in lieu of participating ~~participation~~ in the  
947 Senior Management Service Class. Such election must be made in  
948 writing and filed with the department and the personnel officer  
949 of the employer on or before May 1, 1987. An eligible employee  
950 who is employed on or before February 1, 1987, and who fails to  
951 make an election to participate in the optional annuity program  
952 by May 1, 1987, shall be deemed to have elected membership in  
953 the Senior Management Service Class.

954 2. Except as provided in subparagraph 6., an employee who  
955 becomes eligible to participate in the optional annuity program  
956 by reason of initial employment commencing after February 1,  
957 1987, may, within 90 days after the date of commencing  
958 employment, elect to participate in the optional annuity  
959 program. Such election must be made in writing and filed with  
960 the personnel officer of the employer. An eligible employee who  
961 does not within 90 days after commencing employment elect to  
962 participate in the optional annuity program shall be deemed to  
963 have elected membership in the Senior Management Service Class.

964 3. A person who is appointed to a position in the Senior  
965 Management Service Class and who is a member of an existing  
966 retirement system or the Special Risk or Special Risk  
967 Administrative Support Classes of the Florida Retirement System  
968 may elect to remain in such system or class in lieu of  
969 participating ~~participation~~ in the Senior Management Service



200064

970 Class or optional annuity program. Such election must be made in  
971 writing and filed with the department and the personnel officer  
972 of the employer within 90 days after ~~of~~ such appointment. An ~~Any~~  
973 eligible employee who fails to make an election to participate  
974 in the existing system, the Special Risk Class of the Florida  
975 Retirement System, the Special Risk Administrative Support Class  
976 of the Florida Retirement System, or the optional annuity  
977 program shall be deemed to have elected membership in the Senior  
978 Management Service Class.

979 4. Except as provided in subparagraph 5., an employee's  
980 election to participate in the optional annuity program is  
981 irrevocable if the employee continues to be employed in an  
982 eligible position and continues to meet the eligibility  
983 requirements set forth in this paragraph.

984 5. Effective from July 1, 2002, through September 30, 2002,  
985 an ~~any~~ active employee in a regularly established position who  
986 has elected to participate in the Senior Management Service  
987 Optional Annuity Program has one opportunity to choose to move  
988 from the Senior Management Service Optional Annuity Program to  
989 the Florida Retirement System's pension plan ~~System-defined~~  
990 ~~benefit program~~.

991 a. The election must be made in writing and must be filed  
992 with the department and the personnel officer of the employer  
993 before October 1, 2002, or, in the case of an active employee  
994 who is on a leave of absence on July 1, 2002, within 90 days  
995 after the conclusion of the leave of absence. This election is  
996 irrevocable.

997 b. The employee shall receive service credit under the  
998 pension plan ~~defined benefit program of the Florida Retirement~~



200064

999 ~~System~~ equal to his or her years of service under the Senior  
1000 Management Service Optional Annuity Program. The cost for such  
1001 credit is the amount representing the present value of that  
1002 employee's accumulated benefit obligation for the affected  
1003 period of service.

1004 c. The employee must transfer the total accumulated  
1005 employer contributions and earnings on deposit in his or her  
1006 Senior Management Service Optional Annuity Program account. If  
1007 the transferred amount is not sufficient to pay the amount due,  
1008 the employee must pay a sum representing the remainder of the  
1009 amount due. The employee may not retain any employer  
1010 contributions or earnings ~~thereon~~ from the Senior Management  
1011 Service Optional Annuity Program account.

1012 6. A retiree of a state-administered retirement system who  
1013 is initially reemployed on or after July 1, 2010, may not renew  
1014 membership in the Senior Management Service Optional Annuity  
1015 Program.

1016 (d) *Contributions.*—

1017 1.a. Through June 30, 2001, each employer shall contribute  
1018 on behalf of each member of participant in the Senior Management  
1019 Service Optional Annuity Program an amount equal to the normal  
1020 cost portion of the employer retirement contribution which would  
1021 be required if the employee participant were a Senior Management  
1022 Service Class member of the Florida Retirement System's pension  
1023 plan System defined benefit program, plus the portion of the  
1024 contribution rate required in s. 112.363(8) which that would  
1025 otherwise be assigned to the Retiree Health Insurance Subsidy  
1026 Trust Fund.

1027 b. Effective July 1, 2001, each employer shall contribute



200064

1028 on behalf of each member of participant in the optional annuity  
1029 program an amount equal to 12.49 percent of the employee's  
1030 participant's gross monthly compensation.

1031 c. Effective July 1, 2011, each member of the optional  
1032 annuity program shall contribute an amount equal to the employee  
1033 contribution required in s. 121.71(3). The employer shall  
1034 contribute on behalf of each such employee an amount equal to  
1035 the difference between 12.49 percent of the employee's gross  
1036 monthly compensation and the amount equal to the employee's  
1037 required contribution based on the employee's gross monthly  
1038 compensation.

1039 d. The department shall deduct an amount approved by the  
1040 Legislature to provide for the administration of this program.  
1041 The Payment of the contributions, including contributions made  
1042 by the employee, to the optional program which is required by  
1043 this subparagraph for each participant shall be made by the  
1044 employer to the department, which shall forward the  
1045 contributions to the designated company or companies contracting  
1046 for payment of benefits for members of the participant under the  
1047 optional annuity program. The department shall deduct an amount  
1048 approved by the Legislature to provide for the administration of  
1049 the program.

1050 2. Each employer shall contribute on behalf of each member  
1051 of participant in the Senior Management Service Optional Annuity  
1052 Program an amount equal to the unfunded actuarial accrued  
1053 liability portion of the employer contribution which would be  
1054 required for members of the Senior Management Service Class in  
1055 the Florida Retirement System. This contribution shall be paid  
1056 to the department for transfer to the Florida Retirement System



200064

1057 Trust Fund.

1058 3. An Optional Annuity Program Trust Fund shall be  
1059 established in the State Treasury and administered by the  
1060 department to make payments to provider companies on behalf of  
1061 the optional annuity program members ~~participants~~, and to  
1062 transfer the unfunded liability portion of the state optional  
1063 annuity program contributions to the Florida Retirement System  
1064 Trust Fund.

1065 4. Contributions required for social security by each  
1066 employer and each employee ~~participant~~, in the amount required  
1067 for social security coverage as now or hereafter may be provided  
1068 by the federal Social Security Act, shall be maintained for each  
1069 member of ~~participant in~~ the Senior Management Service  
1070 retirement program and are ~~shall be~~ in addition to the  
1071 retirement contributions specified in this paragraph.

1072 5. Each member of ~~participant in~~ the ~~Senior Management~~  
1073 ~~Service~~ optional annuity program may contribute by way of salary  
1074 reduction or deduction a percentage amount of the employee's  
1075 ~~participant's~~ gross compensation not to exceed the percentage  
1076 amount contributed by the employer to the optional annuity  
1077 program. Payment of the employee's ~~participant's~~ contributions  
1078 shall be made by the employer to the department, which shall  
1079 forward the contributions to the designated company or companies  
1080 contracting for payment of benefits for member's ~~the participant~~  
1081 under the program.

1082 (e) *Benefits.*—

1083 1. Benefits under the Senior Management Service Optional  
1084 Annuity Program are payable only to members of ~~participants in~~  
1085 the program, or their beneficiaries as designated by the member



200064

1086 ~~participant~~ in the contract with the provider company, and must  
1087 be paid by the designated company in accordance with the terms  
1088 of the annuity contract applicable to the member ~~participant~~. A  
1089 member ~~participant~~ must be terminated from all employment  
1090 relationships with Florida Retirement System employers as  
1091 provided in s. 121.021(39) to begin receiving the employer-  
1092 funded benefit. Benefits funded by employer contributions are  
1093 payable under the terms of the contract to the member  
1094 ~~participant~~, his or her beneficiary, or his or her estate, in  
1095 addition to:

1096 a. A lump-sum payment to the beneficiary upon the death of  
1097 the member ~~participant~~;

1098 b. A cash-out of a de minimis account upon the request of a  
1099 former member ~~participant~~ who has been terminated for a minimum  
1100 of 6 calendar months from the employment that entitled him or  
1101 her to optional annuity program participation. Such cash-out  
1102 must be a complete liquidation of the account balance with that  
1103 company and is subject to the Internal Revenue Code;

1104 c. A mandatory distribution of a de minimis account of a  
1105 former member ~~participant~~ who has been terminated for a minimum  
1106 of 6 calendar months from the employment that entitled him or  
1107 her to optional annuity program participation as authorized by  
1108 the department; or

1109 d. A lump-sum direct rollover distribution whereby all  
1110 accrued benefits, plus interest and investment earnings, are  
1111 paid from the member's ~~participant's~~ account directly to the  
1112 custodian of an eligible retirement plan, as defined in s.  
1113 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
1114 member ~~participant~~.



200064

1115           2. The benefits payable to any person under the ~~Senior~~  
1116 ~~Management Service~~ optional annuity program, and any  
1117 contribution accumulated under such program, are not subject to  
1118 assignment, execution, or attachment or to any legal process  
1119 ~~whatsoever~~.

1120           3. Except as provided in subparagraph 4., a member  
1121 ~~participant~~ who terminates employment and receives a  
1122 distribution, including a rollover or trustee-to-trustee  
1123 transfer, funded by employer or employee contributions is ~~shall~~  
1124 ~~be~~ deemed to be retired from a state-administered retirement  
1125 system if the retiree ~~participant~~ is subsequently employed with  
1126 an employer that participates in the Florida Retirement System.

1127           4. A member ~~participant~~ who receives optional annuity  
1128 program benefits funded by employer or employee contributions as  
1129 a mandatory distribution of a de minimis account authorized by  
1130 the department is not considered a retiree.

1131  
1132 As used in this paragraph, a "de minimis account" means an  
1133 account with a provider company containing employer or employee  
1134 contributions and accumulated earnings of not more than \$5,000  
1135 made under this chapter.

1136           Section 12. Subsections (2) and (5) and paragraph (c) of  
1137 subsection (6) of section 121.071, Florida Statutes, are  
1138 amended, present paragraph (d) of subsection (6) of that section  
1139 is redesignated as paragraph (e), and a new paragraph (d) is  
1140 added to that subsection, to read:

1141           121.071 Contributions.—Contributions to the system shall be  
1142 made as follows:

1143           (2) (a) Effective January 1, 1975, or October 1, 1975, as



200064

1144 applicable, and through June 30, 2011, each employer shall make  
1145 ~~accomplish~~ the contribution required by subsection (1) by a  
1146 procedure in which no employee's gross salary is ~~shall be~~  
1147 reduced. Effective July 1, 2011, each employee, and his or her  
1148 employer, shall pay retirement contributions as specified in s.  
1149 121.71.

1150 (b) Three calendar months after ~~Upon~~ termination of  
1151 employment from all participating employers for any reason other  
1152 than retirement, a member is ~~shall be~~ entitled to a full refund  
1153 of the contributions he or she ~~has~~ made before or after ~~prior or~~  
1154 ~~subsequent to~~ participation in the noncontributory plan, subject  
1155 to ~~the~~ restrictions otherwise provided in this chapter. Partial  
1156 refunds are not permitted. Employer contributions made on behalf  
1157 of the member are not refundable. The refund may not include  
1158 interest earnings on contributions for a member of the pension  
1159 plan. A member may not receive a refund of employee  
1160 contributions if a pending or approved qualified domestic  
1161 relations order is filed against his or her retirement account.  
1162 By obtaining a refund of contributions, a member waives all  
1163 rights under the Florida Retirement System and the health  
1164 insurance subsidy to the service credit represented by the  
1165 refunded contributions, except the right to purchase his or her  
1166 prior service credit in accordance with s. 121.081(2).

1167 (5) Contributions made in accordance with subsections (1),  
1168 (2), (3), and (4), and s. 121.71 shall be paid ~~by the employer~~  
1169 into the system trust funds in accordance with rules adopted by  
1170 the administrator pursuant to chapter 120, except as ~~may be~~  
1171 otherwise specified herein. Effective July 1, 2002,  
1172 contributions paid under subsections (1) and (4) and





200064

1173 accompanying payroll data are due and payable by ~~no later than~~  
1174 the 5th working day of the month immediately following the month  
1175 during which the payroll period ended.

1176 (6)

1177 (c) By obtaining a refund of contributions, a member waives  
1178 all rights under the Florida Retirement System, including the  
1179 health insurance subsidy under subsection (4), to the service  
1180 credit represented by the refunded contributions, except the  
1181 right to purchase his or her prior service credit in accordance  
1182 with s. 121.081(2).

1183 (d) If a member or former member of the pension plan  
1184 receives an invalid refund from the Florida Retirement System  
1185 Trust Fund, such person must repay the full amount of the  
1186 refund, plus interest at 6.5 percent compounded annually on each  
1187 June 30 from the date of refund until full repayment is made.  
1188 The invalid refund must be repaid before the member retires or,  
1189 if applicable, transfers to the investment plan.

1190 Section 13. Paragraphs (b) and (c) of subsection (1) and  
1191 subsection (2) of section 121.081, Florida Statutes, are amended  
1192 to read:

1193 121.081 Past service; prior service; contributions.—  
1194 Conditions under which past service or prior service may be  
1195 claimed and credited are:

1196 (1)

1197 (b) Past service earned after January 1, 1975, may be  
1198 claimed by officers or employees of a municipality, metropolitan  
1199 planning organization, charter school, charter technical career  
1200 center, or special district who become a covered group under  
1201 this system. The governing body of a covered group may elect to



200064

1202 provide benefits for past service earned after January 1, 1975,  
1203 in accordance with this chapter. ~~and~~ The cost for such past  
1204 service is established by applying the following formula: The  
1205 employer shall contribute an amount equal to the employer or  
1206 employee contribution rate in effect at the time the service was  
1207 earned, as applicable, multiplied by the employee's gross salary  
1208 for each year of past service claimed, plus 6.5 percent ~~6.5-~~  
1209 ~~percent~~ interest thereon, compounded annually, for figured on  
1210 each year of past service, with interest compounded from date of  
1211 annual salary earned until date of payment.

1212 (c) If an ~~Should the~~ employer joined the Florida Retirement  
1213 System before July 1, 2011, and does not elect to provide past  
1214 service for the member on the date of joining the system, then  
1215 the member may claim and pay for the service as provided in  
1216 same, based on paragraphs (a) and (b).

1217 (2) Prior service, as defined in s. 121.021~~(19)~~, may be  
1218 claimed as creditable service under the Florida Retirement  
1219 System after a member has been reemployed for 1 complete year of  
1220 creditable service ~~within a period of 12 consecutive months~~,  
1221 except as provided in paragraph (c). Service performed as a  
1222 member participant of the optional retirement program for the  
1223 State University System under s. 121.35 or the Senior Management  
1224 Service Optional Annuity Program under s. 121.055 may be used to  
1225 satisfy the reemployment requirement of 1 complete year of  
1226 creditable service. The member may ~~shall not be permitted to~~  
1227 make any contributions for prior service until after completion  
1228 of the 1 year of creditable service. If a member does not wish  
1229 to claim credit for all of his or her prior service, the service  
1230 the member claims must be the most recent period of service. The



200064

1231 required contributions for claiming the various types of prior  
1232 service are:

1233 (a) For prior service performed before ~~prior to~~ the date  
1234 the system becomes noncontributory for the member and for which  
1235 the member had credit under one of the existing retirement  
1236 systems and received a refund of contributions upon termination  
1237 of employment, the member shall contribute 4 percent of all  
1238 salary received during the period being claimed, plus 4 percent  
1239 ~~4-percent~~ interest compounded annually from date of refund until  
1240 July 1, 1975, and 6.5 percent ~~6.5-percent~~ interest compounded  
1241 annually thereafter, until full payment is made to the Florida  
1242 Retirement System Trust Fund, and shall receive credit in the  
1243 Regular Class. A member who elected to transfer to the Florida  
1244 Retirement System from an existing system may receive credit for  
1245 prior service under the existing system if he or she was  
1246 eligible under the existing system to claim the prior service at  
1247 the time of the transfer. Contributions for such prior service  
1248 shall be determined by the applicable provisions of the system  
1249 under which the prior service is claimed and shall be paid by  
1250 the member, with matching contributions paid by the employer at  
1251 the time the service was performed. Effective July 1, 1978, the  
1252 account of a person who terminated under s. 238.05(3) may not be  
1253 charged interest for contributions that remained on deposit in  
1254 the Annuity Savings Trust Fund established under chapter 238,  
1255 upon retirement under this chapter or chapter 238.

1256 (b) For prior service performed before ~~prior to~~ the date  
1257 the system becomes noncontributory for the member and for which  
1258 the member had credit under the Florida Retirement System and  
1259 received a refund of contributions upon termination of



200064

1260 employment, the member shall contribute at the rate that was  
1261 required of him or her during the period of service being  
1262 claimed, on all salary received during such period, plus 4  
1263 percent ~~4-percent~~ interest compounded annually from date of  
1264 refund until July 1, 1975, and 6.5 percent ~~6.5-percent~~ interest  
1265 compounded annually thereafter, until the full payment is made  
1266 to the Florida Retirement System Trust Fund, and ~~shall~~ receive  
1267 credit in the membership class in which the member participated  
1268 during the period claimed.

1269 (c) For prior service as defined in s. 121.021(19) (b) and  
1270 (c) during which no contributions were made because the member  
1271 did not participate in a retirement system, the member shall  
1272 contribute 14.38 percent of all salary received during such  
1273 period or 14.38 percent of \$100 per month during such period,  
1274 whichever is greater, plus 4 percent ~~4-percent~~ interest  
1275 compounded annually from the first year of service claimed until  
1276 July 1, 1975, and 6.5 percent ~~6.5-percent~~ interest compounded  
1277 annually thereafter, until full payment is made to the  
1278 Retirement Trust Fund, and shall receive credit in the Regular  
1279 Class.

1280 (d) In order to claim credit for prior service as defined  
1281 in s. 121.021(19) (d) for which no retirement contributions were  
1282 paid during the period of such service, the member shall  
1283 contribute the total employee and employer contributions which  
1284 were required to be made to the Highway Patrol Pension Trust  
1285 Fund, as provided in chapter 321, during the period claimed,  
1286 plus 4 percent ~~4-percent~~ interest compounded annually from the  
1287 first year of service until July 1, 1975, and 6.5 percent ~~6.5-~~  
1288 ~~percent~~ interest compounded annually thereafter, until full



200064

1289 payment is made to the Retirement Trust Fund. However, any  
1290 governmental entity that ~~which~~ employed such member may elect to  
1291 pay up to 50 percent of the contributions and interest required  
1292 to purchase the ~~this~~ prior service credit. The service shall be  
1293 credited in accordance with the ~~provisions of the~~ Highway Patrol  
1294 Pension Plan in effect during the period claimed unless the  
1295 member terminated and withdrew his or her retirement  
1296 contributions and was thereafter enrolled in the State and  
1297 County Officers and Employees' Retirement System or the Florida  
1298 Retirement System, in which case the service shall be credited  
1299 as Regular Class service.

1300 (e) For service performed under the Florida Retirement  
1301 System after December 1, 1970, which ~~that~~ was never reported to  
1302 the division or the department due to error, retirement credit  
1303 may be claimed by a member of the Florida Retirement System. The  
1304 department shall adopt rules establishing criteria for claiming  
1305 such credit and detailing the documentation required to  
1306 substantiate the error.

1307 (f) For prior service performed on or after July 1, 2011,  
1308 for which the member had credit under the Florida Retirement  
1309 System and received a refund of contributions 3 months after  
1310 termination of employment, the member shall contribute at the  
1311 rate that was required during the period of service being  
1312 claimed, plus 6.5 percent interest, compounded annually on each  
1313 June 30 from date of refund until the full payment is made to  
1314 the Florida Retirement System Trust Fund, and shall receive  
1315 credit in the membership class in which the member participated  
1316 during the period claimed.

1317 (g) ~~(f)~~ The employer may not ~~be required to~~ make



200064

1318 contributions for prior service credit for any member, except  
1319 that the employer shall pay the employer portion of  
1320 contributions for any legislator who elects to withdraw from the  
1321 Florida Retirement System and later rejoins the system and pays  
1322 any employee contributions required in accordance with s.  
1323 121.052(3)(d).

1324 Section 14. Paragraph (a) of subsection (3), paragraph (a)  
1325 of subsection (4), paragraphs (a) and (c) of subsection (5),  
1326 paragraph (d) of subsection (9), and paragraph (d) of subsection  
1327 (14) of section 121.091, Florida Statutes, are amended, present  
1328 paragraphs (e) through (k) of subsection (5) of that section are  
1329 renumbered as paragraphs (f) through (l), respectively, and a  
1330 new paragraph (d) is added to that subsection, to read:

1331 121.091 Benefits payable under the system.—Benefits may not  
1332 be paid under this section unless the member has terminated  
1333 employment as provided in s. 121.021(39)(a) or begun  
1334 participation in the Deferred Retirement Option Program as  
1335 provided in subsection (13), and a proper application has been  
1336 filed in the manner prescribed by the department. The department  
1337 may cancel an application for retirement benefits when the  
1338 member or beneficiary fails to timely provide the information  
1339 and documents required by this chapter and the department's  
1340 rules. The department shall adopt rules establishing procedures  
1341 for application for retirement benefits and for the cancellation  
1342 of such application when the required information or documents  
1343 are not received.

1344 (3) EARLY RETIREMENT BENEFIT.—Upon retirement on his or her  
1345 early retirement date, the member shall receive an immediate  
1346 monthly benefit that shall begin to accrue on the first day of



200064

1347 the month of the retirement date and be payable on the last day  
1348 of that month and each month thereafter during his or her  
1349 lifetime. Such benefit shall be calculated as follows:

1350 (a) The amount of each monthly payment shall be computed in  
1351 the same manner as ~~for~~ a normal retirement benefit, in  
1352 accordance with subsection (1), but shall be based on the  
1353 member's average monthly compensation and creditable service as  
1354 of the member's early retirement date. The benefit so computed  
1355 shall be reduced by five-twelfths of 1 percent for each complete  
1356 month by which the early retirement date precedes the normal  
1357 retirement date of age 62 for a member of the Regular Class,  
1358 Senior Management Service Class, or the Elected Officers' Class,  
1359 and age 55 for a member of the Special Risk Class, or age 52 if  
1360 a Special Risk member has completed 25 years of creditable  
1361 service in accordance with s. 121.021(29) ~~(b)3~~.

1362 (4) DISABILITY RETIREMENT BENEFIT.—

1363 (a) *Disability retirement; entitlement and effective date.*—

1364 1.a. A member who becomes totally and permanently disabled,  
1365 as defined in paragraph (b), after completing 5 years of  
1366 creditable service, or a member who becomes totally and  
1367 permanently disabled in the line of duty regardless of service,  
1368 is shall be entitled to a monthly disability benefit; except  
1369 that any member with less than 5 years of creditable service on  
1370 July 1, 1980, or any person who becomes a member of the Florida  
1371 Retirement System on or after such date must have completed 10  
1372 years of creditable service before ~~prior to~~ becoming totally and  
1373 permanently disabled in order to receive disability retirement  
1374 benefits for any disability which occurs other than in the line  
1375 of duty. However, if a member employed on July 1, 1980, that has



200064

1376 ~~with~~ less than 5 years of creditable service as of that date,  
1377 becomes totally and permanently disabled after completing 5  
1378 years of creditable service and is found not to have attained  
1379 fully insured status for benefits under the federal Social  
1380 Security Act, such member is ~~shall be~~ entitled to a monthly  
1381 disability benefit.

1382       b. Effective July 1, 2001, a member of the pension plan  
1383 ~~defined benefit retirement program~~ who becomes totally and  
1384 permanently disabled, as defined in paragraph (b), after  
1385 completing 8 years of creditable service, or a member who  
1386 becomes totally and permanently disabled in the line of duty  
1387 regardless of service, is ~~shall be~~ entitled to a monthly  
1388 disability benefit.

1389       2. If the division has received from the employer the  
1390 required documentation of the member's termination of  
1391 employment, the effective retirement date for a member who  
1392 applies and is approved for disability retirement shall be  
1393 established by rule of the division.

1394       3. For a member who is receiving Workers' Compensation  
1395 payments, the effective disability retirement date may not  
1396 precede the date the member reaches Maximum Medical Improvement  
1397 (MMI), unless the member terminates employment before ~~prior to~~  
1398 reaching MMI.

1399       (5) TERMINATION BENEFITS.—A member whose employment is  
1400 terminated before ~~prior to~~ retirement retains membership rights  
1401 to previously earned member-noncontributory service credit, and  
1402 to member-contributory service credit, if the member leaves the  
1403 member contributions on deposit in his or her retirement  
1404 account. If a terminated member receives a refund of member





200064

1405 contributions, such member may reinstate membership rights to  
1406 the previously earned service credit represented by the refund  
1407 by completing 1 year of creditable service and repaying the  
1408 refunded member contributions, plus interest.

1409 (a) A member whose employment is terminated for any reason  
1410 other than death or retirement before ~~prior to~~ becoming vested  
1411 is entitled to the return of his or her accumulated employee  
1412 contributions as of the date of termination.

1413 (c) In lieu of the deferred monthly benefit provided in  
1414 paragraph (b), the terminated member may elect to receive a  
1415 lump-sum amount equal to his or her accumulated employee  
1416 contributions as of the date of termination.

1417 (d) Upon termination of employment from all participating  
1418 employers for 3 calendar months for any reason other than  
1419 retirement pursuant to s. 121.021(39)(c), a member may receive a  
1420 refund of all contributions he or she has made to the pension  
1421 plan, subject to restrictions otherwise provided in this  
1422 chapter. Partial refunds are not permitted. The refund may not  
1423 include any interest earnings on the contributions for a member  
1424 of the pension plan. Employer contributions made on behalf of  
1425 the member are not refundable. A member may not receive a refund  
1426 of employee contributions if a pending or an approved qualified  
1427 domestic relations order is filed against his or her retirement  
1428 account. By obtaining a refund of contributions, a member waives  
1429 all rights under the Florida Retirement System and the health  
1430 insurance subsidy to the service credit represented by the  
1431 refunded contributions, except the right to purchase his or her  
1432 prior service credit in accordance with s. 121.081(2).

1433 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—



200064

1434 (d) ~~The provisions of~~ This subsection applies ~~apply~~ to  
1435 retirees, as defined in s. 121.4501(2), of the Florida Public  
1436 ~~Employee Optional Retirement System Investment Plan Program,~~  
1437 subject to the following conditions:

1438 1. The retiree ~~retirees~~ may not be reemployed with an  
1439 employer participating in the Florida Retirement System until  
1440 such person has been retired for 6 calendar months.

1441 2. A retiree employed in violation of this subsection and  
1442 an employer that employs or appoints such person are jointly and  
1443 severally liable for reimbursement of any benefits paid to the  
1444 retirement trust fund from which the benefits were paid,  
1445 ~~including the Retirement System Trust Fund and the Public~~  
1446 ~~Employee Optional Retirement Program Trust Fund, as appropriate.~~  
1447 The employer must have a written statement from the retiree that  
1448 he or she is not retired from a state-administered retirement  
1449 system.

1450 (14) PAYMENT OF BENEFITS.—This subsection applies to the  
1451 payment of benefits to a payee (retiree or beneficiary) under  
1452 the Florida Retirement System:

1453 (d) A payee whose retirement benefits are reduced by the  
1454 application of maximum benefit limits under s. 415(b) of the  
1455 Internal Revenue Code, as specified in s. 121.30(5), shall have  
1456 the portion of his or her calculated benefit in the Florida  
1457 Retirement System's pension System ~~defined benefit~~ plan which  
1458 exceeds such federal limitation paid through the Florida  
1459 Retirement System Preservation of Benefits Plan, as provided in  
1460 s. 121.1001.

1461 Section 15. Subsection (1) and paragraph (a) of subsection  
1462 (2) of section 121.1001, Florida Statutes, is amended to read:



200064

1463           121.1001 Florida Retirement System Preservation of Benefits  
1464 Plan.—Effective July 1, 1999, the Florida Retirement System  
1465 Preservation of Benefits Plan is established as a qualified  
1466 governmental excess benefit arrangement pursuant to s. 415(m) of  
1467 the Internal Revenue Code. The Preservation of Benefits Plan is  
1468 created as a separate portion of the Florida Retirement System,  
1469 for the purpose of providing benefits to a payee (retiree or  
1470 beneficiary) of the Florida Retirement System whose benefits  
1471 would otherwise be limited by s. 415(b) of the Internal Revenue  
1472 Code.

1473           (1) ELIGIBILITY TO PARTICIPATE IN THE PRESERVATION OF  
1474 BENEFITS PLAN.—A payee of the Florida Retirement System shall  
1475 participate in the Preservation of Benefits Plan if ~~whenever~~ his  
1476 or her earned benefit under the Florida Retirement System's  
1477 pension System ~~defined benefit~~ plan exceeds the benefit maximum  
1478 established under s. 415(b) of the Internal Revenue Code.  
1479 Participation in the Preservation of Benefits Plan shall  
1480 continue for as long as the payee's earned benefit under the  
1481 pension ~~Florida Retirement System defined benefit~~ plan is  
1482 reduced by the application of the maximum benefit limit under s.  
1483 415(b) of the Internal Revenue Code.

1484           (2) BENEFITS PAYABLE UNDER THE PRESERVATION OF BENEFITS  
1485 PLAN.—

1486           (a) On and after July 1, 1999, the Division of Retirement  
1487 shall pay to each eligible payee of the Florida Retirement  
1488 System who retires before, on, or after that ~~such~~ date, a  
1489 supplemental retirement benefit equal to the difference between  
1490 the amount of the payee's monthly retirement benefit which would  
1491 have been payable under the Florida Retirement System's pension



200064

1492 ~~System defined benefit~~ plan if not for a reduction due to the  
1493 application of s. 415(b) of the Internal Revenue Code and the  
1494 reduced monthly retirement benefit as paid to the payee. The  
1495 Preservation of Benefits Plan benefit shall be computed and  
1496 payable under the same terms and conditions and to the same  
1497 person as would have applied under the pension ~~Florida~~  
1498 ~~Retirement System defined benefit~~ plan were it not for the  
1499 federal limitation.

1500 Section 16. Subsection (1) of section 121.121, Florida  
1501 Statutes, is amended to read:

1502 121.121 Authorized leaves of absence.-

1503 (1) A member may purchase creditable service for up to 2  
1504 work years of authorized leaves of absence, including any leaves  
1505 of absence covered under the Family Medical Leave Act, if:

1506 (a) The member has completed a minimum of 6 years of  
1507 creditable service, excluding periods for which a leave of  
1508 absence was authorized;

1509 (b) The leave of absence is authorized in writing by the  
1510 employer of the member and approved by the administrator;

1511 (c) The member returns to active employment performing  
1512 service with a Florida Retirement System employer in a regularly  
1513 established position immediately upon termination of the leave  
1514 of absence and remains on the employer's payroll for 1 calendar  
1515 month, except that a member who retires on disability while on a  
1516 medical leave of absence may ~~shall~~ not be required to return to  
1517 employment. A member whose work year is less than 12 months and  
1518 whose leave of absence terminates between school years is  
1519 eligible to receive credit for the leave of absence if ~~as long~~  
1520 ~~as~~ he or she returns to the employment ~~of his or her employer~~ at



200064

1521 the beginning of the next school year and remains on the  
1522 employer's payroll for 1 calendar month; and  
1523 (d) The member makes the required contributions for service  
1524 credit during the leave of absence, which shall be 8 percent  
1525 until January 1, 1975, and 9 percent thereafter of his or her  
1526 rate of monthly compensation in effect immediately before ~~prior~~  
1527 ~~to~~ the commencement of such leave for each month of such period,  
1528 plus 4 percent interest until July 1, 1975, and 6.5 percent  
1529 interest thereafter on such contributions, compounded annually  
1530 each June 30 from the due date of the contribution to date of  
1531 payment. Effective July 1, 1980, any leave of absence purchased  
1532 pursuant to this section is shall be at the contribution rates  
1533 specified in s. 121.071 or s. 121.71 in effect at the time the  
1534 leave is granted for the class of membership from which the  
1535 leave of absence was granted; however, any member who purchased  
1536 leave-of-absence credit before ~~prior to~~ July 1, 1980, for a  
1537 leave of absence from a position in a class other than the  
1538 regular membership class, may pay the appropriate additional  
1539 contributions plus compound interest thereon and receive  
1540 creditable service for such leave of absence in the membership  
1541 class from which the member was granted the leave of absence.  
1542 Effective July 1, 2011, any leave of absence purchased pursuant  
1543 to this section shall be at the employee and employer  
1544 contribution rates specified in s. 121.71 in effect during the  
1545 leave for the class of membership from which the leave of  
1546 absence was granted.

1547 Section 17. Subsection (2) of section 121.122, Florida  
1548 Statutes, is amended, and subsection (3) is added to that  
1549 section, to read:



200064

1550 121.122 Renewed membership in system.-

1551 (2) A retiree of a state-administered retirement system who  
1552 is initially reemployed on or after July 1, 2010, through June  
1553 30, 2011, shall become a member of the Regular Class and be  
1554 enrolled in the Florida Retirement System Investment Plan on  
1555 July 1, 2011, and must resatisfy the vesting requirements and  
1556 other provisions provided in this chapter ~~is not eligible for~~  
1557 ~~renewed membership.~~

1558 (a) Creditable service, including credit towards the  
1559 retiree health insurance subsidy provided in s. 112.363, does  
1560 not accrue for a retiree's employment in a regularly established  
1561 position with a covered employer during the period from July 1,  
1562 2010, through June 30, 2011.

1563 (b) Employer contributions, interest, earnings, or any  
1564 other funds may not be paid into a renewed member's investment  
1565 plan account for any employment in a regularly established  
1566 position with a covered employer during the period from July 1,  
1567 2010, through June 30, 2011.

1568 (c) To be eligible to receive a retirement benefit under  
1569 the investment plan, the renewed member must meet the vesting  
1570 requirements of the plan as provided in s. 121.4501(6).

1571 (d) The member is not entitled to disability benefits as  
1572 provided in s. 121.091(4) or s. 121.591(2).

1573 (e) The member must meet the reemployment after retirement  
1574 limitations as provided in s. 121.091(9), as applicable.

1575 (f) Upon the renewed membership or reemployment of a  
1576 retiree, the employer of such member and the retiree shall pay  
1577 the applicable employer and employee contributions as required  
1578 by ss. 112.363, 121.71, 121.74, and 121.76. Such contributions



200064

1579 are payable only for employment in a regularly established  
1580 position with a covered employer on or after July 1, 2011.

1581 (g) The member may not purchase any prior or past service  
1582 in the investment plan, including employment in a regularly  
1583 established position with a covered employer during the period  
1584 from July 1, 2010, through June 30, 2011.

1585 (h) A renewed member who is not receiving the maximum  
1586 health insurance subsidy provided in s. 112.363 is entitled to  
1587 earn additional credit toward the subsidy. Such credit may be  
1588 earned only for employment in a regularly established position  
1589 with a covered employer on or after July 1, 2011. Any additional  
1590 subsidy due because of additional credit may be received only at  
1591 the time of paying the second career retirement benefit. The  
1592 total health insurance subsidy received by a retiree receiving  
1593 benefits from initial and renewed membership may not exceed the  
1594 maximum allowed under s. 112.363.

1595 (3) Any retiree of a state-administered retirement system  
1596 who is initially reemployed on or after July 1, 2011, in a  
1597 regularly established position with a covered employer,  
1598 including an elective public office that does not qualify for  
1599 the Elected Officers' Class, shall become a member of the  
1600 Regular Class and be enrolled in the Florida Retirement System  
1601 Investment Plan, and must resatisfy the vesting requirements and  
1602 other provisions provided in this chapter.

1603 (a) To be eligible to receive a retirement benefit under  
1604 the investment plan, the renewed member must meet the vesting  
1605 requirements of the investment plan as provided in s.  
1606 121.4501(6).

1607 (b) The member is not entitled to disability benefits as



200064

1608 provided in s. 121.091(4) or s. 121.591(2).

1609 (c) The member must meet the reemployment after retirement  
1610 limitations provided in s. 121.091(9), as applicable.

1611 (d) Upon renewed membership or reemployment of a retiree,  
1612 the employer of such member and the retiree must pay the  
1613 applicable employer and employee contributions as required by  
1614 ss. 112.363, 121.71, 121.74, and 121.76.

1615 (e) The member may not purchase any prior or past service  
1616 in the investment plan.

1617 (f) A renewed member who is not receiving the maximum  
1618 health insurance subsidy provided in s. 112.363 is entitled to  
1619 earn additional credit toward the subsidy. Any additional  
1620 subsidy due because of additional credit may be received only at  
1621 the time of paying the second career retirement benefit. The  
1622 total health insurance subsidy received by a retiree receiving  
1623 benefits from initial and renewed membership may not exceed the  
1624 maximum allowed under s. 112.363.

1625 Section 18. Section 121.125, Florida Statutes, is amended  
1626 to read:

1627 121.125 Credit for workers' compensation payment periods.—A  
1628 member of the retirement system created by this chapter who has  
1629 been eligible or becomes eligible for ~~to receive~~ workers'  
1630 compensation payments for an injury or illness that occurred  
1631 ~~occurring~~ during ~~his or her~~ employment while a member of a ~~any~~  
1632 state retirement system shall, upon return to active employment  
1633 with a covered employer for 1 calendar month or upon approval  
1634 for disability retirement in accordance with s. 121.091(4),  
1635 receive full retirement credit for the period before ~~prior to~~  
1636 such return to active employment or disability retirement for





200064

1637 which the workers' compensation payments were received. However,  
1638 a ~~ne~~ member may not receive retirement credit for ~~any~~ such  
1639 period occurring after the earlier of the date of maximum  
1640 medical improvement as defined in s. 440.02 or the date  
1641 termination has occurred as defined in s. 121.021(~~39~~). The  
1642 employer of record at the time of the worker's compensation  
1643 injury or illness shall make the required employee and employer  
1644 retirement contributions based on the member's rate of monthly  
1645 compensation immediately before ~~prior to his or her~~ receiving  
1646 workers' compensation payments for retirement credit received by  
1647 the member.

1648 Section 19. Paragraphs (g) and (i) of subsection (3) and  
1649 subsection (4) of section 121.35, Florida Statutes, are amended  
1650 to read:

1651 121.35 Optional retirement program for the State University  
1652 System.—

1653 (3) ELECTION OF OPTIONAL PROGRAM.—

1654 (g) An eligible employee who is a member of the Florida  
1655 Retirement System at the time of electing ~~election~~ to  
1656 participate in the optional retirement program shall retain all  
1657 retirement service credit earned under the Florida Retirement  
1658 System, at the rate earned. ~~No~~ Additional service credit in the  
1659 ~~Florida Retirement~~ system may not ~~shall~~ be earned while the  
1660 employee participates in the optional program, and ~~nor shall~~ the  
1661 employee is not ~~be~~ eligible for disability retirement under the  
1662 ~~Florida Retirement~~ system. An eligible employee may transfer  
1663 from the Florida Retirement System to his or her accounts under  
1664 the State University System Optional Retirement Program a sum  
1665 representing the present value of the employee's accumulated



200064

1666 benefit obligation under the ~~defined benefit program of the~~  
1667 Florida Retirement System's pension plan System for any service  
1668 credit accrued from the employee's first eligible transfer date  
1669 to the optional retirement program through the actual date of  
1670 such transfer, if such service credit was earned ~~in the period~~  
1671 from July 1, 1984, through December 31, 1992. The present value  
1672 of the employee's accumulated benefit obligation shall be  
1673 calculated as described in s. 121.4501(3) ~~s. 121.4501(3)(c)2.~~  
1674 Upon ~~such~~ transfer, all ~~such~~ service credit ~~previously~~ earned  
1675 under the pension plan ~~defined benefit program of the Florida~~  
1676 ~~Retirement System~~ during this period is ~~shall be~~ nullified for  
1677 purposes of entitlement to a future benefit under the pension  
1678 plan ~~defined benefit program of the Florida Retirement System.~~

1679 (i) Effective January 1, 2008, through December 31, 2008,  
1680 except for an employee who is a mandatory member ~~participant~~ of  
1681 the State University System Optional Retirement Program, an  
1682 employee who has elected to participate in the State University  
1683 System Optional Retirement Program shall have one opportunity,  
1684 at the employee's discretion, ~~to choose~~ to transfer from this  
1685 program to the pension plan or the investment plan ~~defined~~  
1686 ~~benefit program of the Florida Retirement System or to the~~  
1687 ~~Public Employee Optional Retirement Program~~, subject to the  
1688 terms of the applicable contracts of the State University System  
1689 Optional Retirement Program.

1690 1. If the employee chooses to move to the investment plan  
1691 ~~Public Employee Optional Retirement~~ program, any contributions,  
1692 interest, and earnings creditable to the employee under the  
1693 State University System Optional Retirement Program must ~~shall~~  
1694 be retained by the employee in the State University System



200064

1695 Optional Retirement Program, and the applicable provisions of s.  
1696 121.4501(4) shall govern the election.

1697 2. If the employee chooses to move to the pension plan  
1698 ~~defined benefit program of the Florida Retirement System~~, the  
1699 employee shall receive service credit equal to his or her years  
1700 of service under the State University System Optional Retirement  
1701 Program.

1702 a. The cost for such credit must be in ~~shall be~~ an amount  
1703 representing the actuarial accrued liability for the affected  
1704 period of service. The cost must ~~shall~~ be calculated using the  
1705 discount rate and other relevant actuarial assumptions that were  
1706 used to value the pension ~~Florida Retirement System defined~~  
1707 ~~benefit~~ plan liabilities in the most recent actuarial valuation.  
1708 The calculation must ~~shall~~ include any service already  
1709 maintained under the pension ~~defined benefit~~ plan in addition to  
1710 the years under the State University System Optional Retirement  
1711 Program. The actuarial accrued liability of any service already  
1712 maintained under the pension ~~defined benefit~~ plan must ~~shall~~ be  
1713 applied as a credit to total cost resulting from the  
1714 calculation. The division must ~~shall~~ ensure that the transfer  
1715 sum is prepared using a formula and methodology certified by an  
1716 enrolled actuary.

1717 b. The employee must transfer from his or her State  
1718 University System Optional Retirement Program account, and from  
1719 other employee moneys as necessary, a sum representing the  
1720 actuarial accrued liability immediately following the time of  
1721 such movement, determined assuming that attained service equals  
1722 the sum of service in the pension plan ~~defined benefit program~~  
1723 and service in the State University System Optional Retirement



200064

1724 Program.

1725 (4) CONTRIBUTIONS.—

1726 (a)1. Through June 30, 2001, each employer shall contribute  
1727 on behalf of each member of ~~participant in~~ the optional  
1728 retirement program an amount equal to the normal cost portion of  
1729 the employer retirement contribution which would be required if  
1730 the employee ~~participant~~ were a regular member of the Florida  
1731 Retirement System's pension plan ~~System defined benefit program~~,  
1732 plus the portion of the contribution rate required in s.  
1733 112.363(8) that would otherwise be assigned to the Retiree  
1734 Health Insurance Subsidy Trust Fund.

1735 2. Effective July 1, 2001, through June 30, 2011, each  
1736 employer shall contribute on behalf of each member of  
1737 ~~participant in~~ the optional retirement program an amount equal  
1738 to 10.43 percent of the employee's ~~participant's~~ gross monthly  
1739 compensation.

1740 3. Effective July 1, 2011, each member of the optional  
1741 retirement program shall contribute an amount equal to the  
1742 employee contribution required in s. 121.71(3). The employer  
1743 shall contribute on behalf of each such member an amount equal  
1744 to the difference between 10.43 percent of the employee's gross  
1745 monthly compensation and the amount equal to the employee's  
1746 required contribution based on the employee's gross monthly  
1747 compensation.

1748 4. ~~The department shall deduct an amount approved by the~~  
1749 ~~Legislature to provide for the administration of this program.~~  
1750 The payment of the contributions, including contributions by the  
1751 employee, to the optional program which is required by this  
1752 ~~paragraph for each participant~~ shall be made by the employer to



200064

1753 the department, which shall forward the contributions to the  
1754 designated company or companies contracting for payment of  
1755 benefits for member's of ~~the participant under~~ the program.  
1756 However, such contributions paid on behalf of an employee  
1757 described in paragraph (3) (c) may ~~shall~~ not be forwarded to a  
1758 company and do ~~shall~~ not begin to accrue interest until the  
1759 employee has executed a contract and notified the department.  
1760 The department shall deduct an amount from the contributions to  
1761 provide for the administration of this program.

1762 (b) Each employer shall contribute on behalf of each member  
1763 of participant ~~in~~ the optional retirement program an amount  
1764 equal to the unfunded actuarial accrued liability portion of the  
1765 employer contribution which would be required for members of the  
1766 Florida Retirement System. This contribution shall be paid to  
1767 the department for transfer to the Florida Retirement System  
1768 Trust Fund.

1769 (c) An Optional Retirement Program Trust Fund shall be  
1770 established in the State Treasury and administered by the  
1771 department to make payments to the provider companies on behalf  
1772 of ~~the~~ optional retirement program members ~~participants~~, and to  
1773 transfer the unfunded liability portion of the state optional  
1774 retirement program contributions to the Florida Retirement  
1775 System Trust Fund.

1776 (d) Contributions required for social security by each  
1777 employer and each employee ~~participant~~, in the amount required  
1778 for social security coverage as now or hereafter may be provided  
1779 by the federal Social Security Act, shall be maintained for each  
1780 member of ~~participant in~~ the optional retirement program and are  
1781 ~~shall be~~ in addition to the retirement contributions specified



200064

1782 in this subsection.

1783 (e) Each member of participant in the optional retirement  
1784 program who has executed a contract may contribute by way of  
1785 salary reduction or deduction a percentage amount of the  
1786 employee's participant's gross compensation not to exceed the  
1787 percentage amount contributed by the employer to the optional  
1788 program, but ~~in no case may~~ such contribution may not exceed  
1789 federal limitations. Payment of the employee's participant's  
1790 contributions shall be made by the financial officer of the  
1791 employer to the division which shall forward the contributions  
1792 to the designated company or companies contracting for payment  
1793 of benefits for members ~~the participant~~ under the program. A  
1794 member participant may not make, through salary reduction, any  
1795 voluntary employee contributions to any other plan under s.  
1796 403(b) of the Internal Revenue Code, with the exception of a  
1797 custodial account under s. 403(b)(7) of the Internal Revenue  
1798 Code, until he or she has made an employee contribution to his  
1799 or her optional program equal to the employer contribution. An  
1800 employee ~~A participant~~ is responsible for monitoring his or her  
1801 individual tax-deferred income to ensure he or she does not  
1802 exceed the maximum deferral amounts permitted under the Internal  
1803 Revenue Code.

1804 (f) The Optional Retirement Trust Fund may accept for  
1805 deposit into member participant contracts contributions in the  
1806 form of rollovers or direct trustee-to-trustee transfers by or  
1807 on behalf of members participants who are reasonably determined  
1808 by the department to be eligible for rollover or transfer to the  
1809 optional retirement program pursuant to the Internal Revenue  
1810 Code, if such contributions are made in accordance with rules



200064

1811 adopted by the department. Such contributions shall be accounted  
1812 for in accordance with any applicable requirements of the  
1813 Internal Revenue Code and department rules ~~of the department~~.

1814 (g) Effective July 1, 2008, for purposes of paragraph (a)  
1815 and notwithstanding s. 121.021(22)(b)1., the term "employee's  
1816 ~~participant's~~ gross monthly compensation" includes salary  
1817 payments made to eligible clinical faculty from a state  
1818 university using funds provided by a faculty practice plan  
1819 authorized by the Board of Governors of the State University  
1820 System if:

1821 1. There is no ~~not any~~ employer contribution from the state  
1822 university to any other retirement program with respect to such  
1823 salary payments; and

1824 2. The employer contribution on behalf of a member of the  
1825 ~~participant in~~ the optional retirement program with respect to  
1826 such salary payments is made using funds provided by the faculty  
1827 practice plan.

1828 Section 20. Subsections (1) and (2) of section 121.355,  
1829 Florida Statutes, is amended to read:

1830 121.355 Community College Optional Retirement Program and  
1831 State University System Optional Retirement Program member  
1832 transfer.—Effective January 1, 2009, through December 31, 2009,  
1833 an employee who is a former member of ~~participant in~~ the  
1834 Community College Optional Retirement Program or the State  
1835 University System Optional Retirement Program and present  
1836 mandatory member of ~~participant in~~ the Florida Retirement  
1837 System's pension ~~System defined benefit~~ plan may receive service  
1838 credit equal to his or her years of service under the Community  
1839 College Optional Retirement Program or the State University



200064

1840 System Optional Retirement Program under the following  
1841 conditions:

1842 (1) The cost for such credit must represent ~~shall be an~~  
1843 ~~amount representing~~ the actuarial accrued liability for the  
1844 affected period of service. The cost shall be calculated using  
1845 the discount rate and other relevant actuarial assumptions that  
1846 were used to value the Florida Retirement System's pension  
1847 ~~System defined benefit~~ plan liabilities in the most recent  
1848 actuarial valuation. The calculation must ~~shall~~ include any  
1849 service already maintained under the pension ~~defined benefit~~  
1850 plan in addition to the years under the Community College  
1851 Optional Retirement Program or the State University System  
1852 Optional Retirement Program. The actuarial accrued liability of  
1853 any service already maintained under the pension ~~defined benefit~~  
1854 plan shall be applied as a credit to total cost resulting from  
1855 the calculation. The division shall ensure that the transfer sum  
1856 is prepared using a formula and methodology certified by an  
1857 enrolled actuary.

1858 (2) The employee must transfer from his or her Community  
1859 College Optional Retirement Program account or State University  
1860 System Optional Retirement Program account, subject to the terms  
1861 of the applicable optional retirement program contract, and from  
1862 other employee moneys as necessary, a sum representing the  
1863 actuarial accrued liability immediately following the time of  
1864 such movement, determined assuming that attained service equals  
1865 the sum of service in the pension plan ~~defined benefit program~~  
1866 and service in the Community College Optional Retirement Program  
1867 or State University System Optional Retirement Program.

1868 Section 21. Section 121.4501, Florida Statutes, is amended





200064

1869 to read:

1870 121.4501 Florida Public Employee Optional Retirement System  
1871 Investment Plan Program.—

1872 (1) The Trustees of the State Board of Administration shall  
1873 establish a ~~an optional~~ defined contribution ~~retirement~~ program  
1874 called the Florida Retirement System Investment Plan for members  
1875 of the Florida Retirement System under which retirement benefits  
1876 are will be provided for eligible employees initially employed  
1877 before July 1, 2011, who elect to enroll participate in the  
1878 plan. Enrollment is compulsory for all eligible employees  
1879 employed on or after July 1, 2011, except for those who are  
1880 eligible to and elect to enroll in an optional retirement  
1881 program established under s. 121.055(6), s. 121.35, or s.  
1882 1012.875 program. The retirement benefits to be provided for or  
1883 on behalf of participants in such optional retirement program  
1884 shall be provided through employee-directed investments, in  
1885 accordance with s. 401(a) of the Internal Revenue Code and ~~its~~  
1886 related regulations. ~~The~~ Employers and employees shall make  
1887 contributions contribute, as provided in this section ~~and,~~ ss.  
1888 121.571~~7~~ and 121.71, to the Florida Public Employee Optional  
1889 Retirement System Investment Plan Program Trust Fund toward the  
1890 funding of ~~such optional~~ benefits.

1891 (2) DEFINITIONS.—As used in this part, the term:

1892 (a) "Approved provider" or "provider" means a private  
1893 sector company that is selected and approved by the state board  
1894 to offer one or more investment products or services to the  
1895 investment plan optional retirement program. The term includes a  
1896 bundled provider that offers plan members participants a range  
1897 of individually allocated or unallocated investment products and



200064

1898 may offer a range of administrative and customer services, which  
1899 may include accounting and administration of individual member  
1900 ~~participant~~ benefits and contributions; individual member  
1901 ~~participant~~ recordkeeping; asset purchase, control, and  
1902 safekeeping; direct execution of the member's ~~participant's~~  
1903 instructions as to asset and contribution allocation;  
1904 calculation of daily net asset values; direct access to member  
1905 ~~participant~~ account information; periodic reporting to members  
1906 ~~participants~~, at least quarterly, on account balances and  
1907 transactions; guidance, advice, and allocation services directly  
1908 relating to the provider's own investment options or products,  
1909 but only if the bundled provider complies with the standard of  
1910 care of s. 404(a)(1)(A-B) of the Employee Retirement Income  
1911 Security Act of 1974 (ERISA) and if providing such guidance,  
1912 advice, or allocation services does not constitute a prohibited  
1913 transaction under s. 4975(c)(1) of the Internal Revenue Code or  
1914 s. 406 of ERISA, notwithstanding that such prohibited  
1915 transaction provisions do not apply to the ~~optional~~ retirement  
1916 program; a broad array of distribution options; asset  
1917 allocation; and retirement counseling and education. Private  
1918 sector companies include investment management companies,  
1919 insurance companies, depositories, and mutual fund companies.

1920 (b) "Average monthly compensation" means one-twelfth of  
1921 average final compensation as defined in s. 121.021.

1922 (c) "Covered employment" means employment in a regularly  
1923 established position as defined in s. 121.021.

1924 ~~(d) "Defined benefit program" means the defined benefit~~  
1925 ~~program of the Florida Retirement System administered under part~~  
1926 ~~I of this chapter.~~



200064

1927           (d) "District school board employer" means a district  
1928 school board that participates in the Florida Retirement System  
1929 for the benefit of certain employees, or a charter school or  
1930 charter technical career center that participates in the Florida  
1931 Retirement System as provided under s. 121.051(2)(d).

1932           (e) "Division" means the Division of Retirement within the  
1933 department.

1934           (f) "Electronic means" means by telephone, if ~~the required~~  
1935 information is received on a recorded line, or through Internet  
1936 access, if ~~the required~~ information is captured online.

1937           (g) "Eligible employee" means an officer or employee, as  
1938 defined in s. 121.021, who:

1939           1. Is a member of, or is eligible for membership in, the  
1940 Florida Retirement System, including any renewed member of the  
1941 Florida Retirement System initially enrolled before July 1,  
1942 2010; or

1943           2. Participates in, or is eligible to participate in, the  
1944 Senior Management Service Optional Annuity Program as  
1945 established under s. 121.055(6), the State Community College  
1946 System Optional Retirement Program as established under s.  
1947 121.051(2)(c), or the State University System Optional  
1948 Retirement Program established under s. 121.35.

1949  
1950 The term does not include any member participating in the  
1951 Deferred Retirement Option Program established under s.  
1952 121.091(13), a retiree of a state-administered retirement system  
1953 initially reemployed on or after July 1, 2010, or a mandatory  
1954 member participant of the State University System Optional  
1955 Retirement Program established under s. 121.35.



200064

1956 (h) "Employer" means an employer, as defined in s. 121.021,  
1957 of an eligible employee.

1958 (i) "Investment plan" means the Florida Retirement System  
1959 Investment Plan, a defined contribution program established  
1960 under this part.

1961 (j) "Local employer" means an employer that is not a state  
1962 employer or a district school board employer.

1963 ~~(i) "Optional retirement program" or "optional program"~~  
1964 ~~means the Public Employee Optional Retirement Program~~  
1965 ~~established under this part.~~

1966 (k) ~~(j)~~ "Member Participant" means an eligible employee who  
1967 is enrolled enrolls in the investment plan optional program as  
1968 provided in subsection (4) or a terminated Deferred Retirement  
1969 Option Program participant as described in subsection (21).

1970 (l) "Pension plan" means the defined benefit program of the  
1971 Florida Retirement System administered under part I of this  
1972 chapter.

1973 (m) ~~(k)~~ "Retiree" means a former member participant of the  
1974 investment plan optional retirement program who has terminated  
1975 employment and has taken a distribution as provided in s.  
1976 121.591, except for a mandatory distribution of a de minimis  
1977 account authorized by the state board.

1978 (n) "State employer" means an agency, board, branch,  
1979 commission, community college, department, institution,  
1980 institution of higher education, or water management district  
1981 that participates in the Florida Retirement System for the  
1982 benefit of certain employees.

1983 (o) ~~(l)~~ "Vested" or "vesting" means the guarantee that a  
1984 member participant is eligible to receive a retirement benefit



200064

1985 upon completion of the required years of service under the  
1986 investment plan optional retirement program.

1987 (3) ELIGIBILITY; RETIREMENT SERVICE CREDIT; TRANSFER OF  
1988 BENEFITS.—

1989 ~~(a) Participation in the Public Employee Optional~~  
1990 ~~Retirement Program is limited to eligible employees.~~  
1991 ~~Participation in the optional retirement program is in lieu of~~  
1992 ~~participation in the defined benefit program of the Florida~~  
1993 ~~Retirement System.~~

1994 ~~(a)(b)~~ An eligible employee who is employed in a regularly  
1995 established position by a state employer on June 1, 2002; by a  
1996 district school board employer on September 1, 2002; or by a  
1997 local employer on December 1, 2002, and who is a member of the  
1998 pension plan defined benefit retirement program of the Florida  
1999 Retirement System at the time of his or her election to enroll  
2000 participate in the investment plan Public Employee Optional  
2001 Retirement Program shall retain all retirement service credit  
2002 earned under the pension plan defined benefit retirement program  
2003 of the Florida Retirement System as credited under the Florida  
2004 Retirement System and is shall be entitled to a deferred benefit  
2005 upon termination, ~~if eligible under the system.~~ However,  
2006 election to enroll participate in the investment plan Public  
2007 ~~Employee Optional Retirement Program~~ terminates the active  
2008 membership of the employee in the pension plan defined benefit  
2009 program of the Florida Retirement System, and the service of a  
2010 member of participant in the investment plan is Public Employee  
2011 Optional Retirement Program shall not be creditable under the  
2012 pension plan defined benefit retirement program of the Florida  
2013 Retirement System for purposes of benefit accrual but is



200064

2014 creditable ~~shall be credited~~ for purposes of vesting.

2015 (b)(c)1. Notwithstanding paragraph (a), ~~an (b),~~ each  
2016 eligible employee who elects to enroll ~~participate~~ in the  
2017 investment plan ~~Public Employee Optional Retirement Program~~ and  
2018 establishes one or more individual member ~~participant~~ accounts  
2019 ~~under the optional program~~ may elect to transfer to the  
2020 investment plan ~~optional program~~ a sum representing the present  
2021 value of the employee's accumulated benefit obligation under the  
2022 pension plan ~~defined benefit retirement program of the Florida~~  
2023 ~~Retirement System~~. Upon such transfer, all service credit  
2024 ~~previously~~ earned under the pension plan ~~is defined benefit~~  
2025 ~~program of the Florida Retirement System~~ shall be nullified for  
2026 purposes of entitlement to a future benefit under the pension  
2027 plan ~~defined benefit program of the Florida Retirement System~~. A  
2028 member ~~may not transfer participant~~ is precluded from  
2029 ~~transferring~~ the accumulated benefit obligation balance from the  
2030 pension plan ~~after the time defined benefit program upon the~~  
2031 ~~expiration of the period~~ for enrolling ~~afforded to enroll~~ in the  
2032 investment plan ~~optional program~~.

2033 1.2. For purposes of this subsection, the present value of  
2034 the member's accumulated benefit obligation is based upon the  
2035 member's estimated creditable service and estimated average  
2036 final compensation under the pension plan ~~defined benefit~~  
2037 program, subject to recomputation under subparagraph 2. 3. For  
2038 state employees ~~enrolling under subparagraph (4)(a)1.~~, initial  
2039 estimates shall ~~will~~ be based upon creditable service and  
2040 average final compensation as of midnight on June 30, 2002; for  
2041 district school board employees ~~enrolling under subparagraph~~  
2042 ~~(4)(b)1.~~, initial estimates shall ~~will~~ be based upon creditable



200064

2043 service and average final compensation as of midnight on  
2044 September 30, 2002; and for local government employees ~~enrolling~~  
2045 ~~under subparagraph (4)(c)1.~~, initial estimates shall ~~will~~ be  
2046 based upon creditable service and average final compensation as  
2047 of midnight on December 31, 2002. The dates ~~respectively~~  
2048 specified are ~~above shall be construed as~~ the "estimate date"  
2049 for these employees. The actuarial present value of the  
2050 employee's accumulated benefit obligation shall be based on the  
2051 following:

2052 a. The discount rate and other relevant actuarial  
2053 assumptions used to value the Florida Retirement System Trust  
2054 Fund at the time the amount to be transferred is determined,  
2055 consistent with the factors provided in sub-subparagraphs b. and  
2056 c.

2057 b. A benefit commencement age, based on the member's  
2058 estimated creditable service as of the estimate date. The  
2059 benefit commencement age is ~~shall be~~ the younger of the  
2060 following, but may ~~shall~~ not be younger than the member's age as  
2061 of the estimate date:

2062 (I) Age 62; or

2063 (II) The age the member would attain if the member  
2064 completed 30 years of service with an employer, assuming the  
2065 member worked continuously from the estimate date, and  
2066 disregarding any vesting requirement that would otherwise apply  
2067 under the pension plan ~~defined benefit program of the Florida~~  
2068 ~~Retirement System.~~

2069 c. For members of the Special Risk Class, and for members  
2070 of the Special Risk Administrative Support Class entitled to  
2071 retain the special risk normal retirement date, the benefit



200064

2072 commencement age is ~~shall be~~ the younger of the following, but  
2073 may ~~shall~~ not be younger than the member's age as of the  
2074 estimate date:

2075 (I) Age 55; or

2076 (II) The age the member would attain if the member  
2077 completed 25 years of service with an employer, assuming the  
2078 member worked continuously from the estimate date, and  
2079 disregarding any vesting requirement that would otherwise apply  
2080 under the pension plan ~~defined benefit program of the Florida~~  
2081 ~~Retirement System.~~

2082 d. The calculation must ~~shall~~ disregard vesting  
2083 requirements and early retirement reduction factors that would  
2084 otherwise apply under the pension plan ~~defined benefit~~  
2085 ~~retirement program.~~

2086 ~~2.3.~~ For each member ~~participant~~ who elects to transfer  
2087 moneys from the pension plan ~~defined benefit program~~ to his or  
2088 her account in the investment plan ~~optional program~~, the  
2089 division shall recompute the amount transferred under  
2090 subparagraph 1. ~~within 2.~~ ~~not later than~~ 60 days after the  
2091 actual transfer of funds based upon the member's ~~participant's~~  
2092 actual creditable service and actual final average compensation  
2093 as of the initial date of participation in the investment plan  
2094 ~~optional program~~. If the recomputed amount differs from the  
2095 amount transferred ~~under subparagraph 2.~~ by \$10 or more, the  
2096 division shall:

2097 a. Transfer, or cause to be transferred, from the Florida  
2098 Retirement System Trust Fund to the member's ~~participant's~~  
2099 account ~~in the optional program~~ the excess, if any, of the  
2100 recomputed amount over the previously transferred amount





200064

2101 together with interest from the initial date of transfer to the  
2102 date of transfer under this subparagraph, based upon the  
2103 effective annual interest equal to the assumed return on the  
2104 actuarial investment which was used in the most recent actuarial  
2105 valuation of the system, compounded annually.

2106 b. Transfer, or cause to be transferred, from the member's  
2107 ~~participant's~~ account to the Florida Retirement System Trust  
2108 Fund the excess, if any, of the previously transferred amount  
2109 over the recomputed amount, together with interest from the  
2110 initial date of transfer to the date of transfer under this  
2111 subparagraph, based upon 6 percent effective annual interest,  
2112 compounded annually, pro rata based on the member's  
2113 ~~participant's~~ allocation plan.

2114 3. If contribution adjustments are made as a result of  
2115 employer errors or corrections, including plan corrections,  
2116 following recomputation of the amount transferred under  
2117 subparagraph 1., the member is entitled to the additional  
2118 contributions or is responsible for returning any excess  
2119 contributions resulting from the correction if the return of  
2120 such contributions by the plan is made within 1 year after the  
2121 making of the erroneous contributions or such other period  
2122 allowed by applicable Internal Revenue Service guidance. The  
2123 present value of the member's accumulated benefit obligation may  
2124 not be recalculated.

2125 4. As directed by the member participant, the state board  
2126 shall transfer or cause to be transferred the appropriate  
2127 amounts to the designated accounts within. ~~The board shall~~  
2128 ~~establish transfer procedures by rule, but the actual transfer~~  
2129 ~~shall not be later than 30 days after the effective date of the~~



200064

2130 member's participation in the investment plan ~~optional program~~  
2131 unless the major financial markets for securities available for  
2132 a transfer are seriously disrupted by an unforeseen event that  
2133 ~~which also~~ causes the suspension of trading on any national  
2134 securities exchange in the country where the securities are ~~were~~  
2135 issued. In that event, the ~~such~~ 30-day period ~~of time~~ may be  
2136 extended by a resolution of the state board ~~trustees~~. The state  
2137 board shall establish transfer procedures by rule. Transfers are  
2138 not commissionable or subject to other fees and may be in the  
2139 form of securities or cash, as determined by the state board.  
2140 Such securities are ~~shall be~~ valued as of the date of receipt in  
2141 the member's ~~participant's~~ account.

2142 5. If the state board or the division receives notification  
2143 from the United States Internal Revenue Service that this  
2144 paragraph or any portion of this paragraph will cause the  
2145 retirement system, or a portion thereof, to be disqualified for  
2146 tax purposes under the Internal Revenue Code, ~~then~~ the portion  
2147 that will cause the disqualification does not apply. Upon such  
2148 notice, the state board and the division shall notify the  
2149 presiding officers of the Legislature.

2150 (4) PARTICIPATION; ENROLLMENT.—

2151 (a) ~~4~~. With respect to an eligible employee who is employed  
2152 in a regularly established position by a state employer after ~~on~~  
2153 June 1, 2002; by a district school board employer after  
2154 September 1, 2002; or by a local employer after December 1,  
2155 2002, but before July 1, 2011, the, ~~by a state employer:~~

2156 ~~a. Any such employee may elect to participate in the Public~~  
2157 ~~Employee Optional Retirement Program in lieu of retaining his or~~  
2158 ~~her membership in the defined benefit program of the Florida~~



200064

2159 ~~Retirement System. The election must be made in writing or by~~  
2160 ~~electronic means and must be filed with the third-party~~  
2161 ~~administrator by August 31, 2002, or, in the case of an active~~  
2162 ~~employee who is on a leave of absence on April 1, 2002, by the~~  
2163 ~~last business day of the 5th month following the month the leave~~  
2164 ~~of absence concludes. This election is irrevocable, except as~~  
2165 ~~provided in paragraph (c). Upon making such election, the~~  
2166 ~~employee shall be enrolled as a participant of the Public~~  
2167 ~~Employee Optional Retirement Program, the employee's membership~~  
2168 ~~in the Florida Retirement System shall be governed by the~~  
2169 ~~provisions of this part, and the employee's membership in the~~  
2170 ~~defined benefit program of the Florida Retirement System shall~~  
2171 ~~terminate. The employee's enrollment in the Public Employee~~  
2172 ~~Optional Retirement Program shall be effective the first day of~~  
2173 ~~the month for which a full month's employer contribution is made~~  
2174 ~~to the optional program.~~

2175 ~~b. Any such employee who fails to elect to participate in~~  
2176 ~~the Public Employee Optional Retirement Program within the~~  
2177 ~~prescribed time period is deemed to have elected to retain~~  
2178 ~~membership in the defined benefit program of the Florida~~  
2179 ~~Retirement System, and the employee's option to elect to~~  
2180 ~~participate in the optional program is forfeited.~~

2181 ~~2. With respect to employees who become eligible to~~  
2182 ~~participate in the Public Employee Optional Retirement Program~~  
2183 ~~by reason of employment in a regularly established position with~~  
2184 ~~a state employer commencing after April 1, 2002:~~

2185 ~~a. Any such employee shall, by default, be enrolled in the~~  
2186 ~~pension plan defined benefit retirement program of the Florida~~  
2187 ~~Retirement System at the commencement of employment, and may, by~~



200064

2188 the last business day of the 5th month following the employee's  
2189 month of hire, elect to enroll ~~participate~~ in the investment  
2190 plan ~~Public Employee Optional Retirement Program~~. The employee's  
2191 election must be made in writing or by electronic means and must  
2192 be filed with the third-party administrator. The election to  
2193 enroll ~~participate~~ in the investment plan ~~optional program~~ is  
2194 irrevocable, except as provided in paragraph (e).

2195 ~~1.b.~~ If the employee files such election within the  
2196 prescribed time period, enrollment in the investment plan is  
2197 ~~optional program~~ shall be effective on the first day of  
2198 employment. The employer and employee ~~retirement~~ contributions  
2199 paid through the month of the employee plan change shall be  
2200 transferred to the investment plan ~~optional program~~, and,  
2201 effective the first day of the next month, the employer and  
2202 employee must ~~shall~~ pay the applicable contributions based on  
2203 the employee membership class in the plan ~~optional program~~.

2204 ~~2.c.~~ An Any such employee who fails to elect to enroll  
2205 ~~participate~~ in the investment plan ~~Public Employee Optional~~  
2206 ~~Retirement Program~~ within the prescribed time period is deemed  
2207 to have elected to retain membership in the pension plan ~~defined~~  
2208 ~~benefit program of the Florida Retirement System~~, and the  
2209 employee's option to elect to enroll ~~participate~~ in the  
2210 investment plan ~~optional program~~ is forfeited.

2211 3. With respect to employees who become eligible to enroll  
2212 ~~participate~~ in the investment plan ~~Public Employee Optional~~  
2213 ~~Retirement Program~~ pursuant to s. 121.051(2)(c)3. or s.  
2214 121.35(3)(i), the any such employee may elect to enroll  
2215 ~~participate~~ in the investment plan ~~Public Employee Optional~~  
2216 ~~Retirement Program~~ in lieu of retaining his or her participation



200064

2217 in the State Community College System Optional Retirement  
2218 Program or the State University System Optional Retirement  
2219 Program. The election must be made in writing or by electronic  
2220 means and must be filed with the third-party administrator. This  
2221 election is irrevocable, except as provided in paragraph (e).  
2222 Upon making such election, the employee shall be enrolled in as  
2223 ~~a participant of the investment plan Public Employee Optional~~  
2224 ~~Retirement Program~~, the employee's membership in the Florida  
2225 Retirement System shall be governed by the provisions of this  
2226 part, and the employee's participation in the State Community  
2227 College System Optional Retirement Program or the State  
2228 University System Optional Retirement Program shall terminate.  
2229 The employee's enrollment in the investment plan is Public  
2230 ~~Employee Optional Retirement Program shall be effective on the~~  
2231 first day of the month for which a full month's employer  
2232 employee contributions are ~~contribution is~~ made to the  
2233 investment plan optional program.

2234 ~~4. For purposes of this paragraph, "state employer" means~~  
2235 ~~any agency, board, branch, commission, community college,~~  
2236 ~~department, institution, institution of higher education, or~~  
2237 ~~water management district of the state, which participates in~~  
2238 ~~the Florida Retirement System for the benefit of certain~~  
2239 ~~employees.~~

2240 ~~(b)1. With respect to an eligible employee who is employed~~  
2241 ~~in a regularly established position on September 1, 2002, by a~~  
2242 ~~district school board employer:~~

2243 ~~a. Any such employee may elect to participate in the Public~~  
2244 ~~Employee Optional Retirement Program in lieu of retaining his or~~  
2245 ~~her membership in the defined benefit program of the Florida~~



200064

2246 ~~Retirement System. The election must be made in writing or by~~  
2247 ~~electronic means and must be filed with the third-party~~  
2248 ~~administrator by November 30, or, in the case of an active~~  
2249 ~~employee who is on a leave of absence on July 1, 2002, by the~~  
2250 ~~last business day of the 5th month following the month the leave~~  
2251 ~~of absence concludes. This election is irrevocable, except as~~  
2252 ~~provided in paragraph (c). Upon making such election, the~~  
2253 ~~employee shall be enrolled as a participant of the Public~~  
2254 ~~Employee Optional Retirement Program, the employee's membership~~  
2255 ~~in the Florida Retirement System shall be governed by the~~  
2256 ~~provisions of this part, and the employee's membership in the~~  
2257 ~~defined benefit program of the Florida Retirement System shall~~  
2258 ~~terminate. The employee's enrollment in the Public Employee~~  
2259 ~~Optional Retirement Program shall be effective the first day of~~  
2260 ~~the month for which a full month's employer contribution is made~~  
2261 ~~to the optional program.~~

2262 ~~b. Any such employee who fails to elect to participate in~~  
2263 ~~the Public Employee Optional Retirement Program within the~~  
2264 ~~prescribed time period is deemed to have elected to retain~~  
2265 ~~membership in the defined benefit program of the Florida~~  
2266 ~~Retirement System, and the employee's option to elect to~~  
2267 ~~participate in the optional program is forfeited.~~

2268 ~~2. With respect to employees who become eligible to~~  
2269 ~~participate in the Public Employee Optional Retirement Program~~  
2270 ~~by reason of employment in a regularly established position with~~  
2271 ~~a district school board employer commencing after July 1, 2002:~~

2272 ~~a. Any such employee shall, by default, be enrolled in the~~  
2273 ~~defined benefit retirement program of the Florida Retirement~~  
2274 ~~System at the commencement of employment, and may, by the last~~



200064

2275 ~~business day of the 5th month following the employee's month of~~  
2276 ~~hire, elect to participate in the Public Employee Optional~~  
2277 ~~Retirement Program. The employee's election must be made in~~  
2278 ~~writing or by electronic means and must be filed with the third-~~  
2279 ~~party administrator. The election to participate in the optional~~  
2280 ~~program is irrevocable, except as provided in paragraph (c).~~

2281 ~~b. If the employee files such election within the~~  
2282 ~~prescribed time period, enrollment in the optional program shall~~  
2283 ~~be effective on the first day of employment. The employer~~  
2284 ~~retirement contributions paid through the month of the employee~~  
2285 ~~plan change shall be transferred to the optional program, and,~~  
2286 ~~effective the first day of the next month, the employer shall~~  
2287 ~~pay the applicable contributions based on the employee~~  
2288 ~~membership class in the optional program.~~

2289 ~~e. Any such employee who fails to elect to participate in~~  
2290 ~~the Public Employee Optional Retirement Program within the~~  
2291 ~~prescribed time period is deemed to have elected to retain~~  
2292 ~~membership in the defined benefit program of the Florida~~  
2293 ~~Retirement System, and the employee's option to elect to~~  
2294 ~~participate in the optional program is forfeited.~~

2295 ~~3. For purposes of this paragraph, "district school board~~  
2296 ~~employer" means any district school board that participates in~~  
2297 ~~the Florida Retirement System for the benefit of certain~~  
2298 ~~employees, or a charter school or charter technical career~~  
2299 ~~center that participates in the Florida Retirement System as~~  
2300 ~~provided in s. 121.051(2)(d).~~

2301 ~~(c)1. With respect to an eligible employee who is employed~~  
2302 ~~in a regularly established position on December 1, 2002, by a~~  
2303 ~~local employer:~~



200064

2304           ~~a. Any such employee may elect to participate in the Public~~  
2305 ~~Employee Optional Retirement Program in lieu of retaining his or~~  
2306 ~~her membership in the defined benefit program of the Florida~~  
2307 ~~Retirement System. The election must be made in writing or by~~  
2308 ~~electronic means and must be filed with the third-party~~  
2309 ~~administrator by February 28, 2003, or, in the case of an active~~  
2310 ~~employee who is on a leave of absence on October 1, 2002, by the~~  
2311 ~~last business day of the 5th month following the month the leave~~  
2312 ~~of absence concludes. This election is irrevocable, except as~~  
2313 ~~provided in paragraph (e). Upon making such election, the~~  
2314 ~~employee shall be enrolled as a participant of the Public~~  
2315 ~~Employee Optional Retirement Program, the employee's membership~~  
2316 ~~in the Florida Retirement System shall be governed by the~~  
2317 ~~provisions of this part, and the employee's membership in the~~  
2318 ~~defined benefit program of the Florida Retirement System shall~~  
2319 ~~terminate. The employee's enrollment in the Public Employee~~  
2320 ~~Optional Retirement Program shall be effective the first day of~~  
2321 ~~the month for which a full month's employer contribution is made~~  
2322 ~~to the optional program.~~

2323           ~~b. Any such employee who fails to elect to participate in~~  
2324 ~~the Public Employee Optional Retirement Program within the~~  
2325 ~~prescribed time period is deemed to have elected to retain~~  
2326 ~~membership in the defined benefit program of the Florida~~  
2327 ~~Retirement System, and the employee's option to elect to~~  
2328 ~~participate in the optional program is forfeited.~~

2329           ~~2. With respect to employees who become eligible to~~  
2330 ~~participate in the Public Employee Optional Retirement Program~~  
2331 ~~by reason of employment in a regularly established position with~~  
2332 ~~a local employer commencing after October 1, 2002:~~





200064

2333           ~~a. Any such employee shall, by default, be enrolled in the~~  
2334 ~~defined benefit retirement program of the Florida Retirement~~  
2335 ~~System at the commencement of employment, and may, by the last~~  
2336 ~~business day of the 5th month following the employee's month of~~  
2337 ~~hire, elect to participate in the Public Employee Optional~~  
2338 ~~Retirement Program. The employee's election must be made in~~  
2339 ~~writing or by electronic means and must be filed with the third-~~  
2340 ~~party administrator. The election to participate in the optional~~  
2341 ~~program is irrevocable, except as provided in paragraph (c).~~

2342           ~~b. If the employee files such election within the~~  
2343 ~~prescribed time period, enrollment in the optional program shall~~  
2344 ~~be effective on the first day of employment. The employer~~  
2345 ~~retirement contributions paid through the month of the employee~~  
2346 ~~plan change shall be transferred to the optional program, and,~~  
2347 ~~effective the first day of the next month, the employer shall~~  
2348 ~~pay the applicable contributions based on the employee~~  
2349 ~~membership class in the optional program.~~

2350           ~~e. Any such employee who fails to elect to participate in~~  
2351 ~~the Public Employee Optional Retirement Program within the~~  
2352 ~~prescribed time period is deemed to have elected to retain~~  
2353 ~~membership in the defined benefit program of the Florida~~  
2354 ~~Retirement System, and the employee's option to elect to~~  
2355 ~~participate in the optional program is forfeited.~~

2356           ~~3. For purposes of this paragraph, "local employer" means~~  
2357 ~~any employer not included in paragraph (a) or paragraph (b).~~

2358           ~~(b)-(d) Contributions available for self-direction by a~~  
2359 ~~member participant who has not selected one or more specific~~  
2360 ~~investment products shall be allocated as prescribed by the~~  
2361 ~~state board. The third-party administrator shall notify the~~



200064

2362 member ~~any such participant~~ at least quarterly that the member  
2363 ~~participant~~ should take an affirmative action to make an asset  
2364 allocation among the investment plan ~~optional program~~ products.

2365 (c) On or after July 1, 2011, a member of the pension plan  
2366 who obtains a refund of employee contributions retains his or  
2367 her prior plan choice upon return to employment in a regularly  
2368 established position with a participating employer.

2369 (d) A member of the investment plan who takes a  
2370 distribution of any contributions from his investment plan  
2371 account is considered a retiree. Upon reemployment in a  
2372 regularly established position with a participating employer,  
2373 the member returns as a new hire and, if applicable, may  
2374 participate in the Florida Retirement System.

2375 (e) After the period during which an eligible employee had  
2376 the choice to elect the pension plan ~~defined benefit program~~ or  
2377 the investment plan ~~optional retirement program~~, or the month  
2378 following the receipt of the eligible employee's plan election,  
2379 if sooner, the employee shall have one opportunity, at the  
2380 employee's discretion, to choose to move from the pension plan  
2381 ~~defined benefit program~~ to the investment plan ~~optional~~  
2382 ~~retirement program~~ or from the investment plan ~~optional~~  
2383 ~~retirement program~~ to the pension plan ~~defined benefit program~~.  
2384 Eligible employees may elect to move between Florida Retirement  
2385 System programs only if they are earning service credit in an  
2386 employer-employee relationship consistent with s.  
2387 121.021(17)(b), excluding leaves of absence without pay.  
2388 Effective July 1, 2005, such elections are effective on the  
2389 first day of the month following the receipt of the election by  
2390 the third-party administrator and are not subject to the



200064

2391 requirements regarding an employer-employee relationship or  
2392 receipt of contributions for the eligible employee in the  
2393 effective month, except when the election is received by the  
2394 third-party administrator. This paragraph is contingent upon  
2395 receiving approval from the Internal Revenue Service to include  
2396 ~~for including~~ the choice described herein within the programs  
2397 offered by the Florida Retirement System.

2398 1. If the employee chooses to move to the investment plan  
2399 ~~optional retirement program~~, the applicable provisions of  
2400 subsection (3) ~~this section shall~~ govern the transfer.

2401 2. If the employee chooses to move to the pension plan  
2402 ~~defined benefit program~~, the employee must transfer from his or  
2403 her investment plan ~~optional retirement program~~ account, and  
2404 from other employee moneys as necessary, a sum representing the  
2405 present value of that employee's accumulated benefit obligation  
2406 immediately following the time of such movement, determined  
2407 assuming that attained service equals the sum of service in the  
2408 pension plan ~~defined benefit program~~ and service in the  
2409 investment plan ~~optional retirement program~~. Benefit  
2410 commencement occurs on the first date the employee is eligible  
2411 for unreduced benefits, using the discount rate and other  
2412 relevant actuarial assumptions that were used to value the  
2413 pension ~~defined benefit~~ plan liabilities in the most recent  
2414 actuarial valuation. For any employee who, at the time of the  
2415 second election, already maintains an accrued benefit amount in  
2416 the pension plan ~~defined benefit program~~, the then-present value  
2417 of the accrued benefit shall be deemed part of the required  
2418 transfer amount. The division shall ensure that the transfer sum  
2419 is prepared using a formula and methodology certified by an



200064

2420 enrolled actuary. A refund of any employee contributions or  
2421 additional employee payments which exceed the employee  
2422 contributions that would have accrued had the employee remained  
2423 in the pension plan and not transferred to the investment plan  
2424 is not permitted.

2425 3. Notwithstanding subparagraph 2., an employee who chooses  
2426 to move to the pension plan defined benefit program and who  
2427 ~~became eligible to participate in the optional retirement~~  
2428 ~~program by reason of employment in a regularly established~~  
2429 ~~position with a state employer after June 1, 2002; a district~~  
2430 ~~school board employer after September 1, 2002; or a local~~  
2431 ~~employer after December 1, 2002,~~ must transfer from his or her  
2432 investment plan optional retirement program account, and from  
2433 other employee moneys as necessary, a sum representing the  
2434 employee's actuarial accrued liability. A refund of any employee  
2435 contributions or additional employee payments which exceed the  
2436 employee contributions that would have accrued had the employee  
2437 remained in the pension plan and not transferred to the  
2438 investment plan is not permitted.

2439 4. An employee's ability to transfer from the pension plan  
2440 ~~defined benefit program~~ to the investment plan optional  
2441 ~~retirement program~~ pursuant to paragraphs (a) and (b) ~~(a)-(d)~~,  
2442 and the ability of a current employee to have an option to later  
2443 transfer back into the pension plan defined benefit program  
2444 under subparagraph 2., shall be deemed a significant system  
2445 amendment. Pursuant to s. 121.031(4), any resulting unfunded  
2446 liability arising from actual original transfers from the  
2447 pension plan defined benefit program to the investment plan  
2448 ~~optional program~~ must be amortized within 30 plan years as a



200064

2449 separate unfunded actuarial base independent of the reserve  
2450 stabilization mechanism defined in s. 121.031(3)(f). For the  
2451 first 25 years, a direct amortization payment may not be  
2452 calculated for this base. During this 25-year period, the  
2453 separate base shall be used to offset the impact of employees  
2454 exercising their second program election under this paragraph.  
2455 It is the intent of the Legislature that the actuarial funded  
2456 status of the pension plan ~~defined benefit program~~ not be  
2457 affected by such second program elections in any significant  
2458 manner, after due recognition of the separate unfunded actuarial  
2459 base. Following the initial 25-year period, any remaining  
2460 balance of the original separate base shall be amortized over  
2461 the remaining 5 years of the required 30-year amortization  
2462 period.

2463 5. If the employee chooses to transfer from the investment  
2464 plan ~~optional retirement program~~ to the pension plan ~~defined~~  
2465 ~~benefit program~~ and retains an excess account balance in the  
2466 investment plan ~~optional program~~ after satisfying the buy-in  
2467 requirements under this paragraph, the excess may not be  
2468 distributed until the member retires from the pension plan  
2469 ~~defined benefit program~~. The excess account balance may be  
2470 rolled over to the pension plan ~~defined benefit program~~ and used  
2471 to purchase service credit or upgrade creditable service in that  
2472 program.

2473 (f) On or after July 1, 2011, an employee in the pension  
2474 plan who obtains a refund of employee contributions shall retain  
2475 his or her prior plan choice upon return to employment in a  
2476 regularly established position with an employer participating in  
2477 the Florida Retirement System.



200064

2478           (g) A member who terminates covered employment in the  
2479 Florida Retirement System and takes a distribution of any  
2480 contributions from his investment plan account is considered a  
2481 retiree. Upon reemployment in a regularly established position  
2482 with a covered employer, the retiree returns as a new hire and,  
2483 if applicable, may participate in the Florida Retirement System.

2484           (h) All eligible employees initially enrolled on or after  
2485 July 1, 2011, except those who are eligible to and elect to  
2486 enroll in an optional retirement program established under s.  
2487 121.055(6), s. 121.35, or s. 1012.875, are compulsory members of  
2488 the investment plan and membership in the pension plan is not  
2489 permitted except as provided in s. 121.591. Such employees may  
2490 not use the election opportunity specified in paragraph (e).

2491           (5) CONTRIBUTIONS.—

2492           (a) The ~~Each~~ employer and employee shall make the required  
2493 contributions to the investment plan based on a percentage of  
2494 the employee's gross monthly compensation ~~contribute on behalf~~  
2495 of each participant in the Public Employee optional retirement  
2496 Program, as provided in part III of this chapter.

2497           (b) Employee contributions shall be paid on a pretax basis,  
2498 as provided in s. 401 of the Internal Revenue Code. Such  
2499 contributions may not exceed federal limitations. An employee is  
2500 responsible for monitoring his or her individual contributions  
2501 to ensure that he or she does not exceed the maximum deferral  
2502 amounts permitted under the Internal Revenue Code. A employee's  
2503 total contribution equals the sum of all amounts deducted from  
2504 the employee's salary by his or her employer in accordance with  
2505 s. 121.71(2) and credited to his or her individual account in  
2506 the investment plan, plus any earnings on such amounts and any



200064

2507 contributions specified in paragraph (e).

2508 (c) The state board, acting as plan fiduciary, shall ensure  
2509 that all plan assets are held in a trust, pursuant to s. 401 of  
2510 the Internal Revenue Code. The fiduciary shall ensure that said  
2511 contributions are allocated as follows:

2512 1. The employer and employee portion earmarked for member  
2513 ~~participant~~ accounts shall be used to purchase interests in the  
2514 appropriate investment vehicles ~~for the accounts of each~~  
2515 ~~participant~~ as specified by the member participant, or in  
2516 accordance with paragraph (4) (b) ~~(4) (d)~~.

2517 2. The employer portion earmarked for administrative and  
2518 educational expenses shall be transferred to the state board.

2519 3. The employer portion earmarked for disability benefits  
2520 shall be transferred to the department.

2521 ~~(d) (b)~~ Employers are responsible for notifying employees  
2522 ~~participants~~ regarding maximum contribution levels authorized  
2523 ~~permitted~~ under the Internal Revenue Code. If a member  
2524 ~~participant~~ contributes to any other tax-deferred plan, he or  
2525 she is responsible for ensuring that total contributions made to  
2526 the investment plan optional program and to any other such plan  
2527 do not exceed federally permitted maximums.

2528 ~~(e) (e)~~ The investment plan ~~Public Employee Optional~~  
2529 ~~Retirement Program~~ may accept for deposit into member  
2530 ~~participant~~ accounts contributions in the form of rollovers or  
2531 direct trustee-to-trustee transfers by or on behalf of members  
2532 ~~participants~~, reasonably determined by the state board to be  
2533 eligible for rollover or transfer to the investment plan  
2534 ~~optional retirement program~~ pursuant to the Internal Revenue  
2535 Code, if such contributions are made in accordance with rules ~~as~~



200064

2536 ~~may be~~ adopted by the board. Such contributions must ~~shall~~ be  
2537 accounted for in accordance with ~~any~~ applicable Internal Revenue  
2538 Code requirements and rules of the state board.

2539 (6) VESTING REQUIREMENTS.—

2540 (a) A member is fully and immediately vested in all  
2541 employee contributions paid to the investment plan as provided  
2542 in s. 121.72(2), plus interest and earnings thereon and less  
2543 investment fees and administrative charges.

2544 (b) ~~(a)~~1. With respect to employer contributions paid on  
2545 behalf of a member of the participant to the investment plan  
2546 optional retirement program, plus interest and earnings thereon  
2547 and less investment fees and administrative charges, a member  
2548 who voluntarily elected to enroll in the investment plan before  
2549 July 1, 2011, or an eligible employee initially enrolled in the  
2550 Florida Retirement System before July 1, 2011, who has the  
2551 option to voluntarily elect to enroll in the investment plan,  
2552 participant is vested after completing 1 work year with an  
2553 employer, including any service while the employee participant  
2554 was a member of the pension plan defined benefit program or an  
2555 optional retirement program authorized under s. 121.051(2)(c),  
2556 or s. 121.055(6), or s. 121.35.

2557 2. With respect to employer contributions paid on behalf of  
2558 the member of the investment plan, plus interest and earnings  
2559 thereon and less investment fees and administrative charges, an  
2560 employee initially enrolled in the Florida Retirement System on  
2561 or after July 1, 2011, is vested according to the following  
2562 schedule:

- 2563 a. Prior to completion of 3 years of service.....0%  
2564 b. Upon completion of 3 years of service.....40%





- 2565 c. Upon completion of 4 years of service.....80%
- 2566 d. Upon completion of 5 or more years of service.....100%

2567

2568 Years of service includes any service completed while the

2569 employee was a member of the pension plan or an optional

2570 retirement program authorized under s. 121.051(2)(c), s.

2571 121.055(6), or s. 121.35.

2572 ~~3.2.~~ If the member participant terminates employment before

2573 satisfying the vesting requirements, the nonvested accumulation

2574 must be transferred from the member's participant's accounts to

2575 the state board for deposit and investment by the state board in

2576 the suspense account created within the Florida Public Employee

2577 Optional Retirement System Investment Plan Program Trust Fund.

2578 If the terminated member participant is reemployed as an

2579 eligible employee within 5 years, the state board shall transfer

2580 to the member's participant's account any amount previously

2581 transferred from the member's participant's accounts to the

2582 suspense account, plus actual earnings on such amount while in

2583 the suspense account.

2584 ~~(c)(b)~~1. With respect to amounts transferred from the

2585 pension plan defined benefit program to the investment plan

2586 program, plus interest and earnings, and less investment fees

2587 and administrative charges, a member participant shall be vested

2588 in the employer amount transferred upon meeting the service

2589 requirements for the employee's participant's membership class

2590 as set forth in s. 121.021(29). The third-party administrator

2591 shall account for such amounts for each member participant. The

2592 division shall notify the member participant and the third-party

2593 administrator when the member participant has satisfied the



200064

2594 vesting period for Florida Retirement System purposes.

2595       2. If the member participant terminates employment before  
2596 satisfying the vesting requirements, the nonvested employer  
2597 accumulation must be transferred from the member's participant's  
2598 accounts to the state board for deposit and investment by the  
2599 state board in the suspense account created within the Florida  
2600 Public Employee Optional Retirement System Investment Plan  
2601 Program Trust Fund. If the terminated member participant is  
2602 reemployed as an eligible employee within 5 years, the state  
2603 board shall transfer to the member's participant's account any  
2604 amount previously transferred from the member's participant's  
2605 accounts to the suspense account, plus the actual earnings on  
2606 such amount while in the suspense account.

2607       (d) (e) Any nonvested accumulations transferred from a  
2608 member's participant's account to the state board's suspense  
2609 account, including any accompanying services credit, shall be  
2610 forfeited by the member participant if the member participant is  
2611 not reemployed as an eligible employee within 5 years after  
2612 termination.

2613       (e) If the member elects to receive any of his or her  
2614 vested employer or employee contributions upon termination of  
2615 employment as defined in s. 121.021, except for a mandatory  
2616 distribution of a de minimis account authorized by the state  
2617 board or a minimum required distribution provided by s.  
2618 401(a) (9) of the Internal Revenue Code, the employee shall  
2619 forfeit all nonvested employer contributions and accompanying  
2620 service credit paid on behalf of the employee to the investment  
2621 plan.

2622       (7) BENEFITS.—Under the investment plan the normal



200064

2623 retirement date is the date on which a member attains age 62 or  
2624 completes 5 years of service, whichever occurs later. Plan  
2625 benefits must ~~Public Employee Optional Retirement program:~~

2626 (a) ~~Benefits shall~~ Be provided in accordance with s. 401(a)  
2627 of the Internal Revenue Code.

2628 (b) ~~Benefits shall~~ Accrue in individual accounts that are  
2629 member-directed ~~participant-directed~~, portable, and funded by  
2630 employer contributions and earnings thereon.

2631 (c) ~~Benefits shall~~ Be payable in accordance with ~~the~~  
2632 ~~provisions of~~ s. 121.591.

2633 (8) ADMINISTRATION OF PLAN ~~PROGRAM~~.—

2634 ~~(a)~~ The investment plan ~~optional retirement program~~ shall  
2635 be administered by the state board and affected employers. The  
2636 state board may require oaths, by affidavit or otherwise, and  
2637 acknowledgments from persons in connection with the  
2638 administration of its statutory duties and responsibilities for  
2639 the plan ~~this program~~. An oath, by affidavit or otherwise, may  
2640 not be required of an employee ~~participant~~ at the time of  
2641 enrollment. For members enrolled before July 1, 2011,  
2642 acknowledgment of an employee's election to enroll ~~participate~~  
2643 in the plan ~~may program shall~~ be no greater than necessary to  
2644 confirm the employee's election. The state board shall adopt  
2645 rules to carry out its statutory duties with respect to  
2646 administering the investment plan ~~optional retirement program~~,  
2647 including ~~establishing~~ the roles and responsibilities of  
2648 affected state, local government, and education-related  
2649 employers, the state board, the department, and third-party  
2650 contractors. The department shall adopt rules necessary to  
2651 administer the investment plan ~~optional program~~ in coordination



200064

2652 with the pension plan ~~defined benefit program~~ and the disability  
2653 benefits available under the investment plan ~~optional program~~.

2654 ~~(a) (b)~~1. The state board shall select and contract with a  
2655 ~~one~~ third-party administrator to provide administrative services  
2656 if those services cannot be competitively and contractually  
2657 provided by the division ~~of Retirement within the Department of~~  
2658 ~~Management Services~~. With the approval of the state board, the  
2659 third-party administrator may subcontract ~~with other~~  
2660 ~~organizations or individuals~~ to provide components of the  
2661 administrative services. As a cost of administration, the state  
2662 board may compensate ~~any~~ such contractor for its services, in  
2663 accordance with the terms of the contract, as is deemed  
2664 necessary or proper by the board. The third-party administrator  
2665 may not be an approved provider or be affiliated with an  
2666 approved provider.

2667 2. These administrative services may include, but are not  
2668 limited to, enrollment of eligible employees, collection of  
2669 employer and employee contributions, disbursement of ~~such~~  
2670 contributions to approved providers in accordance with the  
2671 allocation directions of members ~~participants~~; services relating  
2672 to consolidated billing; individual and collective recordkeeping  
2673 and accounting; asset purchase, control, and safekeeping; and  
2674 direct disbursement of funds to and from the third-party  
2675 administrator, the division, the state board, employers, plan  
2676 members ~~participants~~, approved providers, and beneficiaries.  
2677 This section does not prevent or prohibit a bundled provider  
2678 from providing any administrative or customer service, including  
2679 accounting and administration of individual member ~~participant~~  
2680 benefits and contributions; individual member ~~participant~~



200064

2681 recordkeeping; asset purchase, control, and safekeeping; direct  
2682 execution of the member's ~~participant's~~ instructions as to asset  
2683 and contribution allocation; calculation of daily net asset  
2684 values; direct access to member ~~participant~~ account information;  
2685 or periodic reporting to members ~~participants~~, at least  
2686 quarterly, on account balances and transactions, if these  
2687 services are authorized by the state board as part of the  
2688 contract.

2689 ~~(b)1.3.~~ The state board shall select and contract with one  
2690 or more organizations to provide educational services. With  
2691 approval of the state board, the organizations may subcontract  
2692 ~~with other organizations or individuals~~ to provide components of  
2693 the educational services. As a cost of administration, the state  
2694 board may compensate any such contractor for its services in  
2695 accordance with the terms of the contract, as is deemed  
2696 necessary or proper by the board. The education organization may  
2697 not be an approved provider or be affiliated with an approved  
2698 provider.

2699 ~~2.4.~~ Educational services shall be designed by the state  
2700 board and department to assist employers, eligible employees,  
2701 members ~~participants~~, and beneficiaries in order to maintain  
2702 compliance with United States Department of Labor regulations  
2703 under s. 404(c) of the Employee Retirement Income Security Act  
2704 of 1974, ~~and~~ to assist employees in understanding their ~~choice~~  
2705 ~~of defined benefit or defined contribution retirement program,~~  
2706 and, if applicable, the choice between the pension plan and the  
2707 investment plan alternatives. Educational services include, but  
2708 are not limited to, disseminating educational materials;  
2709 providing retirement planning education; explaining the pension



200064

2710 ~~differences between the defined benefit retirement plan and the~~  
2711 ~~investment defined contribution retirement plan; and offering~~  
2712 financial planning guidance on matters such as investment  
2713 diversification, investment risks, investment costs, and asset  
2714 allocation. An approved provider may also provide educational  
2715 information, including retirement planning and investment  
2716 allocation information concerning its products and services.

2717 (c)1. In evaluating and selecting a third-party  
2718 administrator, the state board shall establish criteria for  
2719 evaluating ~~under which it shall consider~~ the relative  
2720 capabilities and qualifications of each proposed administrator.  
2721 In developing such criteria, the state board shall consider:

2722 a. The administrator's demonstrated experience in providing  
2723 administrative services to public or private sector retirement  
2724 systems.

2725 b. The administrator's demonstrated experience in providing  
2726 daily valued recordkeeping for investment ~~to defined~~  
2727 ~~contribution~~ plans.

2728 c. The administrator's ability and willingness to  
2729 coordinate its activities with ~~the Florida Retirement System~~  
2730 employers, the state board, and the division, and to supply to  
2731 such employers, the board, and the division the information and  
2732 data they require, including, but not limited to, monthly  
2733 management reports, quarterly member participant reports, and ad  
2734 hoc reports requested by the department or state board.

2735 d. The cost-effectiveness and levels of the administrative  
2736 services provided.

2737 e. The administrator's ability to interact with the members  
2738 ~~participants~~, the employers, the state board, the division, and



200064

2739 the providers; the means by which members ~~participants~~ may  
2740 access account information, direct investment of contributions,  
2741 make changes to their accounts, transfer moneys between  
2742 available investment vehicles, and transfer moneys between  
2743 investment products; and any fees that apply to such activities.

2744 f. Any other factor deemed necessary by the ~~Trustees of the~~  
2745 state board ~~of Administration~~.

2746 2. In evaluating and selecting an educational provider, the  
2747 state board shall establish criteria under which it shall  
2748 consider the relative capabilities and qualifications of each  
2749 proposed educational provider. In developing such criteria, the  
2750 board shall consider:

2751 a. Demonstrated experience in providing educational  
2752 services to public or private sector retirement systems.

2753 b. Ability and willingness to coordinate its activities  
2754 with the ~~Florida Retirement System~~ employers, the state board,  
2755 and the division, and to supply to such employers, the board,  
2756 and the division the information and data they require,  
2757 including, but not limited to, reports on educational contacts.

2758 c. The cost-effectiveness and levels of the educational  
2759 services provided.

2760 d. Ability to provide educational services via different  
2761 media, including, but not limited to, the Internet, personal  
2762 contact, seminars, brochures, and newsletters.

2763 e. Any other factor deemed necessary by the ~~Trustees of the~~  
2764 state board ~~of Administration~~.

2765 3. The establishment of the criteria shall be solely within  
2766 the discretion of the state board.

2767 (d) The state board shall develop the form and content of



200064

2768 any contracts to be offered under the investment plan ~~Public~~  
2769 ~~Employee Optional Retirement Program~~. In developing the ~~its~~  
2770 contracts, the board shall ~~must~~ consider:

2771 1. The nature and extent of the rights and benefits to be  
2772 afforded in relation to the ~~required~~ contributions required  
2773 under the plan ~~program~~.

2774 2. The suitability of the rights and benefits provided ~~to~~  
2775 ~~be afforded~~ and the interests of employers in the recruitment  
2776 and retention of eligible employees.

2777 (e)1. The state board may contract ~~with any consultant~~ for  
2778 professional services, including legal, consulting, accounting,  
2779 and actuarial services, deemed necessary to implement and  
2780 administer the investment plan ~~optional program by the Trustees~~  
2781 ~~of the state board of Administration~~. The board may enter into a  
2782 contract with one or more vendors to provide low-cost investment  
2783 advice to members ~~participants~~, supplemental to education  
2784 provided by the third-party administrator. All fees under ~~any~~  
2785 such contract shall be paid by those members ~~participants~~ who  
2786 choose to use the services of the vendor.

2787 2. The department may contract ~~with consultants~~ for  
2788 professional services, including legal, consulting, accounting,  
2789 and actuarial services, deemed necessary to implement and  
2790 administer the investment plan ~~optional program~~ in coordination  
2791 with the pension plan ~~defined benefit program of the Florida~~  
2792 ~~Retirement System~~. The department, in coordination with the  
2793 state board, may enter into a contract with the third-party  
2794 administrator in order to coordinate services common to the  
2795 various programs within the Florida Retirement System.

2796 (f) The third-party administrator may ~~shall~~ not receive





200064

2797 direct or indirect compensation from an approved provider,  
2798 except as specifically provided for in the contract with the  
2799 state board.

2800 (g) The state board shall receive and resolve member  
2801 ~~participant~~ complaints against the investment plan ~~program~~, the  
2802 third-party administrator, or any plan ~~program~~ vendor or  
2803 provider; shall resolve any conflict between the third-party  
2804 administrator and an approved provider if such conflict  
2805 threatens the implementation or administration of the plan  
2806 ~~program~~ or the quality of services to employees; and may resolve  
2807 any other conflicts. The third-party administrator shall retain  
2808 all member ~~participant~~ records for at least 5 years for use in  
2809 resolving any member ~~participant~~ conflicts. The state board, the  
2810 third-party administrator, or a provider is not required to  
2811 produce documentation or an audio recording to justify action  
2812 taken with regard to a member ~~participant~~ if the action occurred  
2813 5 or more years before the complaint is submitted to the ~~state~~  
2814 board. It is presumed that all action taken 5 or more years  
2815 before the complaint is submitted was taken at the request of  
2816 the member ~~participant~~ and with the member's ~~participant's~~ full  
2817 knowledge and consent. To overcome this presumption, the member  
2818 ~~participant~~ must present documentary evidence or an audio  
2819 recording demonstrating otherwise.

2820 (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE REVIEW.—

2821 (a) The state board shall develop policy and procedures for  
2822 selecting, evaluating, and monitoring the performance of  
2823 approved providers and investment products ~~to which employees~~  
2824 ~~may direct retirement contributions~~ under the investment plan  
2825 ~~program~~. In accordance with such policy and procedures, the



200064

2826 state board shall designate and contract for a number of  
2827 investment products as determined by the board. The board shall  
2828 also select one or more bundled providers, each of which ~~whom~~  
2829 may offer multiple investment options and related services, if  
2830 ~~when~~ such ~~an~~ approach is determined by the board to provide  
2831 ~~afford~~ value to the members ~~participants~~ otherwise not available  
2832 through individual investment products. Each approved bundled  
2833 provider may offer investment options that provide members  
2834 ~~participants~~ with the opportunity to invest in each of the  
2835 following asset classes, to be composed of individual options  
2836 that represent ~~either~~ a single asset class or a combination  
2837 thereof: money markets, United States fixed income, United  
2838 States equities, and foreign stock. The state board shall review  
2839 and manage all educational materials, contract terms, fee  
2840 schedules, and other aspects of ~~the~~ approved provider  
2841 relationships to ensure that no provider is unduly favored or  
2842 penalized by virtue of its status within the investment plan.

2843 (b) The state board shall consider investment options or  
2844 products it considers appropriate to give members ~~participants~~  
2845 the opportunity to accumulate retirement benefits, subject to  
2846 the following:

2847 1. The investment plan ~~Public Employee Optional Retirement~~  
2848 ~~Program~~ must offer a diversified mix of low-cost investment  
2849 products that span the risk-return spectrum and may include a  
2850 guaranteed account as well as investment products, such as  
2851 individually allocated guaranteed and variable annuities, which  
2852 meet the requirements of this subsection and combine the ability  
2853 to accumulate investment returns with the option of receiving  
2854 lifetime income consistent with the long-term retirement



200064

2855 security of a pension plan and similar to the lifetime-income  
2856 benefit provided by the Florida Retirement System.

2857 2. Investment options or products offered by ~~the group of~~  
2858 approved providers may include mutual funds, group annuity  
2859 contracts, individual retirement annuities, interests in trusts,  
2860 collective trusts, separate accounts, and other such financial  
2861 instruments, and ~~may include~~ products that give members  
2862 ~~participants~~ the option of committing their contributions for an  
2863 extended time period in an effort to obtain returns higher than  
2864 those that could be obtained from investment products offering  
2865 full liquidity.

2866 3. The state board may ~~shall~~ not contract with a any  
2867 provider that imposes a front-end, back-end, contingent, or  
2868 deferred sales charge, or any other fee that limits or restricts  
2869 the ability of members ~~participants~~ to select any investment  
2870 product available in the investment plan ~~optional program~~. This  
2871 prohibition does not apply to fees or charges that are imposed  
2872 on withdrawals from products that give members ~~participants~~ the  
2873 option of committing ~~their~~ contributions for an extended time  
2874 period in an effort to obtain returns higher than those that  
2875 could be obtained from investment products offering full  
2876 liquidity, provided that the product ~~in question~~, net of all  
2877 fees and charges, produces material benefits relative to other  
2878 comparable products in the plan ~~program~~ offering full liquidity.

2879 4. Fees or charges for insurance features, such as  
2880 mortality and expense-risk charges, must be reasonable relative  
2881 to the benefits provided.

2882 (c) In evaluating and selecting approved providers and  
2883 products, the state board shall establish criteria for



200064

2884 ~~evaluating under which it shall consider~~ the relative  
2885 capabilities and qualifications of each proposed provider  
2886 company and product. In developing such criteria, the board  
2887 shall consider the following to the extent such factors may be  
2888 applied in connection with investment products, services, or  
2889 providers:

2890 1. Experience in the United States providing retirement  
2891 products and related financial services under investment ~~defined~~  
2892 ~~contribution retirement~~ plans.

2893 2. Financial strength and stability as ~~which shall be~~  
2894 evidenced by the highest ratings assigned by nationally  
2895 recognized rating services when comparing proposed providers  
2896 that are so rated.

2897 3. Intrastate and interstate portability of the product  
2898 offered, including early withdrawal options.

2899 4. Compliance with the Internal Revenue Code.

2900 5. The cost-effectiveness of the product provided and the  
2901 levels of service supporting the product relative to its  
2902 benefits and its characteristics, including, ~~without limitation,~~  
2903 the level of risk borne by the provider.

2904 6. The provider company's ability and willingness to  
2905 coordinate its activities with Florida Retirement System  
2906 employers, the department, and the state board, and to supply ~~to~~  
2907 the ~~such~~ employers, the department, and the board with the  
2908 information and data they require.

2909 7. The methods available to members ~~participants~~ to  
2910 interact with the provider company; the means by which members  
2911 ~~participants~~ may access account information, direct investment  
2912 of contributions, make changes to their accounts, transfer



2913 moneys between available investment vehicles, and transfer  
2914 moneys between provider companies; and any fees that apply to  
2915 such activities.

2916 8. The provider company's policies with respect to the  
2917 transfer of individual account balances, contributions, and  
2918 earnings thereon, both internally among investment products  
2919 offered by the provider company and externally between approved  
2920 providers, as well as any fees, charges, reductions, or  
2921 penalties that may be applied.

2922 9. An evaluation of specific investment products, taking  
2923 into account each product's experience in meeting its investment  
2924 return objectives net of all related fees, expenses, and  
2925 charges, including, but not limited to, investment management  
2926 fees, loads, distribution and marketing fees, custody fees,  
2927 recordkeeping fees, education fees, annuity expenses, and  
2928 consulting fees.

2929 10. Organizational factors, including, but not limited to,  
2930 financial solvency, organizational depth, and experience in  
2931 providing institutional and retail investment services.

2932 (d) ~~By March 1, 2010,~~ The state board shall identify and  
2933 offer at least one terror-free investment product that allocates  
2934 its funds among securities not subject to divestiture as  
2935 provided in s. 215.473 if the investment product is deemed by  
2936 the board to be consistent with prudent investor standards. No  
2937 person may bring a civil, criminal, or administrative action  
2938 against an approved provider; the state board; or any employee,  
2939 officer, director, or trustee of such provider based upon the  
2940 divestiture of any security or the offering of a terror-free  
2941 investment product as specified in this paragraph.



200064

2942 (e) As a condition of offering an ~~any~~ investment option or  
2943 product in the investment plan ~~optional retirement program~~, the  
2944 approved provider must agree to make the investment product or  
2945 service available under the most beneficial terms offered to any  
2946 other customer, subject to approval by the ~~Trustees of the state~~  
2947 board ~~of Administration~~.

2948 (f) The state board shall regularly review the performance  
2949 of each approved provider and product and related organizational  
2950 factors to ensure continued compliance with established  
2951 selection criteria and with board policy and procedures.  
2952 Providers and products may be terminated subject to contract  
2953 provisions. The state board shall adopt procedures to transfer  
2954 account balances from terminated products or providers to other  
2955 products or providers in the investment plan ~~optional program~~.

2956 (g)1. An approved provider shall comply with all applicable  
2957 federal and state securities and insurance laws and regulations  
2958 ~~applicable to the provider~~, as well as with the applicable rules  
2959 and guidelines of the National Association of Securities Dealers  
2960 which govern the ethical marketing of investment products. In  
2961 furtherance of this mandate, an approved provider must agree in  
2962 its contract with the state board to establish and maintain a  
2963 compliance education and monitoring system to supervise the  
2964 activities of all personnel who directly communicate with  
2965 individual members ~~participants~~ and recommend investment  
2966 products, which system is consistent with rules of the National  
2967 Association of Securities Dealers.

2968 2. Approved provider personnel who directly communicate  
2969 with individual members ~~participants~~ and who recommend  
2970 investment products shall make an independent and unbiased



200064

2971 determination as to whether an investment product is suitable  
2972 for a particular member participant.

2973 3. The state board shall develop procedures to receive and  
2974 resolve member participant complaints against a provider or  
2975 approved provider personnel, and, if when appropriate, refer  
2976 such complaints to the appropriate agency.

2977 4. Approved providers may not sell or in any way distribute  
2978 any customer list or member participant identification  
2979 information generated through their offering of products or  
2980 services through the investment plan optional retirement  
2981 program.

2982 (10) EDUCATION COMPONENT.—

2983 (a) The state board, in coordination with the department,  
2984 shall provide ~~for~~ an education component for eligible employees  
2985 ~~system members~~ in a manner consistent with ~~the provisions of~~  
2986 this section. The education component must be available to  
2987 eligible employees at least 90 days before ~~prior to~~ the  
2988 beginning date of the election period for the employees of the  
2989 respective types of employers.

2990 (b) The education component must provide eligible employees  
2991 ~~system members~~ with impartial and balanced information about  
2992 plan choices. The education component must involve multimedia  
2993 formats. Plan Program comparisons must, to the greatest extent  
2994 possible, be based upon the retirement income that different  
2995 retirement programs may provide to the member participant. The  
2996 state board shall monitor the performance of the contract for  
2997 the education component to ensure that the program is conducted  
2998 in accordance with the contract, applicable law, and the rules  
2999 of the board.



200064

3000 (c) The state board, in coordination with the department,  
3001 shall provide for an initial and ongoing transfer education  
3002 component to provide system members with information necessary  
3003 to make informed plan choice decisions. The transfer education  
3004 component must include, but is not limited to, information on:  
3005 1. The amount of money available to a member to transfer to  
3006 the investment plan ~~defined contribution program~~.  
3007 2. The features of and differences between the pension plan  
3008 ~~defined benefit program~~ and the investment plan ~~defined~~  
3009 ~~contribution program~~, both generally and specifically, as those  
3010 differences may affect the member.  
3011 3. The expected benefit available if the member were to  
3012 retire under each of the retirement programs, based on  
3013 appropriate alternative sets of assumptions.  
3014 4. The rate of return from investments in the investment  
3015 plan ~~defined contribution program~~ and the period of time over  
3016 which such rate of return must be achieved to equal or exceed  
3017 the expected monthly benefit payable to the member under the  
3018 pension plan ~~defined benefit program~~.  
3019 5. The historical rates of return for the investment  
3020 alternatives available in the investment plan ~~defined~~  
3021 ~~contribution programs~~.  
3022 6. The benefits and historical rates of return on  
3023 investments available in a typical deferred compensation plan or  
3024 a typical plan under s. 403(b) of the Internal Revenue Code for  
3025 which the employee may be eligible.  
3026 7. The program choices available to employees of the State  
3027 University System and the comparative benefits of each available  
3028 program, if applicable.





200064

3029           8. Payout options available in each of the retirement  
3030 programs.

3031           (d) An ongoing education and communication component must  
3032 provide eligible employees ~~system members~~ with information  
3033 necessary to make informed decisions about choices within their  
3034 retirement program ~~of membership~~ and in preparation for  
3035 retirement. The component must include, but is not limited to,  
3036 information concerning:

3037           1. Rights and conditions of membership.

3038           2. Benefit features within the program, options, and  
3039 effects of certain decisions.

3040           3. Coordination of contributions and benefits with a  
3041 deferred compensation plan under s. 457 or a plan under s.  
3042 403(b) of the Internal Revenue Code.

3043           4. Significant program changes.

3044           5. Contribution rates and program funding status.

3045           6. Planning for retirement.

3046           (e) Descriptive materials must be prepared under the  
3047 assumption that the employee is an unsophisticated investor, and  
3048 all materials used in the education component must be approved  
3049 by the state board before ~~prior to~~ dissemination.

3050           (f) The state board and the department shall also establish  
3051 a communication component to provide program information to  
3052 participating employers and the employers' personnel and payroll  
3053 officers and to explain their respective responsibilities in  
3054 conjunction with the retirement programs.

3055           (g) Funding for education of new employees may reflect  
3056 administrative costs to the investment plan ~~optional program~~ and  
3057 the pension plan ~~defined benefit program~~.



200064

3058 (h) Pursuant to paragraph (8)(a), all Florida Retirement  
3059 System employers have an obligation to regularly communicate the  
3060 existence of the two Florida Retirement System plans and the  
3061 plan choice in the natural course of administering their  
3062 personnel functions, using the educational materials supplied by  
3063 the state board and the department ~~of Management Services~~.

3064 (11) ~~MEMBER PARTICIPANT~~ INFORMATION REQUIREMENTS.—The state  
3065 board shall ensure that each member participant is provided a  
3066 quarterly statement that accounts for employer and employee ~~the~~  
3067 contributions made on behalf of the member ~~such participant~~; the  
3068 interest and investment earnings thereon; and any fees,  
3069 penalties, or other deductions that apply ~~thereto~~. At a minimum,  
3070 such statements must:

3071 (a) Indicate the member's ~~participant's~~ investment options.

3072 (b) State the market value of the account at the close of  
3073 the current quarter and previous quarter.

3074 (c) Show account gains and losses ~~for the period~~ and  
3075 changes in account accumulation unit values for the quarter  
3076 ~~period~~.

3077 (d) Itemize account contributions for the quarter.

3078 (e) Indicate any account changes due to adjustment of  
3079 contribution levels, reallocation of contributions, balance  
3080 transfers, or withdrawals.

3081 (f) Set forth any fees, charges, penalties, and deductions  
3082 that apply to the account.

3083 (g) Indicate the amount of the account in which the member  
3084 ~~participant~~ is fully vested and the amount of the account in  
3085 which the member ~~participant~~ is not vested.

3086 (h) Indicate each investment product's performance relative



200064

3087 to an appropriate market benchmark.

3088

3089 The third-party administrator shall provide quarterly and annual  
3090 summary reports to the state board and any other reports  
3091 requested by the department or the board. In any solicitation or  
3092 offer of coverage under the investment plan ~~an optional~~  
3093 ~~retirement program~~, a provider company shall be governed by the  
3094 contract readability provisions of s. 627.4145, notwithstanding  
3095 s. 627.4145(6)(c). In addition, all descriptive materials must  
3096 be prepared under the assumption that the member participant is  
3097 an unsophisticated investor. Provider companies must maintain an  
3098 internal system of quality assurance, have proven functional  
3099 systems that are date-calculation compliant, and be subject to a  
3100 due-diligence inquiry that proves their capacity and fitness to  
3101 undertake service responsibilities.

3102 (12) ADVISORY COUNCIL TO PROVIDE ADVICE AND ASSISTANCE.—The  
3103 Investment Advisory Council, created pursuant to s. 215.444,  
3104 shall assist the state board in implementing and administering  
3105 the investment plan ~~Public Employee Optional Retirement Program~~.  
3106 The ~~Investment Advisory council, created pursuant to s. 215.444~~,  
3107 shall review the state board's initial recommendations regarding  
3108 the criteria to be used in selecting and evaluating approved  
3109 providers and investment products. The council may provide  
3110 comments on the recommendations to the board within 45 days  
3111 after receiving the initial recommendations. The state board  
3112 shall make the final determination as to whether any investment  
3113 provider or product, any contractor, or any and all contract  
3114 provisions are ~~shall be~~ approved for the investment plan  
3115 ~~program~~.



200064

3116 (13) FEDERAL REQUIREMENTS.-  
3117 (a) ~~Provisions of~~ This section shall be construed, and the  
3118 investment plan ~~Public Employee Optional Retirement Program~~  
3119 shall be administered, so as to comply with the Internal Revenue  
3120 Code, 26 U.S.C., and specifically with plan qualification  
3121 requirements imposed on governmental plans under s. 401(a) of  
3122 the Internal Revenue Code. The state board ~~may shall have the~~  
3123 ~~power and authority to~~ adopt rules reasonably necessary to  
3124 establish or maintain the qualified status of the investment  
3125 plan ~~Optional Retirement Program~~ under the Internal Revenue Code  
3126 and to implement and administer the plan ~~Optional Retirement~~  
3127 ~~Program~~ in compliance with the Internal Revenue Code and this  
3128 part; ~~provided however, that~~ the board may ~~shall not have the~~  
3129 ~~authority to~~ adopt any rule which makes a substantive change to  
3130 the investment plan ~~Optional Retirement Program~~ as designed by  
3131 this part.  
3132 (b) Any section or provision of this chapter which is  
3133 susceptible to more than one construction shall ~~must~~ be  
3134 interpreted in favor of the construction most likely to satisfy  
3135 requirements imposed by s. 401(a) of the Internal Revenue Code.  
3136 (c) Employer and employee contributions payable under this  
3137 section for any limitation year may not exceed the maximum  
3138 amount allowable for qualified defined contribution ~~pension~~  
3139 plans under applicable provisions of the Internal Revenue Code.  
3140 If an employee who is enrolled ~~who has elected to participate~~ in  
3141 the investment plan ~~enrolls~~ ~~Public Employee Optional Retirement~~  
3142 ~~Program~~ ~~participates~~ in any other plan that is maintained by the  
3143 participating employer, benefits that accrue under the  
3144 investment plan ~~are~~ ~~Public Employee Optional Retirement Program~~



200064

3145 ~~shall be~~ considered primary for any aggregate limitation  
3146 applicable under s. 415 of the Internal Revenue Code.

3147 (14) INVESTMENT POLICY STATEMENT.—

3148 (a) Investment products and approved providers selected for  
3149 the investment plan ~~Public Employee Optional Retirement Program~~  
3150 must shall conform with the Florida ~~Public Employee Optional~~  
3151 ~~Retirement System Program~~ Investment Plan Policy Statement,  
3152 herein referred to as the "statement," as developed and approved  
3153 by the ~~Trustees of the~~ state board of Administration. The  
3154 statement must include, among other items, the investment  
3155 objectives of the investment plan ~~Public Employee Optional~~  
3156 ~~Retirement Program~~, manager selection and monitoring guidelines,  
3157 and performance measurement criteria. As required from time to  
3158 time, the executive director of the state board may present  
3159 recommended changes in the statement to the board for approval.

3160 (b) Before ~~Prior to~~ presenting the statement, or any  
3161 recommended changes ~~thereto~~, to the state board, the executive  
3162 director of the board shall present such statement or changes to  
3163 the Investment Advisory Council for review. The council shall  
3164 present the results of its review to the board prior to the  
3165 board's final approval of the statement or changes in the  
3166 statement.

3167 (15) STATEMENT OF FIDUCIARY STANDARDS AND  
3168 RESPONSIBILITIES.—

3169 (a) Investment of investment plan ~~optional defined~~  
3170 ~~contribution retirement plan~~ assets shall be made for the sole  
3171 interest and exclusive purpose of providing benefits to plan  
3172 members ~~participants~~ and beneficiaries and defraying reasonable  
3173 expenses of administering the plan. The program's assets shall



200064

3174 ~~are to~~ be invested, on behalf of the members ~~program~~  
3175 ~~participants~~, with the care, skill, and diligence that a prudent  
3176 person acting in a like manner would undertake. The performance  
3177 of the investment duties set forth in this paragraph shall  
3178 comply with the fiduciary standards set forth in the Employee  
3179 Retirement Income Security Act of 1974 at 29 U.S.C. s.  
3180 1104(a)(1)(A)-(C). In case of conflict with other provisions of  
3181 law authorizing investments, the investment and fiduciary  
3182 standards set forth in this subsection shall prevail.

3183 (b) If a member ~~participant~~ or beneficiary of the  
3184 investment plan ~~Public Employee Optional Retirement program~~  
3185 exercises control over the assets in his or her account, as  
3186 determined by reference to regulations of the United States  
3187 Department of Labor under s. 404(c) of the Employee Retirement  
3188 Income Security Act of 1974 and all applicable laws governing  
3189 the operation of the program, a ~~no~~ program fiduciary is not  
3190 ~~shall be~~ liable for any loss to a member's ~~participant's~~ or  
3191 beneficiary's account which results from the member's ~~such~~  
3192 ~~participant's~~ or beneficiary's exercise of control.

3193 (c) Subparagraph (8)(b)2. ~~(8)(b)4.~~ and paragraph ~~(15)(b)~~  
3194 incorporate the federal law concept of member ~~participant~~  
3195 control, established by regulations of the United States  
3196 Department of Labor under s. 404(c) of the Employee Retirement  
3197 Income Security Act of 1974 (ERISA). The purpose of this  
3198 paragraph is to assist employers and the state board ~~of~~  
3199 ~~Administration~~ in maintaining compliance with s. 404(c), while  
3200 avoiding unnecessary costs and eroding member ~~participant~~  
3201 benefits under the investment plan ~~Public Employee Optional~~  
3202 ~~Retirement program~~. Pursuant to 29 C.F.R. s. 2550.404c-



200064

3203 1(b)(2)(i)(B)(1)(viii), the state board of ~~Administration~~ or its  
3204 designated agents shall deliver to members ~~participants~~ of the  
3205 investment plan ~~Public Employee Optional Retirement program~~ a  
3206 copy of the prospectus most recently provided to the plan, and,  
3207 pursuant to 29 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(2)(ii), shall  
3208 provide such members ~~participants~~ an opportunity to obtain this  
3209 information, except that:

3210 1. The requirement to deliver a prospectus shall be ~~deemed~~  
3211 ~~to be~~ satisfied by delivery of a fund profile or summary profile  
3212 that contains the information that would be included in a  
3213 summary prospectus as described by Rule 498 under the Securities  
3214 Act of 1933, 17 C.F.R. s. 230.498. If ~~When~~ the transaction fees,  
3215 expense information, or other information provided by a mutual  
3216 fund in the prospectus does not reflect terms negotiated by the  
3217 state board of ~~Administration~~ or its designated agents, the  
3218 ~~mentioned~~ requirement is ~~deemed to be~~ satisfied by delivery  
3219 of a separate document described by Rule 498 substituting  
3220 accurate information; and

3221 2. Delivery shall be ~~deemed to have been~~ effected if  
3222 delivery is through electronic means and the following standards  
3223 are satisfied:

3224 a. Electronically-delivered documents are prepared and  
3225 provided consistent with style, format, and content requirements  
3226 applicable to printed documents;

3227 b. Each member ~~participant~~ is provided timely and adequate  
3228 notice of the documents that are to be delivered and their  
3229 significance thereof, and of the member's ~~participant's~~ right to  
3230 obtain a paper copy of such documents free of charge;

3231 c. ~~(I)~~ Members ~~Participants~~ have adequate access to the



200064

3232 electronic documents, at locations such as their worksites or  
3233 public facilities, and have the ability to convert the documents  
3234 to paper free of charge by the state board of ~~Administration~~,  
3235 and the board or its designated agents take appropriate and  
3236 reasonable measures to ensure that the system for furnishing  
3237 electronic documents results in actual receipt. ~~or~~

3238 ~~(II) Members~~ Participants have provided consent to receive  
3239 information in electronic format, which consent may be revoked;  
3240 and

3241 d. The state board of ~~Administration~~, or its designated  
3242 agent, actually provides paper copies of the documents free of  
3243 charge, upon request.

3244 (16) DISABILITY BENEFITS.—For any member ~~participant~~ of the  
3245 investment plan ~~optional retirement program~~ who becomes totally  
3246 and permanently disabled, benefits must ~~shall~~ be paid in  
3247 accordance with ~~the provisions of~~ s. 121.591.

3248 (17) SOCIAL SECURITY COVERAGE.—Social security coverage  
3249 shall be provided for all officers and employees who become  
3250 members ~~participants~~ of the investment plan ~~optional program~~.  
3251 Any modification of the present agreement with the Social  
3252 Security Administration, or referendum required under the Social  
3253 Security Act, for the purpose of providing social security  
3254 coverage for any member shall be requested by the state agency  
3255 in compliance with the applicable provisions of the Social  
3256 Security Act governing such coverage. However, retroactive  
3257 social security coverage for service before ~~prior to~~ December 1,  
3258 1970, with the employer may ~~shall~~ not be provided for any member  
3259 who was not covered under the agreement as of November 30, 1970.

3260 (18) RETIREE HEALTH INSURANCE SUBSIDY.—All officers and





200064

3261 employees who are members ~~participants~~ of the investment plan  
3262 are optional program ~~shall be~~ eligible to receive the retiree  
3263 health insurance subsidy, subject to ~~the provisions of~~ s.  
3264 112.363.

3265 (19) MEMBER PARTICIPANT RECORDS.—Personal identifying  
3266 information of a member of participant ~~in the investment plan~~  
3267 ~~Public Employee Optional Retirement Program~~ contained in Florida  
3268 Retirement System records held by the state board ~~of~~  
3269 ~~Administration~~ or the department ~~of Management Services~~ is  
3270 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
3271 Constitution.

3272 (20) DESIGNATION OF BENEFICIARIES.—

3273 (a) Each member participant may, on a form provided for  
3274 that purpose, signed and filed with the third-party  
3275 administrator, designate a choice of one or more persons, named  
3276 sequentially or jointly, as his or her beneficiary for receiving  
3277 ~~who shall receive~~ the benefits, if any, which may be payable  
3278 pursuant to this chapter in the event of the member's  
3279 ~~participant's~~ death. If no beneficiary is named in this manner,  
3280 or if no beneficiary designated by the member participant  
3281 survives the member participant, the beneficiary shall be the  
3282 spouse of the deceased, if living. If the member's participant's  
3283 spouse is not alive at the time of the beneficiary's ~~his or her~~  
3284 death, the beneficiary shall be the member's living children ~~of~~  
3285 ~~the participant~~. If no children survive, the beneficiary shall  
3286 be the member's participant's father or mother, if living;  
3287 otherwise, the beneficiary shall be the member's participant's  
3288 estate. The beneficiary most recently designated by a member  
3289 ~~participant on a form or letter filed with the third-party~~



200064

3290 ~~administrator~~ shall be the beneficiary entitled to any benefits  
3291 payable at the time of the member's participant's death. However  
3292 ~~Notwithstanding any other provision in this subsection to the~~  
3293 ~~contrary, if a member for a participant who dies before prior to~~  
3294 his or her effective date of retirement, the spouse at the time  
3295 of death shall be the member's participant's beneficiary unless  
3296 the member such participant designates a different beneficiary  
3297 ~~as provided in this subsection~~ subsequent to the member's  
3298 ~~participant's~~ most recent marriage.

3299 (b) If a member participant designates a primary  
3300 beneficiary other than the member's participant's spouse, the  
3301 member's participant's spouse must sign the beneficiary  
3302 designation form to acknowledge the designation. This  
3303 requirement does not apply to the designation of one or more  
3304 contingent beneficiaries to receive benefits remaining upon the  
3305 death of the primary beneficiary or beneficiaries.

3306 (c) Notwithstanding the member's participant's designation  
3307 of benefits to be paid through a trust to a beneficiary that is  
3308 a natural person, ~~and notwithstanding~~ the provisions of the  
3309 trust, benefits must shall be paid directly to the beneficiary  
3310 if the person is no longer a minor or an incapacitated person as  
3311 defined in s. 744.102.

3312 (21) PARTICIPATION BY TERMINATED DEFERRED RETIREMENT OPTION  
3313 PROGRAM PARTICIPANTS.—Notwithstanding any other provision of law  
3314 ~~to the contrary~~, participants in the Deferred Retirement Option  
3315 Program offered under part I may, after conclusion of their  
3316 participation in the program, elect to roll over or authorize a  
3317 direct trustee-to-trustee transfer to an account under the  
3318 investment plan Public Employee Optional Retirement Program of



200064

3319 their Deferred Retirement Option Program proceeds distributed as  
3320 provided under s. 121.091(13)(c)5. The transaction must  
3321 constitute an "eligible rollover distribution" within the  
3322 meaning of s. 402(c)(4) of the Internal Revenue Code.

3323 (a) The investment plan ~~Public Employee Optional Retirement~~  
3324 ~~Program~~ may accept such amounts for deposit into member  
3325 ~~participant~~ accounts as provided in paragraph (5)(e) ~~(5)(e)~~.

3326 (b) The affected participant shall direct the investment of  
3327 his or her investment account; however, unless he or she becomes  
3328 a renewed member of the Florida Retirement System under s.  
3329 121.122 and elects to enroll ~~participate~~ in the investment plan  
3330 ~~Public Employee Optional Retirement program~~, employer and  
3331 employee contributions may not be made to the participant's  
3332 account as provided under paragraph (5)(a).

3333 (c) The state board or the department is not responsible  
3334 for locating those persons who may be eligible to enroll  
3335 ~~participate~~ in the investment plan ~~Public Employee Optional~~  
3336 ~~Retirement Program~~ under this subsection.

3337 (22) CREDIT FOR MILITARY SERVICE.—Creditable service of any  
3338 member of the investment program includes ~~Public Employee~~  
3339 ~~Optional Retirement Program shall include~~ military service in  
3340 the Armed Forces of the United States as provided in ~~the~~  
3341 ~~conditions outlined in~~ s. 121.111(1).

3342 Section 22. Section 121.4502, Florida Statutes, is amended  
3343 to read:

3344 121.4502 Florida ~~Public Employee Optional Retirement System~~  
3345 Investment Plan ~~Program~~ Trust Fund.—

3346 (1) The Florida ~~Public Employee Optional Retirement System~~  
3347 Investment Plan ~~Program~~ Trust Fund is created to hold the assets



200064

3348 of the Florida Public Employee Optional Retirement System  
3349 Investment Plan Program in trust for the exclusive benefit of  
3350 plan members ~~such program's participants~~ and beneficiaries, and  
3351 for the payment of reasonable administrative expenses of the  
3352 plan program, in accordance with s. 401 of the Internal Revenue  
3353 Code, and shall be administered by the State Board of  
3354 Administration as trustee. Funds shall be credited to the trust  
3355 fund as provided in this part ~~and, to be~~ used for the purposes  
3356 of this part. The trust fund is exempt from the service charges  
3357 imposed by s. 215.20.

3358 (2) The Florida Public Employee Optional Retirement System  
3359 Investment Plan Program Trust Fund is a ~~retirement~~ trust fund of  
3360 the Florida Retirement System that accounts for retirement plan  
3361 assets held by the state in a trustee capacity as a fiduciary  
3362 for individual members ~~participants~~ in the Florida Public  
3363 ~~Employee Optional Retirement System Investment Plan Program~~ and,  
3364 pursuant to s. 19(f), Art. III of the State Constitution, is not  
3365 subject to termination.

3366 Section 23. Subsections (1) and (3) of section 121.4503,  
3367 Florida Statutes, are amended to read:

3368 121.4503 Florida Retirement System Contributions Clearing  
3369 Trust Fund.—

3370 (1) The Florida Retirement System Contributions Clearing  
3371 Trust Fund is created as a clearing fund for disbursing employer  
3372 and employee contributions to the component plans of the Florida  
3373 Retirement System and shall be administered by the department ~~of~~  
3374 ~~Management Services~~. Funds shall be credited to the trust fund  
3375 as provided in this chapter and ~~shall be~~ held in trust for the  
3376 contributing employers and employees until ~~such time as~~ the



200064

3377 assets are transferred by the department to the Florida  
3378 Retirement System Trust Fund, the Florida Public Employee  
3379 ~~Optional Retirement System Investment Plan Program~~ Trust Fund,  
3380 or other trust funds as authorized by law, to be used for the  
3381 purposes of this chapter. The trust fund is exempt from the  
3382 service charges imposed by s. 215.20.

3383 (3) The department of ~~Management Services~~ may adopt rules  
3384 governing the receipt and disbursement of amounts received by  
3385 the Florida Retirement System Contributions Clearing Trust Fund  
3386 from employers and employees contributing to the component plans  
3387 of the Florida Retirement System.

3388 Section 24. Section 121.571, Florida Statutes, is amended  
3389 to read:

3390 121.571 Contributions.—Contributions to the Florida Public  
3391 ~~Employee Optional Retirement System Investment Plan Program~~  
3392 shall be made as follows:

3393 (1) CONTRIBUTORY NONCONTRIBUTORY PLAN.—Each employer and  
3394 employee shall submit ~~accomplish the~~ contributions as required  
3395 under by s. 121.71 ~~by a procedure in which no employee's gross~~  
3396 ~~salary shall be reduced.~~

3397 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund the  
3398 retirement and disability benefits provided under this part must  
3399 ~~shall~~ be based on the uniform contribution rates established by  
3400 s. 121.71 and on the membership class or subclass of the  
3401 employee participant. Such contributions must ~~shall~~ be allocated  
3402 as provided in ss. 121.72 and 121.73.

3403 (3) CONTRIBUTIONS FOR SOCIAL SECURITY COVERAGE AND FOR  
3404 RETIREE HEALTH INSURANCE SUBSIDY.—Contributions required under  
3405 s. 121.71 ~~are this section shall be~~ in addition to employer and



200064

3406 member contributions ~~required~~ for social security and the  
3407 Retiree Health Insurance Subsidy Trust Fund as required under  
3408 ~~provided in~~ ss. 112.363, 121.052, 121.055, and 121.071, as  
3409 appropriate.

3410 Section 25. Section 121.591, Florida Statutes, is amended  
3411 to read:

3412 121.591 Payment of benefits payable under the Public  
3413 ~~Employee Optional Retirement Program of the Florida Retirement~~  
3414 ~~System.~~ Benefits may not be paid under the Florida Retirement  
3415 System Investment Plan ~~this section~~ unless the member has  
3416 terminated employment as provided in s. 121.021(39)(a) or is  
3417 deceased and a proper application has been filed as ~~in the~~  
3418 ~~manner~~ prescribed by the state board or the department. The  
3419 state board or department, as appropriate, may cancel an  
3420 application for retirement benefits if ~~when~~ the member or  
3421 beneficiary fails to timely provide the information and  
3422 documents required by this chapter and the rules of the state  
3423 board and department. In accordance with their respective  
3424 responsibilities ~~as provided herein~~, the state board ~~of~~  
3425 ~~Administration~~ and the department ~~of Management Services~~ shall  
3426 adopt rules establishing procedures for application for  
3427 retirement benefits and for the cancellation of such application  
3428 if ~~when~~ the required information or documents are not received.  
3429 The state board ~~of Administration~~ and the department ~~of~~  
3430 ~~Management Services~~, as appropriate, are authorized to cash out  
3431 a de minimis account of not more than \$5,000 of a member  
3432 ~~participant~~ who has been terminated from Florida Retirement  
3433 System covered employment for a minimum of 6 calendar months. ~~A~~  
3434 ~~de minimis account is an account containing employer~~



200064

3435 ~~contributions and accumulated earnings of not more than \$5,000~~  
3436 ~~made under the provisions of this chapter.~~ Such cash-out must  
3437 ~~either~~ be a complete lump-sum liquidation of the account  
3438 balance, subject to the provisions of the Internal Revenue Code,  
3439 or a lump-sum direct rollover distribution paid directly to the  
3440 custodian of an eligible retirement plan, as defined by the  
3441 Internal Revenue Code, on behalf of the member participant. Any  
3442 nonvested accumulations, including amounts transferred to the  
3443 suspense account of the Florida Retirement System Investment  
3444 Plan Trust Fund, are forfeited upon payment of any vested  
3445 benefit to a member or beneficiary, except for de minimis  
3446 distributions or minimum required distributions as provided  
3447 under this section. If any financial instrument issued for the  
3448 payment of retirement benefits under this section is not  
3449 presented for payment within 180 days after the last day of the  
3450 month in which it was originally issued, the third-party  
3451 administrator or other duly authorized agent of the state board  
3452 ~~of Administration~~ shall cancel the instrument and credit the  
3453 amount of the instrument to the suspense account of the Florida  
3454 ~~Public Employee Optional Retirement~~ System Investment Plan  
3455 ~~Program~~ Trust Fund authorized under s. 121.4501(6). Any ~~such~~  
3456 amounts transferred to the suspense account are payable upon a  
3457 proper application, not to include earnings thereon, as provided  
3458 in this section, within 10 years after the last day of the month  
3459 in which the instrument was originally issued, after which time  
3460 such amounts and any earnings attributable to employer  
3461 contributions are ~~thereon shall be~~ forfeited. Any ~~such~~ forfeited  
3462 amounts are assets of the ~~Public Employee Optional Retirement~~  
3463 ~~Program~~ trust fund and are not subject to the provisions of



200064

3464 chapter 717.

3465 (1) NORMAL BENEFITS.—Under the Florida Public Employee  
3466 ~~Optional Retirement System Investment Plan Program~~:

3467 (a) Benefits in the form of vested accumulations as  
3468 described in s. 121.4501(6) are payable under this subsection in  
3469 accordance with the following terms and conditions:

3470 1. ~~To the extent vested,~~ Benefits are payable only to a  
3471 member, alternate payee or a qualified domestic relations order,  
3472 or a beneficiary participant.

3473 2. Benefits shall be paid by the third-party administrator  
3474 or designated approved providers in accordance with the law, the  
3475 contracts, and any applicable board rule or policy.

3476 3. ~~To receive benefits,~~ The member participant must be  
3477 terminated from all employment with all Florida Retirement  
3478 System employers, as provided in s. 121.021(39).

3479 4. Benefit payments may not be made until the member  
3480 ~~participant~~ has been terminated for 3 calendar months, except  
3481 that the state board may authorize by rule for the distribution  
3482 of up to 10 percent of the member's participant's account after  
3483 being terminated for 1 calendar month if the member participant  
3484 has reached the normal retirement date as defined in s. 121.021  
3485 ~~of the defined benefit plan.~~

3486 5. If a member or former member of the Florida Retirement  
3487 System receives an invalid distribution ~~from the Public Employee~~  
3488 ~~Optional Retirement Program Trust Fund~~, such person must repay  
3489 the full amount ~~invalid distribution to the trust fund~~ within 90  
3490 days after receipt of final notification by the state board or  
3491 the third-party administrator that the distribution was invalid,  
3492 or, in lieu of repayment, must terminate employment from all





200064

3493 participating employers. If such person fails to repay the full  
3494 invalid distribution within 90 days after receipt of final  
3495 notification, the person may be deemed retired from the  
3496 investment plan ~~optional retirement program~~ by the state board,  
3497 ~~as provided pursuant to s. 121.4501(2)(k)~~, and is subject to s.  
3498 121.122. If such person is deemed retired ~~by the state board~~,  
3499 any joint and several liability set out in s. 121.091(9)(d)2. is  
3500 ~~becomes~~ null and void, and the state board, the department, or  
3501 the employing agency is not liable for gains on payroll  
3502 contributions that have not been deposited to the person's  
3503 account in the investment plan ~~retirement program~~, pending  
3504 resolution of the invalid distribution. The member or former  
3505 member who has been deemed retired or who has been determined by  
3506 the state board to have taken an invalid distribution may appeal  
3507 the agency decision through the complaint process as provided  
3508 under s. 121.4501(9)(g)3. As used in this subparagraph, the term  
3509 "invalid distribution" means any distribution from an account in  
3510 the investment plan ~~optional retirement program~~ which is taken  
3511 in violation of this section, s. 121.091(9), or s. 121.4501.

3512 (b) If a member ~~participant~~ elects to receive his or her  
3513 benefits upon termination of employment as defined in s.  
3514 121.021, the member ~~participant~~ must submit a written  
3515 application or an application by electronic means to the third-  
3516 party administrator indicating his or her preferred distribution  
3517 date and selecting an authorized method of distribution as  
3518 provided in paragraph (c). The member ~~participant~~ may defer  
3519 receipt of benefits until he or she chooses to make such  
3520 application, subject to federal requirements.

3521 (c) Upon receipt by the third-party administrator of a



200064

3522 properly executed application for distribution of benefits, the  
3523 total accumulated benefit ~~is shall be~~ payable to the member  
3524 participant, as:

3525 1. A lump-sum or partial distribution to the member  
3526 participant;

3527 2. A lump-sum direct rollover distribution whereby all  
3528 accrued benefits, plus interest and investment earnings, are  
3529 paid from the member's participant's account directly to the  
3530 custodian of an eligible retirement plan, as defined in s.  
3531 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
3532 participant; or

3533 3. Periodic distributions, as authorized by the state  
3534 board.

3535 (d) The distribution payment method selected by the plan  
3536 member or beneficiary, and the retirement of the member or  
3537 beneficiary, is final and irrevocable at the time a benefit  
3538 distribution payment is cashed, deposited, or transferred to  
3539 another financial institution. Any additional service that  
3540 remains unclaimed at retirement may not be claimed or purchased,  
3541 and the type of retirement may not be changed, except that if a  
3542 member recovers from a disability, the member may subsequently  
3543 request normal service benefits under subsection (2).

3544 (e) A member may not receive a distribution of employee  
3545 contributions if a pending or approved qualified domestic  
3546 relations order is filed against the member's investment plan  
3547 account.

3548 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under  
3549 this subsection are payable in lieu of the benefits that ~~which~~  
3550 would otherwise be payable under the provisions of subsection



200064

3551 (1). Such benefits must ~~shall~~ be funded ~~entirely~~ from employer  
3552 contributions ~~made under s. 121.571~~, transferred employee  
3553 contributions and participant funds accumulated pursuant to  
3554 paragraph (a), and interest and earnings thereon. ~~Pursuant~~  
3555 ~~thereto:~~

3556 (a) *Transfer of funds.*—To qualify for ~~to receive~~ monthly  
3557 disability benefits under this subsection:

3558 1. All moneys accumulated in the member's ~~participant's~~  
3559 ~~Public Employee Optional Retirement Program~~ accounts, including  
3560 vested and nonvested accumulations as described in s.  
3561 121.4501(6), must ~~shall~~ be transferred from such individual  
3562 accounts to the division ~~of Retirement~~ for deposit in the  
3563 disability account of the Florida Retirement System Trust Fund.  
3564 Such moneys must ~~shall~~ be ~~separately~~ accounted for separately.  
3565 Earnings must ~~shall~~ be credited on an annual basis for amounts  
3566 held in the disability accounts ~~of the Florida Retirement System~~  
3567 ~~Trust Fund~~ based on actual earnings of the ~~Florida Retirement~~  
3568 ~~System~~ trust fund.

3569 2. If the member ~~participant~~ has retained retirement credit  
3570 ~~he or she had~~ earned under the pension plan ~~defined benefit~~  
3571 ~~program of the Florida Retirement System~~ as provided in s.  
3572 121.4501(3) ~~s. 121.4501(3)(b)~~, a sum representing the actuarial  
3573 present value of such credit within the Florida Retirement  
3574 System Trust Fund shall be reassigned by the division ~~of~~  
3575 ~~Retirement~~ from the pension plan ~~defined benefit program~~ to the  
3576 disability program as implemented under this subsection and  
3577 shall be deposited in the disability account of the ~~Florida~~  
3578 ~~Retirement System~~ trust fund. Such moneys must ~~shall~~ be  
3579 ~~separately~~ accounted for separately.



200064

3580 (b) *Disability retirement; entitlement.*—  
3581 1. A member participant of the investment plan ~~Public~~  
3582 ~~Employee Optional Retirement program~~ who becomes totally and  
3583 permanently disabled, as defined in paragraph (d) ~~s.~~  
3584 ~~121.091(4)(b)~~, after completing 8 years of creditable service,  
3585 or a member participant who becomes totally and permanently  
3586 disabled in the line of duty regardless of ~~his or her~~ length of  
3587 service, ~~is shall be~~ entitled to a monthly disability benefit ~~as~~  
3588 ~~provided herein~~.  
3589 2. In order for service to apply toward the 8 years of  
3590 creditable service required ~~to vest~~ for regular disability  
3591 benefits, or toward the creditable service used in calculating a  
3592 service-based benefit as provided ~~for~~ under paragraph (g), the  
3593 service must be creditable service as described below:  
3594 a. The member's participant's period of service under the  
3595 investment plan shall ~~Public Employee Optional Retirement~~  
3596 ~~program will~~ be considered creditable service, except as  
3597 provided in subparagraph d.  
3598 b. If the member participant has elected to retain credit  
3599 for ~~his or her~~ service under the pension plan ~~defined benefit~~  
3600 ~~program of the Florida Retirement System~~ as provided under s.  
3601 121.4501(3) ~~s. 121.4501(3)(b)~~, all such service shall ~~will~~ be  
3602 considered creditable service.  
3603 c. If the member elects participant ~~has elected~~ to transfer  
3604 to his or her member participant accounts a sum representing the  
3605 present value of his or her retirement credit under the pension  
3606 plan ~~defined benefit program~~ as provided under s. 121.4501(3) ~~s.~~  
3607 ~~121.4501(3)(c)~~, the period of service under the pension plan  
3608 ~~defined benefit program~~ represented in the present value amounts



200064

3609 transferred shall ~~will~~ be considered creditable service ~~for~~  
3610 ~~purposes of vesting for disability benefits~~, except as provided  
3611 in subparagraph d.

3612 d. If a member ~~Whenever a participant~~ has terminated  
3613 employment and has taken distribution of his or her funds as  
3614 provided in subsection (1), all creditable service represented  
3615 by such distributed funds is forfeited for purposes of this  
3616 subsection.

3617 (c) *Disability retirement effective date.*—The effective  
3618 retirement date for a member ~~participant~~ who applies and is  
3619 approved for disability retirement shall be established as  
3620 provided under s. 121.091(4) (a)2. and 3.

3621 (d) *Total and permanent disability.*—A member is ~~participant~~  
3622 ~~shall be~~ considered totally and permanently disabled if, in the  
3623 opinion of the division, he or she is prevented, by reason of a  
3624 medically determinable physical or mental impairment, from  
3625 rendering useful and efficient service as an officer or  
3626 employee.

3627 (e) *Proof of disability.*—~~The division,~~ Before approving  
3628 payment of any disability retirement benefit, the division shall  
3629 require proof that the member ~~participant~~ is totally and  
3630 permanently disabled ~~in the same manner~~ as provided ~~for members~~  
3631 ~~of the defined benefit program of the Florida Retirement System~~  
3632 under s. 121.091(4) (c).

3633 (f) *Disability retirement benefit.*—Upon the disability  
3634 retirement of a member ~~participant~~ under this subsection, the  
3635 member ~~participant~~ shall receive a monthly benefit that begins  
3636 accruing ~~shall begin to accrue~~ on the first day of the month of  
3637 disability retirement, as approved by the division, and is ~~shall~~



200064

3638 ~~be~~ payable on the last day of that month and each month  
3639 thereafter during his or her lifetime and continued disability.  
3640 All disability benefits must ~~payable to such member shall be~~  
3641 paid out of the disability account of the Florida Retirement  
3642 System Trust Fund established under this subsection.

3643 (g) *Computation of disability retirement benefit.*—The  
3644 amount of each monthly payment must ~~shall~~ be calculated ~~in the~~  
3645 ~~same manner~~ as provided ~~for members of the defined benefit~~  
3646 ~~program of the Florida Retirement System~~ under s. 121.091(4)(f).  
3647 ~~For such purpose,~~ Creditable service under both the pension plan  
3648 ~~defined benefit program~~ and the investment plan ~~Public Employee~~  
3649 ~~Optional Retirement Program of the Florida Retirement System~~  
3650 shall be applicable as provided under paragraph (b).

3651 (h) *Reapplication.*—A member participant whose initial  
3652 application for disability retirement is ~~has been~~ denied may  
3653 reapply for disability benefits in the same manner, and under  
3654 the same conditions, as provided for members of the pension plan  
3655 ~~defined benefit program of the Florida Retirement System~~ under  
3656 s. 121.091(4)(g).

3657 (i) *Membership.*—Upon approval of a member's ~~an~~ application  
3658 for disability benefits ~~under this subsection,~~ the applicant  
3659 shall be transferred to the pension plan ~~defined benefit program~~  
3660 ~~of the Florida Retirement System,~~ effective upon his or her  
3661 disability retirement effective date.

3662 (j) *Option to cancel.*—A member ~~Any participant~~ whose  
3663 application for disability benefits is approved may cancel the  
3664 ~~his or her~~ application if ~~for disability benefits,~~ provided that  
3665 the cancellation request is received by the division before a  
3666 disability retirement warrant has been deposited, cashed, or



200064

3667 received by direct deposit. Upon ~~such~~ cancellation:

3668 1. The member's participant's transfer to the pension plan  
3669 ~~defined benefit program~~ under paragraph (i) shall be nullified;

3670 2. The member participant shall be retroactively reinstated  
3671 in the investment plan ~~Public Employee Optional Retirement~~  
3672 ~~program~~ without hiatus;

3673 3. All funds transferred to the Florida Retirement System  
3674 Trust Fund under paragraph (a) must ~~shall~~ be returned to the  
3675 member participant accounts from which the ~~such~~ funds were  
3676 drawn; and

3677 4. The member participant may elect to receive the benefit  
3678 payable under ~~the provisions of~~ subsection (1) in lieu of  
3679 disability benefits ~~as provided under this subsection.~~

3680 (k) *Recovery from disability.*—

3681 1. The division may require periodic reexaminations at the  
3682 expense of the disability program account of the Florida  
3683 Retirement System Trust Fund. Except as ~~otherwise~~ provided in  
3684 subparagraph 2., the requirements, procedures, and restrictions  
3685 relating to the conduct and review of such reexaminations,  
3686 discontinuation or termination of benefits, reentry into  
3687 employment, disability retirement after reentry into covered  
3688 employment, and all other matters relating to recovery from  
3689 disability are ~~shall be the same as~~ provided ~~are set forth~~ under  
3690 s. 121.091(4) (h).

3691 2. Upon recovery from disability, the ~~any~~ recipient of  
3692 disability retirement benefits under this subsection shall be  
3693 transferred back to the investment plan ~~a compulsory member of~~  
3694 ~~the Public Employee Optional Retirement Program of the Florida~~  
3695 ~~Retirement System.~~ The net difference between the recipient's



200064

3696 original account balance transferred to the Florida Retirement  
3697 System Trust Fund, including earnings, ~~under paragraph (a)~~ and  
3698 total disability benefits paid to such recipient, if any, shall  
3699 be determined as provided in sub-subparagraph a.

3700 a. An amount equal to the total benefits paid shall be  
3701 subtracted from that portion of the transferred account balance  
3702 consisting of vested accumulations as described under s.  
3703 121.4501(6), if any, and an amount equal to the remainder of  
3704 benefit amounts paid, if any, shall ~~then~~ be subtracted from any  
3705 remaining ~~portion consisting of~~ nonvested accumulations ~~as~~  
3706 ~~described under s. 121.4501(6)~~.

3707 b. Amounts subtracted under sub-subparagraph a. must ~~shall~~  
3708 be retained within the disability account of the Florida  
3709 Retirement System Trust Fund. Any remaining account balance  
3710 shall be transferred to the third-party administrator for  
3711 disposition as provided under sub-subparagraph c. or sub-  
3712 subparagraph d., as appropriate.

3713 c. If the recipient returns to covered employment,  
3714 transferred amounts must ~~shall~~ be deposited in individual  
3715 accounts under the investment plan ~~Public Employee Optional~~  
3716 ~~Retirement program~~, as directed by the member ~~participant~~.  
3717 Vested and nonvested amounts shall be separately accounted for  
3718 as provided in s. 121.4501(6).

3719 d. If the recipient fails to return to covered employment  
3720 upon recovery from disability:

3721 (I) Any remaining vested amount must ~~shall~~ be deposited in  
3722 individual accounts under the investment plan ~~Public Employee~~  
3723 ~~Optional Retirement program~~, as directed by the member  
3724 ~~participant~~, and is ~~shall~~ be payable as provided in subsection





200064

3725 (1).

3726 (II) Any remaining nonvested amount must ~~shall~~ be held in a  
3727 suspense account and is ~~shall be~~ forfeitable after 5 years as  
3728 provided in s. 121.4501(6).

3729 3. If present value was reassigned from the pension plan  
3730 ~~defined benefit program~~ to the disability program ~~of the Florida~~  
3731 ~~Retirement System~~ as provided under subparagraph (a)2., the full  
3732 present value amount must ~~shall~~ be returned to the pension plan  
3733 ~~defined benefit account~~ within the Florida Retirement System  
3734 Trust Fund and the recipient's ~~affected individual's~~ associated  
3735 retirement credit under the pension plan ~~defined benefit~~  
3736 ~~program shall~~ be reinstated in full. Any benefit based upon such  
3737 credit must ~~shall~~ be calculated as provided in s.  
3738 121.091(4)(h)1.

3739 (1) *Nonadmissible causes of disability.*—A member is  
3740 ~~participant shall~~ not be entitled to ~~receive~~ a disability  
3741 retirement benefit if the disability results from any injury or  
3742 disease ~~sustained or inflicted~~ as described in s. 121.091(4)(i).

3743 (m) *Disability retirement of justice or judge by order of*  
3744 *Supreme Court.*—

3745 1. If a member ~~participant~~ is a justice of the Supreme  
3746 Court, judge of a district court of appeal, circuit judge, or  
3747 judge of a county court who has served for 6 years or more as an  
3748 elected constitutional judicial officer, including service as a  
3749 judicial officer in any court abolished pursuant to Art. V of  
3750 the State Constitution, and who is retired for disability ~~by~~  
3751 ~~order of the Supreme Court upon recommendation of the Judicial~~  
3752 ~~Qualifications Commission pursuant to s. 12, the provisions of~~  
3753 Art. V of the State Constitution, the member's ~~participant's~~



200064

3754 Option 1 monthly disability benefit amount as provided in s.  
3755 121.091(6)(a)1. shall be two-thirds of his or her monthly  
3756 compensation as of the member's ~~participant's~~ disability  
3757 retirement date. The member ~~Such a participant~~ may alternatively  
3758 elect to receive an actuarially adjusted disability retirement  
3759 benefit under any other option as provided in s. 121.091(6)(a),  
3760 or ~~to~~ receive the normal benefit payable under ~~the Public~~  
3761 ~~Employee Optional Retirement Program as set forth in~~ subsection  
3762 (1).

3763 2. If any justice or judge who is a member ~~participant~~ of  
3764 the investment plan ~~Public Employee Optional Retirement program~~  
3765 ~~of the Florida Retirement System~~ is retired for disability ~~by~~  
3766 ~~order of the Supreme Court upon recommendation of the Judicial~~  
3767 ~~Qualifications Commission pursuant to s. 12, the provisions of~~  
3768 Art. V of the State Constitution, and elects to receive a  
3769 monthly disability benefit under ~~the provisions of~~ this  
3770 paragraph:

3771 a. Any present value amount that was transferred to his or  
3772 her plan ~~program~~ account and all employer contributions made to  
3773 such account on his or her behalf, plus interest and earnings  
3774 thereon, must ~~shall~~ be transferred to and deposited in the  
3775 disability account of the Florida Retirement System Trust Fund;  
3776 and

3777 b. The monthly disability benefits payable under this  
3778 paragraph for any affected justice or judge retired from the  
3779 Florida Retirement System pursuant to Art. V of the State  
3780 Constitution shall be paid from the disability account of the  
3781 Florida Retirement System Trust Fund.

3782 (n) *Death of retiree or beneficiary.*—Upon the death of a



200064

3783 disabled retiree or beneficiary of the retiree ~~thereof~~ who is  
3784 receiving monthly disability benefits under this subsection, the  
3785 monthly benefits shall be paid through the last day of the month  
3786 of death and shall terminate, or be adjusted, if applicable, as  
3787 of that date in accordance with the optional form of benefit  
3788 selected at the time of retirement. The department ~~of Management~~  
3789 ~~Services~~ may adopt rules necessary to administer this paragraph.

3790 (3) DEATH BENEFITS.—Under the Florida ~~Public Employee~~  
3791 ~~Optional Retirement System Investment Plan Program~~:

3792 (a) Survivor benefits are ~~shall be~~ payable in accordance  
3793 with the following terms and conditions:

3794 1. ~~To the extent vested,~~ Benefits are ~~shall be~~ payable only  
3795 to a member's ~~participant's~~ beneficiary or beneficiaries as  
3796 designated by the member ~~participant~~ as provided in s.  
3797 121.4501(20).

3798 2. Benefits shall be paid by the third-party administrator  
3799 or designated approved providers in accordance with the law, the  
3800 contracts, and any applicable state board rule or policy.

3801 3. To receive benefits ~~under this subsection,~~ the member  
3802 ~~participant~~ must be deceased.

3803 (b) Except as provided in paragraph (d), if the employment  
3804 of a member is terminated by reason of his or her ~~In the event~~  
3805 ~~of a participant's death:~~

3806 1. Before being vested, the member's accumulated  
3807 contributions are payable to his or her designated beneficiary.

3808 2. After being vested, all vested accumulations as  
3809 described in s. 121.4501(6), less withholding taxes remitted to  
3810 the Internal Revenue Service, shall be distributed, as provided  
3811 in paragraph (c) or as described in s. 121.4501(20), as if the



200064

3812 ~~member participant~~ retired on the date of death. No other death  
3813 benefits are ~~shall be~~ available for survivors of members  
3814 ~~participants~~ under the investment plan ~~Public Employee Optional~~  
3815 ~~Retirement Program~~, except for ~~such~~ benefits, or coverage for  
3816 ~~such~~ benefits, as are otherwise provided by law or ~~are~~  
3817 separately provided ~~afforded~~ by the employer, at the employer's  
3818 discretion.

3819 (c) Upon receipt by the third-party administrator of a  
3820 properly executed application for distribution of benefits under  
3821 paragraph (b), the total accumulated benefit is ~~shall be~~ payable  
3822 by the third-party administrator to the member's ~~participant's~~  
3823 surviving beneficiary or beneficiaries, as:

3824 1. A lump-sum distribution payable to the beneficiary or  
3825 beneficiaries, or to the deceased member's ~~participant's~~ estate;

3826 2. An eligible rollover distribution on behalf of the  
3827 surviving spouse of a deceased member ~~participant~~, whereby all  
3828 accrued benefits, plus interest and investment earnings, are  
3829 paid from the deceased member's ~~participant's~~ account directly  
3830 to the custodian of an eligible retirement plan, as described in  
3831 s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
3832 surviving spouse; or

3833 3. A partial lump-sum payment whereby a portion of the  
3834 accrued benefit is paid to the deceased member's ~~participant's~~  
3835 surviving spouse or other designated beneficiaries, less  
3836 withholding taxes remitted to the Internal Revenue Service, and  
3837 the remaining amount is transferred directly to the custodian of  
3838 an eligible retirement plan, as described in s. 402(c)(8)(B) of  
3839 the Internal Revenue Code, on behalf of the surviving spouse.  
3840 The proportions must be specified by the member ~~participant~~ or



200064

3841 the surviving beneficiary.

3842 (d) Notwithstanding paragraphs (b) and (c), if a member is  
3843 killed in the line of duty, benefits are payable from employer  
3844 contributions made pursuant to s. 121.571, transferred members  
3845 funds accumulated pursuant to sub-subparagraph 1.a., and  
3846 interest and earnings thereon.

3847 1. Transfer of funds.-

3848 a. All moneys accumulated in the deceased member's  
3849 investment plan accounts, including vested and nonvested  
3850 accumulations described in s. 121.4501(6), shall be transferred  
3851 from such individual accounts to the Division of Retirement for  
3852 deposit in the death benefits program of the Florida Retirement  
3853 System Trust Fund. Such moneys must be separately accounted for.  
3854 Earnings shall be credited on an annual basis for amounts held  
3855 in the death benefits accounts of the trust fund based on actual  
3856 earnings of the trust fund.

3857 b. If the deceased member retained retirement credit he or  
3858 she earned under the pension plan as provided in s.  
3859 121.4501(3) (b), a sum representing the actuarial present value  
3860 of such credit within the Florida Retirement System Trust Fund  
3861 shall be reassigned by the Division of Retirement from the  
3862 pension plan to the death benefits program as implemented under  
3863 this paragraph and deposited in the death benefits account of  
3864 the trust fund. Such moneys shall be separately accounted for.

3865 2. Death benefit entitlement and payments.-

3866 a. The surviving spouse of a member killed in the line of  
3867 duty may receive a monthly pension equal to one-half of the  
3868 monthly salary being received by the member at the time of death  
3869 for the rest of the surviving spouse's lifetime.



200064

3870           b. If the surviving spouse of a member killed in the line  
3871 of duty dies, the monthly payments that would have been payable  
3872 to the surviving spouse had such surviving spouse lived shall be  
3873 paid for the use and benefit of such member's children under 18  
3874 years of age and unmarried until the 18th birthday of the  
3875 member's youngest child.

3876           c. If a member killed in the line of duty leaves no  
3877 surviving spouse but is survived by children under 18 years of  
3878 age, the benefits provided by sub-subparagraph a., normally  
3879 payable to a surviving spouse, shall be paid for the use and  
3880 benefit of the member's child or children under 18 years of age  
3881 and unmarried until the 18th birthday of the member's youngest  
3882 child.

3883  
3884 This paragraph does not abrogate other applicable provisions of  
3885 state or federal law providing for payment of death benefits.

3886           (4) LIMITATION ON LEGAL PROCESS.—The benefits payable to  
3887 any person under the Florida Public Employee Optional Retirement  
3888 System Investment Plan Program, and any contributions  
3889 accumulated under such plan program, are not subject to  
3890 assignment, execution, attachment, or any legal process, except  
3891 for qualified domestic relations orders by a court of competent  
3892 jurisdiction, income deduction orders as provided in s. 61.1301,  
3893 and federal income tax levies.

3894           Section 26. Section 121.5911, Florida Statutes, is amended  
3895 to read:

3896           121.5911 Disability retirement program; qualified status;  
3897 rulemaking authority.—It is the intent of the Legislature that  
3898 the disability retirement program for members ~~participants~~ of



200064

3899 the Florida Public Employee Optional Retirement System  
3900 Investment Plan Program ~~as created in this act~~ must meet all  
3901 applicable requirements of federal law for a qualified plan. The  
3902 department ~~of Management Services~~ shall seek a private letter  
3903 ruling from the Internal Revenue Service on the disability  
3904 retirement program ~~for participants of the Public Employee~~  
3905 ~~Optional Retirement Program~~. Consistent with the private letter  
3906 ruling, the department ~~of Management Services~~ shall adopt ~~any~~  
3907 ~~necessary~~ rules necessary ~~required~~ to maintain the qualified  
3908 status of the disability retirement program and the Florida  
3909 Retirement System's pension System ~~defined benefit~~ plan.

3910 Section 27. Subsection (1) of section 121.70, Florida  
3911 Statutes, is amended to read:

3912 121.70 Legislative purpose and intent.—

3913 (1) This part provides for a uniform system for funding  
3914 benefits provided under the Florida Retirement System defined  
3915 benefit program established under part I of this chapter,  
3916 ~~(referred to in this part as the pension plan, ~~defined benefit~~~~  
3917 ~~program)~~ and under the Florida Public Employee Optional  
3918 Retirement System Investment Plan Program established under part  
3919 II of this chapter, ~~(referred to in this part as the investment~~  
3920 ~~plan optional retirement program)~~. The Legislature recognizes  
3921 and declares that the Florida Retirement System is a single  
3922 retirement system, consisting of two retirement plans and other  
3923 nonintegrated programs. Employers participating in the Florida  
3924 Retirement System collectively shall be responsible for making  
3925 contributions to support the benefits provided ~~afforded~~ under  
3926 both programs ~~plans~~. ~~The~~ As provided in this part, employers  
3927 ~~participating in the Florida Retirement System~~ shall make



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3928 contributions based upon uniform contribution rates determined  
3929 as a percentage of the total payroll for each class or subclass  
3930 of Florida Retirement System membership, irrespective of which  
3931 retirement program the plan individual employee is enrolled in  
3932 ~~employees may elect~~. This shall be known as a uniform or blended  
3933 contribution rate system.

3934 Section 28. Subsections (1) and (2) of section 121.71,  
3935 Florida Statutes, are amended, present subsections (3) and (4)  
3936 of that section are renumbered as subsections (4) and (7),  
3937 respectively, and new subsections (3), (5), and (6) are added to  
3938 that section, to read:

3939 121.71 Uniform rates; process; calculations; levy.—

3940 (1) In conducting the system actuarial study required under  
3941 s. 121.031, the actuary shall follow all requirements specified  
3942 ~~thereunder~~ to determine, by Florida Retirement System employee  
3943 membership class, the dollar contribution amounts necessary for  
3944 the next forthcoming fiscal year for the pension plan defined  
3945 ~~benefit program~~. In addition, the actuary shall determine, by  
3946 Florida Retirement System membership class, based on an estimate  
3947 for the forthcoming fiscal year of the gross compensation of  
3948 employees participating in the investment plan optional  
3949 ~~retirement program~~, the dollar contribution amounts necessary to  
3950 make the allocations required under ss. 121.72 and 121.73. For  
3951 each employee membership class and subclass, the actuarial study  
3952 must shall establish a uniform rate necessary to fund the  
3953 benefit obligations under both Florida Retirement System  
3954 retirement plans by dividing the sum of total dollars required  
3955 by the estimated gross compensation of members in both plans.

3956 (2) Based on the uniform rates set forth in subsections





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3957 ~~subsection~~ (3), (4), and (5), employers and employees shall make  
3958 monthly contributions to the Division of Retirement as required  
3959 under s. 121.061(1), which shall initially deposit the funds  
3960 into the Florida Retirement System Contributions Clearing Trust  
3961 Fund. A change in a contribution rate is effective on the first  
3962 day of the month for which a full month's ~~employer~~ contribution  
3963 may be made on or after the beginning date of the change.  
3964 Beginning July 1, 2011, each employee shall contribute the  
3965 contributions required in subsection (3) to the plan. The  
3966 employer shall deduct the contribution from the employee's  
3967 monthly salary and submit it to the division. The contributions  
3968 shall be reported as employer-paid employee contributions, and  
3969 shall be credited to the account of the employee. The  
3970 contributions shall be deducted from the employee's salary  
3971 before the computation of applicable federal taxes and treated  
3972 as employer contributions under 26 U.S.C. 414(b)(2). Although  
3973 designated as employee contributions, the employer specifies  
3974 that the contributions are being paid by the employer in lieu of  
3975 contributions by the employee. The employee does not have the  
3976 option of choosing to receive the contributed amounts directly  
3977 instead of having them paid to the plan. Such contributions are  
3978 mandatory and each employee is deemed to have consented to the  
3979 payroll deductions. Payment of an employee's salary or wages,  
3980 less the contribution, is a full and complete discharge and  
3981 satisfaction of all claims and demands for the service rendered  
3982 by employees during the period covered by the payment, except  
3983 for claims to benefits to which they may be entitled under this  
3984 chapter.

3985 (3) Required employee retirement contribution rates for



200064

3986 each membership class and subclass of the Florida Retirement  
3987 System for both retirement plans are as follows:

3988  
3989 

<u>Membership Class</u>	<u>Percentage of Gross Compensation,</u> <u>Effective July 1, 2011</u>
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3990 

<u>Regular Class</u>	_____ %
----------------------	---------

3991 

<u>Special Risk Class</u>	_____ %
---------------------------	---------

3992 

<u>Special Risk</u> <u>Administrative</u> <u>Support Class</u>	_____ %
--	---------

3993 

<u>Elected Officers' Class -</u> <u>Legislators, Governor,</u> <u>Lt. Governor,</u> <u>Cabinet Officers,</u> <u>State Attorneys,</u> <u>Public Defenders</u>	_____ %
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3994 

<u>Elected Officers' Class -</u> <u>Justices, Judges</u>	_____ %
---	---------

3995 

<u>Elected Officers' Class -</u> <u>County Elected Officers</u>	_____ %
--	---------

3996 

<u>Senior Management Class</u>	_____ %
--------------------------------	---------



DROP \_\_\_\_\_ %

3997

3998 (4)~~(3)~~ Required employer retirement contribution rates for  
 3999 each membership class and subclass of the Florida Retirement  
 4000 System for both retirement plans are as follows:

	Percentage of Gross Compensation, Effective July 1, <u>2011</u> <del>2009</del>	Percentage of Gross Compensation, Effective July 1, <u>2012</u> <del>2010</del>
Membership Class		
4001		
4002		
4003	<u>9.76%</u> <del>8.69%</del>	<u>9.54%</u> <del>9.63%</del>
4004	<u>22.20</u> <del>19.76%</del>	<u>21.92%</u> <del>22.11%</del>
4005		
Special Risk Administrative Support Class	<u>11.41%</u> <del>11.39%</del>	<u>11.02%</u> <del>12.10%</del>
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys,	<u>14.48%</u> <del>13.32%</del>	<u>14.15%</u> <del>15.20%</del>



4006	Public Defenders		
	Elected Officers'		
	Class-		
	Justices, Judges		
		<u>19.43%</u> <del>18.40%</del>	<u>19.15%</u> <del>20.65%</del>
4007	Elected Officers'		
	Class-		
	County Elected		
	Officers		
		<u>16.73%</u> <del>15.37%</del>	<u>16.39%</u> <del>17.50%</del>
4008	Senior Management Class		
		<u>11.70%</u> <del>11.96%</del>	<u>16.39%</u> <del>13.43%</del>
4009	DROP		
		<u>13.79%</u> <del>9.80%</del>	<u>14.21%</u> <del>11.14%</del>

4010

4011 (5) In order to address unfunded actuarial liabilities of

4012 the system, the required employer retirement contribution rates

4013 for each membership class and subclass of the Florida Retirement

4014 System for both retirement plans are as follows:

4015

4016

	<u>Percentage of</u>	<u>Percentage of</u>
	<u>Gross</u>	<u>Gross</u>
	<u>Compensation,</u>	<u>Compensation,</u>
	<u>Effective</u>	<u>Effective</u>
<u>Membership Class</u>	<u>July 1, 2011</u>	<u>July 1, 2012</u>



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4017			
4018			
4019			
4020			
4021			
4022			
4023			
4024			
	<u>Regular Class</u>	<u>          %</u>	<u>1.58%</u>
4025			
4026			
	<u>Special Risk Class</u>	<u>          %</u>	<u>5.97%</u>
4027			
	<u>Special Risk</u>		
	<u>Administrative</u>		
	<u>Support Class</u>	<u>          %</u>	<u>15.97%</u>
4028			
	<u>Elected Officers'</u>		
	<u>Class-</u>		
	<u>Legislators, Governor,</u>		
	<u>Lt. Governor,</u>		
	<u>Cabinet Officers,</u>		
	<u>State Attorneys,</u>		
	<u>Public Defenders</u>	<u>          %</u>	<u>17.05%</u>
4029			
	<u>Elected Officers'</u>		
	<u>Class-</u>	<u>          %</u>	<u>11.00%</u>



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Justices, Judges

4030

Elected Officers'

Class-

County Elected

Officers

%

19.75%

4031

Senior Management Class

%

9.26%

4032

DROP

%

4.97%

4033

4034

4035

4036

4037

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4042

(6) If a member is reported under an incorrect membership class and the amount of contributions reported and remitted are less than the amount required, the employer shall owe the difference plus the delinquent fee of 1 percent for each calendar month or part thereof that the contributions should have been paid. This delinquent assessment may not be waived. If the contributions reported and remitted are more than the amount required, the employer shall receive a credit to be applied against future contributions owed.

4043

4044

4045

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4047

(7)-(4) The state actuary shall recognize and use an appropriate level of available excess assets of the Florida Retirement System Trust Fund to offset the difference between the normal costs of the Florida Retirement System and the statutorily prescribed contribution rates.

4048

4049

Section 29. Section 121.72, Florida Statutes, is amended to read:

4050

4051

121.72 Allocations to investment plan member ~~optional retirement program participant~~ accounts; percentage amounts.-



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4052 (1) The allocations established in subsection (4) shall  
4053 fund retirement benefits under the investment plan under part II  
4054 of this chapter ~~optional retirement program~~ and shall be  
4055 transferred monthly by the Division of Retirement from the  
4056 Florida Retirement System Contributions Clearing Trust Fund to  
4057 the third-party administrator for deposit in each participating  
4058 employee's individual account based on the membership class of  
4059 the employee participant.

4060 (2) The allocations are stated as a percentage of each  
4061 investment plan member's ~~optional retirement program~~  
4062 ~~participant's~~ gross compensation for the calendar month. A  
4063 change in a contribution percentage is effective the first day  
4064 of the month for which retirement contributions ~~a full month's~~  
4065 ~~employer contribution~~ may be made on or after the beginning date  
4066 of the change. Contribution percentages may be modified by  
4067 general law.

4068 (3) Employer and employee participant contributions to  
4069 member's participant accounts shall be accounted for separately.  
4070 ~~Participant contributions may be made only if expressly~~  
4071 ~~authorized by law.~~ Interest and investment earnings on  
4072 contributions shall accrue on a tax-deferred basis until  
4073 proceeds are distributed.

4074 (4) Effective July 1, 2011 ~~July 1, 2002~~, allocations from  
4075 the Florida Retirement System Contributions Clearing Trust Fund  
4076 to investment plan member ~~optional retirement program~~  
4077 participant accounts, including employee contributions required  
4078 under s. 121.71(3), are ~~shall be~~ as follows:

Membership Class	Percentage of Gross Compensation
------------------	-------------------------------------



200064

4079  
4080  
4081  
4082  
4083  
4084  
4085  
4086  
4087  
4088  
4089  
4090  
4091  
4092

Regular Class	9.00%
Special Risk Class	20.00%
Special Risk Administrative Support Class	11.35%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.40%
Elected Officers' Class— Justices, Judges	18.90%
Elected Officers' Class— County Elected Officers	16.20%
Senior Management Service Class	10.95%

Section 30. Section 121.73, Florida Statutes, is amended to read:  
121.73 Allocations for member ~~optional retirement program~~  
~~participant~~ disability coverage; percentage amounts.—





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4093 (1) The allocations established in subsection (3) shall be  
4094 used to provide disability coverage for members of the  
4095 investment plan ~~participants in the optional retirement program~~  
4096 and shall be transferred monthly by the Division of Retirement  
4097 from the Florida Retirement System Contributions Clearing Trust  
4098 Fund to the disability account of the Florida Retirement System  
4099 Trust Fund.

4100 (2) The allocations are stated as a percentage of each  
4101 investment plan participant's ~~optional retirement program~~  
4102 ~~participant's~~ gross compensation for the calendar month. A  
4103 change in a contribution percentage is effective the first day  
4104 of the month for which retirement contributions ~~a full month's~~  
4105 ~~employer contribution~~ may be made on or after the beginning date  
4106 of the change. Contribution percentages may be modified by  
4107 general law.

4108 (3) Effective July 1, 2002, allocations from the Florida  
4109 Retirement System ~~FRS~~ Contribution Clearing Fund to provide  
4110 disability coverage for members of the investment plan  
4111 ~~participants in the optional retirement program~~, and to offset  
4112 the costs of administering said coverage, shall be as follows:

Membership Class	Percentage of Gross Compensation
------------------	-------------------------------------

4113

4114

Regular Class	0.25%
---------------	-------

4115

Special Risk Class	1.33%
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4116



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4117	Special Risk Administrative Support Class	0.45%
4118	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
4119	Elected Officers' Class— Justices, Judges	0.73%
4120	Elected Officers' Class— County Elected Officers	0.41%
4121	Senior Management Service Class	0.26%

4122  
4123       (4) Effective July 1, 2011, allocations from the Florida  
4124 Retirement System Contribution Clearing Fund to provide  
4125 disability coverage for members of the investment plan and to  
4126 offset the costs of administering such coverage shall be the  
4127 actuarially indicated amount necessary to fund the statutorily  
4128 authorized benefit for the plan year as determined by the  
4129 department's actuary.

4130       Section 31. Section 121.74, Florida Statutes, is amended to  
4131 read:

4132       121.74 Administrative and educational expenses.—In addition  
4133 to contributions required under ss. ~~s.~~ 121.71 and 121.73,



200064

4134 effective July 1, 2010, through June 30, 2014, employers  
4135 participating in the Florida Retirement System shall contribute  
4136 an amount equal to 0.03 percent of the payroll reported for each  
4137 class or subclass of Florida Retirement System membership;  
4138 effective July 1, 2014, the contribution rate shall be 0.04  
4139 percent of the payroll reported for each class or subclass of  
4140 membership. The amount contributed shall be transferred by the  
4141 Division of Retirement from the Florida Retirement System  
4142 Contributions Clearing Trust Fund to the state board's ~~Board of~~  
4143 ~~Administration's~~ administrative trust fund to offset the costs  
4144 of administering the investment plan ~~optional retirement program~~  
4145 and the costs of providing educational services to participants  
4146 in the pension plan ~~defined benefit program~~ and the investment  
4147 plan ~~optional retirement program~~. Approval of the trustees is  
4148 required before the expenditure of these funds. Payments for  
4149 third-party administrative or educational expenses shall be made  
4150 only pursuant to the terms of the approved contracts for such  
4151 services.

4152 Section 32. Section 121.75, Florida Statutes, is amended to  
4153 read:

4154 121.75 Allocation for pension plan ~~defined benefit~~  
4155 ~~program~~.—After making the transfers required pursuant to ss.  
4156 121.71, 121.72, 121.73, and 121.74, the monthly balance of funds  
4157 in the Florida Retirement System Contributions Clearing Trust  
4158 Fund shall be transferred to the Florida Retirement System Trust  
4159 Fund to pay the costs of providing pension plan ~~defined benefit~~  
4160 ~~program~~ benefits and plan administrative costs under the pension  
4161 plan ~~defined benefit program~~.

4162 Section 33. Section 121.77, Florida Statutes, is amended to



200064

4163 read:

4164       121.77 Deductions from member ~~participant~~ accounts.—The  
4165 State Board of Administration may authorize the third-party  
4166 administrator to deduct reasonable fees and apply appropriate  
4167 charges to investment plan member ~~optional retirement program~~  
4168 ~~participant~~ accounts. In no event may ~~shall~~ administrative and  
4169 educational expenses exceed the portion of employer  
4170 contributions earmarked for such expenses under this part,  
4171 except for reasonable administrative charges assessed against  
4172 member ~~participant~~ accounts of persons for whom no employer  
4173 contributions are made during the calendar quarter. Investment  
4174 management fees shall be deducted from member ~~participant~~  
4175 accounts, pursuant to the terms of the contract between the  
4176 provider and the board.

4177       Section 34. Subsections (1) and (3) of section 121.78,  
4178 Florida Statutes, are amended to read:

4179       121.78 Payment and distribution of contributions.—

4180       (1) Contributions made pursuant to this part, including the  
4181 employee contributions, shall be paid by the employer to the  
4182 Division of Retirement by electronic funds transfer no later  
4183 than the 5th working day of the month immediately following the  
4184 month during which the payroll period ended. Accompanying  
4185 payroll data must be transmitted to the division concurrent with  
4186 the contributions.

4187       (3) (a) Employer and employee contributions and accompanying  
4188 payroll data received after the 5th working day of the month are  
4189 considered late. The employer shall be assessed by the Division  
4190 of Retirement a penalty of 1 percent of the contributions due  
4191 for each calendar month or part thereof that the contributions



200064

4192 or accompanying payroll data are late. Proceeds from the 1-  
4193 percent assessment against contributions made on behalf of  
4194 members of the pension plan ~~participants of the defined benefit~~  
4195 ~~program~~ shall be deposited in the Florida Retirement System  
4196 Trust Fund, and proceeds from the 1 percent ~~1-percent~~ assessment  
4197 against contributions made on behalf of members of the  
4198 investment plan ~~participants of the optional retirement program~~  
4199 shall be transferred to the third-party administrator for  
4200 deposit into member ~~participant~~ accounts, as provided in  
4201 paragraph (c) ~~(b)~~.

4202 (b) Retirement contributions paid for a prior period shall  
4203 be charged a delinquent fee of 1 percent for each calendar month  
4204 or part thereof that the contributions should have been paid.  
4205 This includes prior period contributions due to incorrect wages,  
4206 contributions from an earlier report or wages, and contributions  
4207 that should have been reported but were not. The delinquent  
4208 assessments may not be waived.

4209 (c) ~~(b)~~ If employee contributions or contributions made by  
4210 an employer on behalf of members of the investment plan  
4211 ~~participants of the optional retirement program~~ or accompanying  
4212 payroll data are not received within the calendar month they are  
4213 due, including, but not limited to, contribution adjustments as  
4214 a result of employer errors or corrections, and if that  
4215 delinquency results in market losses to members ~~participants~~,  
4216 the employer shall reimburse each member's ~~participant's~~ account  
4217 for market losses resulting from the late contributions. If a  
4218 member ~~participant~~ has terminated employment and taken a  
4219 distribution, the member ~~participant~~ is responsible for  
4220 returning any excess contributions erroneously provided by



200064

4221 employers, adjusted for any investment gain or loss incurred  
4222 during the period such excess contributions were in the member's  
4223 ~~participant's~~ account. The state board or its designated agent  
4224 shall communicate to terminated members ~~participants~~ any  
4225 obligation to repay such excess contribution amounts. However,  
4226 the state board, its designated agents, the Florida Public  
4227 ~~Employee Optional Retirement System Investment Plan Program~~  
4228 Trust Fund, the department, or the Florida Retirement System  
4229 Trust Fund may not incur any loss or gain as a result of an  
4230 employer's correction of such excess contributions. The third-  
4231 party administrator, hired by the state board pursuant to s.  
4232 121.4501(8), shall calculate the market losses for each affected  
4233 member ~~participant~~. If contributions made on behalf of members  
4234 of the investment plan ~~participants of the optional retirement~~  
4235 ~~program~~ or accompanying payroll data are not received within the  
4236 calendar month due, the employer shall also pay the cost of the  
4237 third-party administrator's calculation and reconciliation  
4238 adjustments resulting from the late contributions. The third-  
4239 party administrator shall notify the employer of the results of  
4240 the calculations and the total amount due from the employer for  
4241 such losses and the costs of calculation and reconciliation. The  
4242 employer shall remit to the Division of Retirement the amount  
4243 due within 30 working days after the date of the penalty notice  
4244 sent by the division. The division shall transfer that amount to  
4245 the third-party administrator, which shall deposit proceeds from  
4246 the 1 percent ~~1-percent~~ assessment and from individual market  
4247 losses into member ~~participant~~ accounts, as appropriate. The  
4248 state board may adopt rules to administer the provisions  
4249 regarding late contributions, late submission of payroll data,



200064

4250 the process for reimbursing member ~~participant~~ accounts for  
4251 resultant market losses, and the penalties charged to the  
4252 employers.

4253 (d) If employee contributions reported by an employer on  
4254 behalf of the employee are reduced as a result of employer  
4255 errors or corrections and the employee has terminated employment  
4256 and taken a refund or distribution, the employer shall be billed  
4257 and is responsible for recovering from the employee any excess  
4258 contributions erroneously provided by the employer.

4259 (e) ~~(e)~~ Delinquency fees specified in paragraph (a) may be  
4260 waived by the Division of Retirement, with regard to pension  
4261 plan ~~defined benefit program~~ contributions, and by the state  
4262 board, with regard to investment plan ~~optional retirement~~  
4263 ~~program~~ contributions, only if, in the opinion of the division  
4264 or the board, as appropriate, exceptional circumstances beyond  
4265 the employer's control prevented remittance by the prescribed  
4266 due date notwithstanding the employer's good faith efforts to  
4267 effect delivery. Such a waiver of delinquency may be granted an  
4268 employer only once each plan ~~state fiscal~~ year.

4269 (f) If the employer submits excess employer or employee  
4270 contributions, the employer shall receive a credit to be applied  
4271 against future contributions owed. The employer is responsible  
4272 for reimbursing the employee for any excess contributions  
4273 submitted if any return of such an erroneous excess pretax  
4274 contribution by the program is made within 1 year after making  
4275 erroneous contributions or such other period as allowed under  
4276 applicable Internal Revenue Service guidance.

4277 (g) ~~(d)~~ If contributions made by an employer on behalf of  
4278 members of the investment program ~~participants in the optional~~



4279 ~~retirement program~~ are delayed in posting to member participant  
4280 accounts due to acts of God beyond the control of the Division  
4281 of Retirement, the state board, or the third-party  
4282 administrator, as applicable, market losses resulting from the  
4283 late contributions are not payable to the members participants.

4284 Section 35. Paragraph (a) of subsection (4) of section  
4285 1012.875, Florida Statutes, is amended to read:

4286 1012.875 State Community College System Optional Retirement  
4287 Program.—Each community college may implement an optional  
4288 retirement program, if such program is established therefor  
4289 pursuant to s. 1001.64(20), under which annuity or other  
4290 contracts providing retirement and death benefits may be  
4291 purchased by, and on behalf of, eligible employees who  
4292 participate in the program, in accordance with s. 403(b) of the  
4293 Internal Revenue Code. Except as otherwise provided herein, this  
4294 retirement program, which shall be known as the State Community  
4295 College System Optional Retirement Program, may be implemented  
4296 and administered only by an individual community college or by a  
4297 consortium of community colleges.

4298 (4) (a) Through June 30, 2011, each college must contribute  
4299 on behalf of each program member participant an amount equal to  
4300 10.43 percent of the employee's participant's gross monthly  
4301 compensation. Effective July 1, 2011, each member shall  
4302 contribute an amount equal to the employee contribution required  
4303 under s. 121.71(3). Effective July 1, 2011, each employer shall  
4304 contribute on behalf of each program member an amount equal to  
4305 the difference between 10.43 percent of the employee's gross  
4306 monthly compensation and the employee's required contribution  
4307 based on the employee's gross monthly compensation. The college





200064

4308 shall deduct an amount approved by the district board of  
4309 trustees of the college to provide for the administration of the  
4310 optional retirement program. Payment of this contribution must  
4311 be made ~~either~~ directly by the college or through the program  
4312 administrator to the designated company contracting for payment  
4313 of benefits to the program member participant.

4314 Section 36. The Legislature finds that a proper and  
4315 legitimate state purpose is served when employees and retirees  
4316 of the state and its political subdivisions, and the dependents,  
4317 survivors, and beneficiaries of such employees and retirees, are  
4318 extended the basic protections afforded by governmental  
4319 retirement systems. These persons must be provided benefits that  
4320 are fair and adequate and that are managed, administered, and  
4321 funded in an actuarially sound manner, as required by s. 14,  
4322 Article X of the State Constitution and part VII of chapter 112,  
4323 Florida Statutes. Therefore, the Legislature determines and  
4324 declares that this act fulfills an important state interest.

4325 Section 37. The Division of Statutory Revision is requested  
4326 to rename the title of part II of chapter 121, Florida Statutes,  
4327 as "Florida Retirement System Investment Plan."

4328 Section 38. (1) Effective upon this act becoming a law, the  
4329 State Board of Administration and the Department of Management  
4330 Services shall, as soon as practicable, request a determination  
4331 letter and private letter ruling from the United States Internal  
4332 Revenue Service. If the Internal Revenue Service refuses to act  
4333 upon a request for a private letter ruling, the legal opinion  
4334 from a qualified tax attorney or firm may be substituted for the  
4335 private letter ruling.

4336 (2) If the board or the department receives notification



200064

4337 from the United States Internal Revenue Service that this act or  
4338 any portion of this act will cause the Florida Retirement  
4339 System, or a portion thereof, to be disqualified for tax  
4340 purposes under the Internal Revenue Code, then that portion does  
4341 not apply. Upon such notice, the state board and the department  
4342 shall notify the presiding officers of the Legislature.

4343 Section 39. Except as otherwise expressly provided in this  
4344 act, this act shall take effect June 30, 2011.

4345  
4346 ===== T I T L E A M E N D M E N T =====

4347 And the title is amended as follows:

4348 Delete everything before the enacting clause  
4349 and insert:

4350 A bill to be entitled  
4351 An act relating to retirement; amending s. 110.123,  
4352 F.S.; conforming provisions to changes made by the  
4353 act; amending ss. 112.0801, 112.363, and 112.65, F.S.;  
4354 conforming provisions to changes made by the act;  
4355 amending s. 121.011, F.S.; requiring employee and  
4356 employer contributions to the retirement system by a  
4357 certain date; amending s. 121.021, F.S.; redefining  
4358 the terms "system," "prior service," "compensation,"  
4359 "average final compensation," "benefit," and "payee";  
4360 amending s. 121.051, F.S.; conforming provisions to  
4361 changes made by the act; amending s. 121.0515, F.S.;  
4362 providing that special risk employee contributions be  
4363 used, if applicable, when purchasing credit for past  
4364 service; conforming a cross-reference; amending s.  
4365 121.052, F.S., relating to the membership class of



200064

4366 elected officers; conforming provisions to changes  
4367 made by the act; providing for a refund of  
4368 contributions under certain circumstances for an  
4369 officer who leaves office; prohibiting such refund if  
4370 an approved qualified domestic relations order is  
4371 filed against the member's retirement account;  
4372 providing that a member who obtains a refund of  
4373 contributions waives certain rights under the Florida  
4374 Retirement System; conforming a cross-reference;  
4375 amending s. 121.053, F.S.; conforming provisions to  
4376 changes made by the act; amending s. 121.055, F.S.,  
4377 relating to the Senior Management Service Class;  
4378 conforming provisions to changes made by the act;  
4379 prohibiting such refund if an approved qualified  
4380 domestic relations order is filed against the member's  
4381 retirement account; providing that a member who  
4382 obtains a refund of contributions waives certain  
4383 rights under the Florida Retirement System; requiring  
4384 employee and employer contributions for members in the  
4385 Senior Management Service Optional Annuity Program  
4386 after a certain date; limiting the payment of benefits  
4387 before a member's termination of employment; amending  
4388 s. 121.071, F.S.; requiring employee and employer  
4389 contributions to the retirement system beginning on a  
4390 certain date; providing for a refund of contributions  
4391 under certain circumstances following termination of  
4392 employment; prohibiting such refund if an approved  
4393 qualified domestic relations order is filed against  
4394 the member's retirement account; providing that a



200064

4395 member who obtains a refund of contributions waives  
4396 certain rights under the Florida Retirement System;  
4397 requiring repayment plus interest of an invalid  
4398 refund; amending s. 121.081, F.S.; providing  
4399 requirements for contributions for prior service  
4400 performed on or after a certain date; amending s.  
4401 121.091, F.S.; conforming a cross-reference; delaying  
4402 the refund or payment of accumulated employee  
4403 contributions if a member's employment is terminated  
4404 for any reason other than death or retirement;  
4405 requiring repayment plus interest of an invalid  
4406 refund; prohibiting such refund if an approved  
4407 qualified domestic relations order is filed against  
4408 the member's retirement account; providing that a  
4409 member who obtains a refund of contributions waives  
4410 certain rights under the Florida Retirement System;  
4411 conforming provisions to changes made by the act;  
4412 amending s. 121.1001, F.S.; conforming provisions to  
4413 changes made by the act; amending s. 121.121, F.S.,  
4414 relating to the purchase of creditable service  
4415 following an authorized leave of absence; requiring  
4416 that service credit be purchased at the employee and  
4417 employer contribution rates in effect during the leave  
4418 of absence; reducing the interest rate on benefits  
4419 payable under the Deferred Retirement Option Program  
4420 for employees hired after a certain date; amending s.  
4421 121.122, F.S.; providing for renewed membership in the  
4422 retirement system for retirees who are reemployed  
4423 after a certain date; specifying requirements and



4424 limitations; amending s. 121.125, F.S.; conforming  
4425 provisions to changes made by the act; amending s.  
4426 121.35, F.S., relating to the optional retirement  
4427 program for the State University System; conforming  
4428 provisions to changes made by the act; requiring  
4429 employee and employer contributions for members  
4430 participating in the optional retirement program after  
4431 a certain date; deleting certain requirements  
4432 governing employer contributions to conform to changes  
4433 made by the act; conforming cross-references; amending  
4434 s. 121.355, F.S.; conforming provisions to changes  
4435 made by the act; amending s. 121.4501, F.S.; changing  
4436 the name of the Public Employee Optional Retirement  
4437 Program to the Florida Retirement System Investment  
4438 Plan; limiting the option of enrolling in the State  
4439 Retirement System's defined benefit program or defined  
4440 contribution program to public employees employed  
4441 before a certain date; requiring public employees  
4442 employed on or after a certain date to enroll in the  
4443 investment plan; providing exceptions; requiring that  
4444 plan members make contributions to the plan based on  
4445 the employee's membership class; revising definitions;  
4446 deleting obsolete provisions relating to the 2002  
4447 optional transfer of public employees from the pension  
4448 plan to the investment plan; providing for past  
4449 employees who reenter the system; providing for  
4450 contribution adjustments as a result of errors or  
4451 corrections; requiring an employer to receive a credit  
4452 for excess contributions and to reimburse an employee



4453 for excess contributions, subject to certain  
4454 limitations; providing for a retiree to retain his or  
4455 her prior plan choice following a return to  
4456 employment; limiting certain refunds of contributions  
4457 which exceed the amount that would have accrued had  
4458 the member remained in the pension plan; providing  
4459 certain requirements and limitations with respect to  
4460 contributions; clarifying that employee and employer  
4461 contributions are earmarked for specified purposes;  
4462 providing duties of the third-party administrator;  
4463 providing that a member is vested immediately with  
4464 respect to employee contributions paid by the  
4465 employee; providing for the forfeiture of nonvested  
4466 employer contributions and service credit based on  
4467 years of service; amending s. 121.4502, F.S.;  
4468 conforming provisions to changes made by the act;  
4469 amending s. 121.4503, F.S.; providing for the deposit  
4470 of employee contributions into the Florida Retirement  
4471 System Contributions Clearing Trust Fund; amending s.  
4472 121.571, F.S.; conforming provisions to changes made  
4473 by the act; providing requirements for submitting  
4474 employee contributions; amending s. 121.591, F.S.;  
4475 providing for the forfeiture of nonvested  
4476 accumulations upon payment of certain vested benefits;  
4477 providing that the distribution payment method  
4478 selected by the member or beneficiary is irrevocable  
4479 at the time of distribution; prohibiting a  
4480 distribution of employee contributions if a qualified  
4481 domestic relations order is filed against the member's



200064

4482 account; providing for the distribution of an  
4483 employee's contributions if the employee dies before  
4484 being vested; providing for the establishment of a  
4485 death benefits program in the Florida Retirement  
4486 System Trust Fund and the payment of benefits if the  
4487 employee dies in the line of duty; conforming  
4488 provisions to changes made by the act; amending ss.  
4489 121.5911 and 121.70, F.S.; conforming provisions to  
4490 changes made by the act; amending s. 121.71, F.S.;  
4491 providing for employee contributions to be deducted  
4492 from the employee's monthly salary, beginning on a  
4493 specified date, and treated as employer contributions  
4494 under certain provisions of federal law; clarifying  
4495 that an employee may not receive such contributions  
4496 directly; specifying the required employee  
4497 contribution rates for the membership of each  
4498 membership class and subclass of the Florida  
4499 Retirement System; specifying the required employer  
4500 retirement contribution rates for each membership  
4501 class and subclass of the system in order to address  
4502 unfunded actuarial liabilities of the system;  
4503 requiring an assessment to be imposed if the employee  
4504 contributions remitted are less than the amount  
4505 required; providing for the employer to receive a  
4506 credit for excess contributions remitted; conforming  
4507 cross-references; amending s. 121.72, F.S.; revising  
4508 certain requirements governing allocations to optional  
4509 retirement program member accounts; conforming cross-  
4510 references; amending s. 121.73, F.S., relating to



200064

4511 disability coverage for members of the optional  
4512 retirement program; conforming provisions to changes  
4513 made by the act; amending ss. 121.74, 121.75, and  
4514 121.77, F.S.; conforming provisions to changes made by  
4515 the act; conforming cross-references; amending s.  
4516 121.78, F.S.; revising certain requirements for  
4517 administering the payment and distribution of  
4518 contributions; requiring that certain fees be imposed  
4519 for delinquent payment; providing that an employer is  
4520 responsible for recovering any refund provided to an  
4521 employee in error; revising the terms of an authorized  
4522 waiver of delinquency; requiring an employer to  
4523 receive a credit for excess contributions and to  
4524 reimburse an employee for excess contributions,  
4525 subject to certain limitations; amending s. 1012.875,  
4526 F.S.; requiring employee and employer contributions  
4527 for members of the State Community College System  
4528 Optional Retirement Program on a certain date;  
4529 conforming cross-references; providing that the act  
4530 fulfills an important state interest; providing a  
4531 directive to the Division of Statutory Revision;  
4532 requiring the State Board of Administration and the  
4533 Department of Management Services to request a private  
4534 letter ruling from the United States Internal Revenue  
4535 Service regarding this act; providing for  
4536 severability; providing effective dates.





581812

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala) recommended the following:

**Senate Amendment to Amendment (200064) (with title  
amendment)**

Delete line 179

and insert:

121.071 and part III of this chapter. Notwithstanding any other  
provision of law, the amount of employee retirement  
contributions for any member of the Regular Class or Special  
Risk Class may not exceed 2 percent of such member's annual  
state compensation and the amount of employee retirement  
contributions for any member of the Senior Management Service  
Class or Elected Officers Class may not exceed 4 percent of such



581812

13 member's annual state compensation.

14

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

16 And the title is amended as follows:

17       Delete line 4357

18 and insert:

19       certain date; placing an cap on the amount of employee  
20       contributions; amending s. 121.021, F.S.; redefining



204962

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala) recommended the following:

1           **Senate Amendment to Amendment (200064) (with directory and**  
2 **title amendments)**

3  
4           Between lines 179 and 180  
5 insert:

6           (i) Employee contributions to the system may be used only  
7 to pay down an unfunded actuarial liability in the specific plan  
8 type in the retirement system in which the contributing employee  
9 is enrolled.

10  
11 ===== D I R E C T O R Y   C L A U S E   A M E N D M E N T =====

12 And the directory clause is amended as follows:



204962

13           Delete line 173  
14 and insert:  
15           Section 5. Paragraphs (h) and (i) are added to subsection  
16 (3) of

17  
18 ===== T I T L E   A M E N D M E N T =====

19 And the title is amended as follows:

20           Delete line 4357  
21 and insert:  
22           certain date; limiting how employee retirement  
23           contributions may be used within the system; amending  
24           s. 121.021, F.S.; redefining



855018

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment to Amendment (200064)**

Delete lines 285 - 286  
and insert:  
c.3. Payments for accumulated annual leave in excess of 500  
hours;



641980

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala) recommended the following:

1           **Senate Amendment to Amendment (200064) (with title**  
2 **amendment)**

3  
4           Delete lines 306 - 322

5 and insert:

6           (45) ~~(a)~~ "Vested" or "vesting" means the guarantee that a  
7 member is eligible to receive a future retirement benefit upon  
8 completion of the required years of creditable service for the  
9 employee's class of membership, even though the member may have  
10 terminated covered employment before reaching normal or early  
11 retirement date. Being vested does not entitle a member to a  
12 disability benefit. Provisions governing entitlement to



13 disability benefits are set forth under s. 121.091(4).

14 (a) ~~(b)~~ Effective July 1, 2001, a 6-year vesting requirement  
15 shall be implemented for the ~~defined benefit program of the~~  
16 Florida Retirement System's pension plan System. Pursuant  
17 thereto:

18 1. Any member employed in a regularly established position  
19 on July 1, 2001, who completes or has completed a total of 6  
20 years of creditable service is ~~shall be considered~~ vested as  
21 ~~described in paragraph (a)~~.

22 2. Any member not employed in a regularly established  
23 position on July 1, 2001, shall be deemed vested upon completion  
24 of 6 years of creditable service if, ~~provided that~~ such member  
25 is employed in a covered position for at least 1 work year after  
26 July 1, 2001. However, a ~~no~~ member may not ~~shall~~ be required to  
27 complete more years of creditable service than would have been  
28 required for that member to vest under retirement laws in effect  
29 before July 1, 2001.

30 (b) Effective July 1, 2011, an 8-year vesting requirement  
31 shall be implemented for the Florida Retirement System's pension  
32 plan.

33 1. Any member employed in a regularly established position  
34 on July 1, 2011, who completes or has completed a total of 8  
35 years of creditable service is vested.

36 2. Any member not employed in a regularly established  
37 position on July 1, 2011, shall be deemed vested upon completion  
38 of 8 years of creditable service if such member is employed in a  
39 covered position for at least 1 work year after July 1, 2011.  
40 However, a member may not be required to complete more years of  
41 creditable service than would have been required for that member



641980

42 to vest under retirement laws in effect before July 1, 2011.

43

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

45 And the title is amended as follows:

46 Delete line 4359

47 and insert:

48 "average final compensation," "benefit," "vested," and

49 "payee";





939600

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala) recommended the following:

**Senate Amendment to Amendment (200064) (with directory and  
title amendments)**

Delete lines 607 - 614.

Delete line 1878

and insert:

plan. Enrollment is compulsory for members of the Elected  
Officers Class, the Senior Management Class, and any member of  
any class for which the starting salary of the position in which  
the member is employed is in excess of \$75,000 who are



939600

13 Delete lines 2484 - 2490.

14

15 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

16 And the directory clause is amended as follows:

17 Delete lines 332 - 333

18 and insert:

19 subsections (f) and (g), respectively, and subsection (3) of  
20 that section is

21

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

23 And the title is amended as follows:

24 Delete line 4441

25 and insert:

26 before a certain date; requiring certain public  
27 employees



170778

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Margolis) recommended the following:

**Senate Substitute for Amendment (939600) (with directory  
and title amendments)**

Delete lines 607 - 614.

Delete line 1878

and insert:

plan. Enrollment is compulsory for members of the Elected  
Officers Class and the Senior Management Class who are

Delete lines 2484 - 2490.



170778

13 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

14 And the directory clause is amended as follows:

15 Delete lines 332 - 333

16 and insert:

17 subsections (f) and (g), respectively, and subsection (3) of  
18 that section is

19

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

21 And the title is amended as follows:

22 Delete line 4441

23 and insert:

24 before a certain date; requiring certain public  
25 employees



267752

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Dean) recommended the following:

1           **Senate Substitute for Amendment (939600) (with title**  
2 **amendment)**

3  
4           Delete lines 3985 - 3997  
5 and insert:

6           (3) Effective July 1, 2011, required employee retirement  
7 contribution rates for all members shall be 0 percent for gross  
8 compensation up to and including \$40,000, plus 2 percent for  
9 gross compensation in excess of \$40,000 and up to and including  
10 \$75,000, plus 4 percent for gross compensation that is greater  
11 than \$75,000.  
12



267752

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

14 And the title is amended as follows:

15       Delete lines 4496 - 4499

16 and insert:

17       directly; basing the required employee contribution on  
18       the amount of gross compensation; specifying the  
19       required employer



175742

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Dean) recommended the following:

**Senate Substitute for Amendment (939600) (with title amendment)**

Delete lines 3985 - 3997  
and insert:

(3) Effective July 1, 2011, required employee retirement contribution rates for all members shall be 2 percent for gross compensation up to and including \$75,000, plus 4 percent for gross compensation that is greater than \$75,000.

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

And the title is amended as follows:



175742

13           Delete lines 4496 - 4499  
14 and insert:  
15           directly; basing the required employee contribution on  
16           the amount of gross compensation; specifying the  
17           required employer





791024

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Fasano) recommended the following:

1           **Senate Amendment to Amendment (200064) (with directory and**  
2 **title amendments)**

3  
4           Between lines 788 and 789  
5 insert:

6           (10) ACCRUED SERVICE VALUE.—Prior to July 1, 2011, a member  
7 of the Elected Officers' Class who is a Supreme Court justice,  
8 district court of appeal judge, circuit judge, or county court  
9 judge shall receive judicial retirement credit of 3 1/3 percent  
10 of average final compensation, and all other members shall  
11 receive elected officer retirement credit of 3 percent of  
12 average final compensation, for each year of creditable service



791024

13 in such class. Effective July 1, 2011, all members of such class  
14 shall receive a retirement credit of 1.6 percent of average  
15 compensation.

16  
17 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

18 And the directory clause is amended as follows:

19 Delete lines 700 - 701

20 and insert:

21 paragraph (c) is added to that subsection, and subsections (8)  
22 and (10) of that section are amended, to read:

23  
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 After line 4374

27 insert:

28 revising the amount of the judicial retirement credit  
29 based on average final compensation;



670196

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Fasano) recommended the following:

1           **Senate Amendment to Amendment (200064) (with directory and**  
2 **title amendments)**

3  
4           Between lines 788 and 789  
5 insert:

6           (10) ACCRUED SERVICE VALUE.—For service earned before July  
7 1, 2011, a member of the Elected Officers' Class who is a  
8 Supreme Court justice, district court of appeal judge, circuit  
9 judge, or county court judge shall receive judicial retirement  
10 credit of 3 1/3 percent of average final compensation, and all  
11 other members shall receive elected officer retirement credit of  
12 3 percent of average final compensation, for each year of



670196

13 creditable service in such class. For service earned on or after  
14 July 1, 2011, all members of such class shall receive the  
15 accrual value specified in s. 121.091(1)(a)1. for each year of  
16 credible service.

17  
18 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

19 And the directory clause is amended as follows:

20 Delete lines 700 - 701

21 and insert:

22 paragraph (c) is added to that subsection, and subsections (8)  
23 and (10) of that section are amended, to read:

24  
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 After line 4374

28 insert:

29 revising the amount of the judicial retirement credit  
30 based on average final compensation;



478338

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Fasano) recommended the following:

**Senate Amendment to Amendment (200064) (with title amendment)**

Delete lines 1438 - 1440  
and insert:

1. The retiree ~~retirees~~ may not be reemployed with an employer participating in the Florida Retirement System ~~until such person has been retired for 6 calendar months.~~

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

And the title is amended as follows:



478338

13           After line 4411  
14 insert:  
15           deleting a limitation on when a retiree can be  
16           reemployed with an employer participating in the  
17           Florida Retirement System;



916532

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment to Amendment (200064) (with title amendment)**

Delete lines 3985 - 3997  
and insert:

(3) Effective July 1, 2011, required employee retirement contribution rates for all members shall be 2 percent for gross compensation of up to \$75,000, plus 4 percent for gross compensation that is equal to or greater than \$75,000.

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



916532

13 And the title is amended as follows:  
14       Delete lines 4496 - 4499  
15 and insert:  
16       directly; basing the required employee contribution on  
17       the amount of gross compensation; specifying the  
18       required employer





720294

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Norman) recommended the following:

1           **Senate Amendment to Amendment (200064) (with title**  
2 **amendment)**

3  
4           Delete lines 3985 - 3987  
5 and insert:

6           (3) Employee retirement contributions are not required if  
7 the Florida Retirement System reaches or exceeds 100 percent of  
8 actuarial funding. However, employee contributions shall be set  
9 for an entire fiscal year for each membership class and subclass  
10 of the Florida Retirement System for both the pension and  
11 investment plans as follows:  
12



720294

13  
14  
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21

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

And the title is amended as follows:

Delete line 4496

and insert:

directly; providing that employee contributions are  
not required if the Florida Retirement System reaches  
a certain level of funding; specifying the required  
employee



445844

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

1           **Senate Amendment to Amendment (200064) (with title**  
2 **amendment)**

3  
4           Between lines 4342 and 4343  
5 insert:

6           Section 39. Each state university, as defined in s.  
7 1000.21, Florida Statutes, may develop and implement cost-  
8 effective strategies to deliver health care benefits to its  
9 employees, including faculty and staff. Each such university may  
10 develop health benefit programs, including, but not limited to,  
11 group or self-insurance plans, as well as the necessary  
12 administrative services required to implement and administer



445844

13 such programs if the annual costs in the year of the  
14 implementation do not exceed current state expenditures.

15  
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 Delete line 4536

19 and insert:

20 severability; authorizing state universities to  
21 develop and implement health benefit programs for  
22 their employees if the costs of such programs do not  
23 exceed current state expenditures; providing effective  
24 dates.



696342

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala) recommended the following:

**Senate Amendment to Amendment (200064)**

Delete line 4344  
and insert:  
act, this act shall take effect July 1, 2011.



562994

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Dean) recommended the following:

1           **Senate Amendment to Amendment (200064) (with title**  
2 **amendment)**

3  
4           Delete lines 3985 - 3997

5 and insert:

6 (3) Effective July 1, 2011, required employee retirement  
7 contribution rates for all members for fiscal year 2011-2012  
8 shall be 0 percent for gross compensation up to and including  
9 \$40,000, plus no more than 2 percent for gross compensation in  
10 excess of \$40,000 and up to and including \$75,000, plus no more  
11 than 4 percent for gross compensation that is greater than  
12 \$75,000.



562994

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

And the title is amended as follows:

Delete lines 4496 - 4499

and insert:

directly; placing a cap based on the amount of gross  
compensation on the amount of employee contributions;  
specifying the required employer



440046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala and Ring) recommended the following:

**Senate Amendment to Amendment (200064)**

Delete line 301  
and insert:  
(d) Overtime payments paid from a salary fund in excess of 300  
hours;





249396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala and Ring) recommended the following:

**Senate Amendment to Amendment (200064)**

Between lines 233 and 234

insert:

1. Overtime payments paid from a salary fund, not to exceed 300 hours.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

**BILL:** CS/SB 1970

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Thrasher

**SUBJECT:** OPPAGA/Public-Records Exemption

**DATE:** March 10, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The Auditor General, of which the Office of Program Policy Analysis and Government Accountability (OPPAGA) has been a unit, has a public-records exemption for audit workpapers and notes.

Because SB 1204 establishes OPPAGA as an entity separate from the Auditor General, this bill creates a public-records exemption for work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product. The exemption applies to workpapers held by OPPAGA before, on, or after the effective date of the exemption.

Because this bill creates a public-records exemption, it contains a public necessity statement and requires a two-thirds vote of each house of the Legislature for passage.

This bill amends s. 11.51, F.S.

## II. Present Situation:

### Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to open meetings and public records to a constitutional level. Section 24(a), Art. I of the Florida Constitution, and the Public Records Act,<sup>2</sup> specify the conditions under which public access must be provided to governmental records.

Section 24(a), Art. I of the Florida Constitution provides:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Although the Florida Constitution provides that records are to the public, it also provides the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Any legislation that creates a new exemption or that substantially amends an existing exemption must contain a statement of public necessity justifying the exemption, requires a two-thirds vote of each house of the Legislature for passage, and may not contain other substantive provisions, although it may contain multiple exemptions.<sup>3</sup>

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>4</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>5</sup>

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<sup>1</sup> Section 1390, 1391, F.S. (Rev. 1892).

<sup>2</sup> Chapter 119, F.S. The provisions of the Act apply to any “agency,” which is defined in the chapter as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>3</sup> Section 24(c), Art. I of the Florida Constitution.

<sup>4</sup> Op. Att’y Gen. Fla. 85-62 (August 1, 1985).

<sup>5</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So. 2d 289 (Fla. 1991).

Access to public records is a substantive right and therefore, a statute affecting that right is presumptively prospective in its application.<sup>6</sup> There must be a clear legislative intent for a statute affecting substantive rights to apply retroactively.<sup>7</sup>

### **Office of Program Policy Analysis and Government Accountability**

OPPAGA was created as a unit of the Auditor General. OPPAGA is a staff unit of the Legislature that performs independent examinations, program reviews, and other projects as directed by the Legislature.<sup>8</sup> Examples of OPPAGA's work products include, but are not limited to, government program summaries, agency sunset reviews, and policy research on all subjects.<sup>9</sup>

### **Auditor General Public-Records Exemption**

Audit workpapers and notes of the Auditor General are not public records.<sup>10</sup> Because OPPAGA has been a unit of the Auditor General, its workpapers have been exempt from public-records requirements.

## **III. Effect of Proposed Changes:**

This bill exempts work papers held by OPPAGA which relate to an authorized project or research project from the public-records requirements of the Florida Constitution. The protection is effectively the same as that currently afforded to OPPAGA under the Auditor General's exemption for audit workpapers and notes. The exemption applies to work papers held by OPPAGA before, on, or after the effective date of the exemption.<sup>11</sup>

The bill contains a public necessity statement.

The bill links its effective date to that of SB 1204 or similar legislation.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

This bill creates a public-records exemption. It complies with the requirements of s. 24(c), Art. I of the Florida Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

<sup>6</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001).

<sup>7</sup> *Id.*

<sup>8</sup> Section 11.51(1), F.S., currently provides: "There is hereby created the Office of Program Policy Analysis and Government Accountability as a unit of the Office of the Auditor General appointed pursuant to s. 11.42 ..."

<sup>9</sup> The OPPAGA website, <http://www.oppaga.state.fl.us/Default.aspx>, last viewed March 9, 2011.

<sup>10</sup> Section 11.42(4)(c), F.S.

<sup>11</sup> The phrase "before, on, or after the effective date of the exemption provides a clear legislative intent that the law should apply retroactively. As mentioned previously in the analysis, there must be a clear legislative intent for a statute affecting substantive rights to apply retroactively. See *supra* fn. 6, 7.

Because the bill creates an exemption, it contains a statement of public necessity and is subject to a two-thirds vote of each house of the Legislature for passage as required by s. 24(c), Art. I of the Florida Constitution.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill is linked to SB 1204, which, among other things, removes OPPAGA from the Office of the Auditor General. SB 1204 provides that “OPPAGA” means an entity designated by joint rule of the Legislature or by agreement between the President of the Senate and the Speaker of the House of Representatives.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on March 10, 2011:**

- Makes clarifying drafting changes to the public necessity statement.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment**

Delete lines 26 - 41  
and insert:  
Policy Analysis and Government Accountability (OPPAGA) be made  
exempt from s. 24(a), Article I of the State Constitution. As  
required by the Legislature, OPPAGA may provide independent  
evaluative research and objective analyses to promote government  
accountability and the efficient and effective use of public  
resources. In order for OPPAGA to accomplish this mission, it is  
necessary that individuals and businesses share information with  
OPPAGA staff without concerns of competitive disadvantage,



272688

13 disclosure, or reprisals. Private sector business entities have  
14 legitimate concerns that information provided to assist the  
15 Legislature in directing policy initiatives has protection from  
16 those in the marketplace who could gain financially from the  
17 ability to access information collected by OPPAGA. In addition,  
18 supervisors and others often want to know