

By the Committee on Governmental Oversight and Productivity

302-576-99

1                                   A bill to be entitled  
2           An act relating to retirement; creating s.  
3           121.36, F.S.; creating an optional retirement  
4           program for employees of the State of Florida;  
5           providing eligibility criteria; providing that  
6           state employees may participate in the optional  
7           retirement program in lieu of participating in  
8           the Florida Retirement System; providing  
9           requirements for electing the optional program;  
10          providing for contributions to the optional  
11          program; providing for payment of benefits;  
12          providing for the Division of Retirement of the  
13          Department of Management Services to administer  
14          the program; authorizing the division to adopt  
15          rules; requiring that the State Board of  
16          Administration review the investment products  
17          offered under the optional program; providing  
18          an effective date.

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

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22           Section 1. Section 121.36, Florida Statutes, is  
23           created to read:

24           121.36 Optional retirement program for state  
25           employees.--

26           (1) OPTIONAL RETIREMENT PROGRAM ESTABLISHED.--The  
27           Division of Retirement shall establish an optional retirement  
28           program under which contracts providing retirement and death  
29           benefits may be purchased for eligible employees of the State  
30           of Florida who elect to participate in the program. The  
31           benefits to be provided for or on behalf of participants in

1 such optional retirement program shall be provided through  
2 individual contracts or individual certificates issued for  
3 group annuity contracts, which may be fixed, variable, or a  
4 combination thereof, in accordance with s. 403(b) of the  
5 Internal Revenue Code. Any individual contract or certificate  
6 must contain a statement of the annuity plan on its face page,  
7 and must include, but need not be limited to, a statement of  
8 ownership, the contract benefits, annuity income options,  
9 limitations, expense charges, and surrender charges, if any.  
10 The state shall contribute, as provided in this section,  
11 toward the purchase of such optional benefits.

12 (2) ELIGIBILITY FOR PARTICIPATION IN OPTIONAL  
13 PROGRAM.--

14 (a) Participation in the optional retirement program  
15 provided by this section is limited to persons who are  
16 otherwise eligible for membership in the Florida Retirement  
17 System and who are not participating in any other optional  
18 annuity program authorized under this chapter.

19 (b) As used in this section, the term "employer" means  
20 the individual agency of the State of Florida at which the  
21 employee is employed.

22 (3) ELECTION OF OPTIONAL PROGRAM.--

23 (a) Any eligible employee who is employed on or before  
24 July 1, 2000, may elect to participate in the optional  
25 retirement program in lieu of participation in the Florida  
26 Retirement System. Such election must be made in writing and  
27 filed with the division and the personnel officer of the  
28 employer on or before June 1, 2000. Upon such election,  
29 participation in the optional program will take effect July 1,  
30 2000, and election to so participate will terminate the  
31 membership of the employee in the Florida Retirement System.

1 Any eligible employee who is employed on or before July 1,  
2 2000, and who fails to make an election to participate in the  
3 optional program by June 1, 2000, shall be deemed to have  
4 elected to retain membership in the Florida Retirement System.

5 (b)1. Any employee who becomes eligible to participate  
6 in the optional retirement program by reason of initial  
7 employment commencing after July 1, 2000, may, within 90 days  
8 after the date of commencement of employment, elect to  
9 participate in the optional program. Such election must be  
10 made in writing and filed with the personnel officer of the  
11 employer. The eligible employees described in this  
12 subparagraph shall be enrolled in the Florida Retirement  
13 System at the commencement of employment, with the exception  
14 of those employees who file an election with the personnel  
15 officer of the employer prior to the submission of the initial  
16 payroll for the employee. For such employees, participation  
17 will be effective on the first day of employment or on July 1,  
18 2000, whichever is later. If an eligible employee, as  
19 described in this subparagraph, files an election to  
20 participate in the optional program within 90 days after the  
21 commencement of employment, but after the submission by the  
22 employer of the initial payroll for the employee, the  
23 employee's participation in the optional program will not be  
24 effective until the first day of the month for which a full  
25 month's employer contribution may be made, or until July 1,  
26 2000, whichever is later. Any eligible employee who does not  
27 within 90 days after commencement of such employment elect to  
28 participate in the optional program shall be deemed to have  
29 elected to retain membership in the Florida Retirement System.

30 2. Any employee who after July 1, 2000, becomes  
31 eligible to participate in the optional program by reason of a

1 change in status due to the subsequent designation of the  
2 employee's position as one of those specified in paragraph  
3 (2)(a) or due to the employee's appointment, promotion,  
4 transfer, or reclassification to a position specified in  
5 paragraph (2)(a) may elect to participate in the optional  
6 program. Such employee shall be notified by the employer of  
7 the change in his or her eligibility status. Such employee  
8 may, within 90 days after the date of such notification, file  
9 with the personnel officer of the employer an election in  
10 writing to participate in the optional program in lieu of  
11 participation in the Florida Retirement System. Upon such  
12 election, participation in the optional program will be  
13 effective on the first day of the month for which a full  
14 month's employer contribution may be made or on July 1, 2000,  
15 whichever is later. Election to participate terminates the  
16 membership of the employee in the Florida Retirement System.  
17 Any eligible employee who does not elect to participate in the  
18 optional program within 90 days after notification of his or  
19 her eligibility to participate in the program shall be deemed  
20 to have elected to retain membership in the Florida Retirement  
21 System.

22 (c) Any employee who becomes eligible to participate  
23 in the optional retirement program on or after January 1,  
24 2000, shall be a compulsory participant of the program unless  
25 such employee elects membership in the Florida Retirement  
26 System. Such election must be made in writing and filed with  
27 the personnel officer of the employer. Any eligible employee  
28 who fails to make such election within the prescribed time  
29 period shall be deemed to have elected to participate in the  
30 optional retirement program.

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1           1. Any employee whose optional retirement program  
2 eligibility results from initial employment shall be enrolled  
3 in the program at the commencement of employment. If, within  
4 90 days after commencement of employment, the employee elects  
5 membership in the Florida Retirement System, such membership  
6 shall be effective retroactive to the date of commencement of  
7 employment.

8           2. Any employee whose optional retirement program  
9 eligibility results from a change in status due to the  
10 subsequent designation of the employee's position as one of  
11 those specified in paragraph (2)(a) or due to the employee's  
12 appointment, promotion, transfer, or reclassification to a  
13 position specified in paragraph (2)(a) shall be enrolled in  
14 the optional retirement program upon such change in status and  
15 shall be notified by the employer of such action. If, within  
16 90 days after the date of such notification, the employee  
17 elects to retain membership in the Florida Retirement System,  
18 such continuation of membership shall be retroactive to the  
19 date of the change in status.

20           3. Notwithstanding any other provision of this  
21 paragraph, effective January 1, 2001, any employee who is  
22 eligible to participate in the optional retirement program and  
23 who fails to execute an annuity contract with one of the  
24 approved companies and to notify the division in writing as  
25 provided in subsection (4) within 90 days after the date of  
26 eligibility shall be deemed to have elected membership in the  
27 Florida Retirement System, except as provided in s.  
28 121.051(1)(a). This paragraph also applies to any employee who  
29 terminates employment in an eligible position before executing  
30 the required annuity contract and notifying the division. Such  
31 membership shall be retroactive to the date of eligibility,

1 and all appropriate contributions shall be transferred to the  
2 Florida Retirement System Trust Fund and the Health Insurance  
3 Subsidy Trust Fund.

4 (d) A participant is fully and immediately vested in  
5 the optional retirement program only upon execution of an  
6 annuity contract.

7 (e) The election by an eligible employee to  
8 participate in the optional retirement program is irrevocable  
9 for so long as the employee continues to meet the eligibility  
10 requirements specified in subsection (2), except as provided  
11 in paragraph (h).

12 (f) If an employee becomes ineligible to continue  
13 participation in the optional retirement program under  
14 subsection (2), the employee shall thereafter participate in  
15 the Florida Retirement System if he or she is otherwise  
16 eligible.

17 (g) An eligible employee who is a member of the  
18 Florida Retirement System at the time of election to  
19 participate in the optional retirement program shall retain  
20 all retirement service credit earned under the Florida  
21 Retirement System, at the rate earned. The employee does not  
22 earn additional service credit in the Florida Retirement  
23 System while the employee participates in the optional  
24 program, and the employee is not eligible for disability  
25 retirement under the Florida Retirement System.

26 (h) Except as otherwise provided in this section, a  
27 participant in the optional retirement program may not  
28 participate in more than one state-administered retirement  
29 system, plan, or class simultaneously. Except as provided in  
30 s. 121.052(6)(d), a participant who is or becomes dually  
31 employed in two or more positions covered by the Florida

1 Retirement System, one of which is eligible for the optional  
2 program and one of which is not, may remain a member of the  
3 optional program and contributions shall be paid as required  
4 only on the salary earned in the position eligible for the  
5 optional program during such period of dual employment; or,  
6 within 90 days after becoming dually employed, he or she may  
7 elect membership in the Regular Class of the Florida  
8 Retirement System in lieu of the optional program and  
9 contributions shall be paid as required on the total salary  
10 received for all employment. At retirement, the average final  
11 compensation used to calculate any benefits for which the  
12 member becomes eligible under the Florida Retirement System  
13 shall be based on all salary reported for both positions  
14 during such period of dual employment. When such member ceases  
15 to be dually employed, he or she may, within 90 days, elect to  
16 remain in the Florida Retirement System class for which he or  
17 she is eligible or to again become a participant in the  
18 optional retirement program. Failure to elect membership in  
19 the optional program within 90 days shall result in compulsory  
20 membership in the Florida Retirement System.

21 (4) CONTRIBUTIONS.--

22 (a) Each employer shall contribute on behalf of each  
23 participant in the optional retirement program an amount equal  
24 to the normal cost portion of the employer retirement  
25 contribution which would be required if the participant were a  
26 regular member of the Florida Retirement System, plus the  
27 portion of the contribution rate required in s. 112.363(8)  
28 that would otherwise be assigned to the Retiree Health  
29 Insurance Subsidy Trust Fund, less an amount approved by the  
30 Legislature which shall be deducted by the division to provide  
31 for the administration of this program. The payment of the

1 contributions to the optional program which is required by  
2 this paragraph for each participant shall be made by the  
3 employer to the division, which shall forward the  
4 contributions to the designated company or companies  
5 contracting for payment of benefits for the participant under  
6 the program. However, such contributions paid on behalf of an  
7 employee described in paragraph (3)(c) may not be forwarded to  
8 a company and do not begin to accrue interest until the  
9 employee has executed an annuity contract and notified the  
10 division.

11 (b) Each employer shall contribute on behalf of each  
12 participant in the optional retirement program an amount equal  
13 to the unfunded actuarial accrued liability portion of the  
14 employer contribution which would be required for members of  
15 the Florida Retirement System. This contribution shall be paid  
16 to the division for transfer to the Florida Retirement System  
17 Trust Fund.

18 (c) The Optional Retirement Program Trust Fund  
19 established in the State Treasury and administered by the  
20 Division of Retirement shall make payments to the provider  
21 companies on behalf of the optional retirement program  
22 participants, and the division shall transfer the unfunded  
23 liability portion of the state optional retirement program  
24 contributions to the Florida Retirement System Trust Fund.

25 (d) Contributions required for social security by each  
26 employer and each participant, in the amount required for  
27 social security coverage as now or hereafter may be provided  
28 by the federal Social Security Act, shall be maintained for  
29 each participant in the optional retirement program and shall  
30 be in addition to the retirement contributions specified in  
31 this subsection.



1       (e) Each participant in the optional retirement  
2 program who has executed an annuity contract may contribute by  
3 way of salary reduction or deduction a percentage amount of  
4 the participant's gross compensation not to exceed the  
5 percentage amount contributed by the employer to the optional  
6 program, but such contribution may not exceed federal  
7 limitations. Payment of the participant's contributions shall  
8 be made by the financial officer of the employer to the  
9 division which shall forward the contributions to the  
10 designated company or companies contracting for payment of  
11 benefits for the participant under the program. A participant  
12 may not make, through salary reduction, any voluntary employee  
13 contributions to any other plan under s. 403(b) of the  
14 Internal Revenue Code, with the exception of a custodial  
15 account under s. 403(b)(7) of the Internal Revenue Code, until  
16 he or she has made an employee contribution to his or her  
17 optional program equal to the employer contribution. A  
18 participant is responsible for monitoring his or her  
19 individual tax-deferred income to ensure that he or she does  
20 not exceed the maximum deferral amounts permitted under the  
21 Internal Revenue Code.

22       (5) BENEFITS.--

23       (a) Benefits shall be payable under the optional  
24 retirement program only to vested participants in the program,  
25 or their beneficiaries as designated by the participant in the  
26 contract with a provider company, and such benefits shall be  
27 paid only by the designated company in accordance with the  
28 terms of the annuity contract or contracts applicable to the  
29 participant. The participant must be terminated from all  
30 employment with all Florida Retirement System employers, as  
31 provided in s. 121.021(39), to begin receiving the

1 employer-funded benefit. Benefits funded by employer  
2 contributions shall be payable as a lifetime annuity, a full  
3 or partial cash distribution, or as a full or partial  
4 distribution to a tax-qualified account to the participant,  
5 his or her beneficiary, or his or her estate, except for:  
6       1. A lump-sum payment to the beneficiary upon the  
7 death of the participant; or  
8       2. A cash-out of a de minimis account upon the request  
9 of a former participant who has been terminated for a minimum  
10 of 6 months from the employment that entitled him to optional  
11 retirement program participation. A de minimis account is an  
12 account with a provider company containing employer  
13 contributions and accumulated earnings of not more than \$3,500  
14 made under this chapter. Such cash-out must be a complete  
15 liquidation of the account balance with that company and is  
16 subject to the provisions of the Internal Revenue Code.  
17       (b) The benefits payable to any person under the  
18 optional retirement program and any contribution accumulated  
19 under such program are not subject to assignment, execution,  
20 or attachment or to any legal process whatsoever.  
21       (c) A participant who chooses to receive his or her  
22 benefits upon termination of employment is responsible for  
23 notifying the provider company of the date on which he or she  
24 wishes the annuity funded by employer contributions to begin.  
25 Benefits may be deferred until the participant chooses to make  
26 such application.  
27       (d) Benefits funded by the participant's personal  
28 contributions may be paid out at any time and in any form  
29 within the limits provided in the contract between the  
30 participant and his or her provider company. The participant  
31 shall notify the provider company regarding the date and

1 provisions under which he or she wants to receive the  
2 employee-funded portion of the plan.

3 (6) ADMINISTRATION OF PROGRAM.--

4 (a) The optional retirement program authorized by this  
5 section shall be administered by the division. The division  
6 shall adopt rules establishing the responsibilities of the  
7 state agencies in administering the optional retirement  
8 program. The Department of Management Services shall, not more  
9 than 90 days after July 1, 2000, submit to the division its  
10 recommendations for the annuity contracts to be offered by the  
11 companies chosen by the division. The recommendations of the  
12 department must include the following:

13 1. The nature and extent of the rights and benefits in  
14 relation to the required contributions; and

15 2. The suitability of the rights and benefits to the  
16 needs of the participants and the interests of the  
17 institutions in the recruitment and retention of eligible  
18 employees.

19 (b) After receiving and considering the  
20 recommendations of the department, the division shall  
21 designate not more than four companies from which annuity  
22 contracts may be purchased under the program and shall approve  
23 the form and content of the optional retirement program  
24 contracts. Upon application by a qualified Florida domestic  
25 company, the division shall give reasonable notice to all  
26 other such companies that it intends to designate one of such  
27 companies as a fifth company from which annuity contracts may  
28 be purchased pursuant to this section and that they may apply  
29 for such designation prior to the deadline established by said  
30 notice. At least 60 days after giving such notice and upon  
31 receipt of the recommendation of the department, the division

1 shall designate one of such companies as the fifth company  
2 from which such contracts may be purchased.

3 (c) The State Board of Administration shall review and  
4 make recommendations to the division on the acceptability of  
5 all investment products proposed by provider companies of the  
6 optional retirement program before they are offered through  
7 annuity contracts to the participants and may advise the  
8 division of any changes necessary to ensure that the optional  
9 retirement program offers an acceptable mix of investment  
10 products. The division shall make the final determination as  
11 to whether an investment product will be approved for the  
12 program.

13 (d) The provisions of each contract applicable to a  
14 participant in the optional retirement program must be  
15 contained in a written program description that must include a  
16 report of pertinent financial and actuarial information on the  
17 solvency and actuarial soundness of the program and the  
18 benefits applicable to the participant. Such description must  
19 be furnished by the companies to each participant in the  
20 program and to the division upon commencement of participation  
21 in the program and annually thereafter.

22 (e) The division shall ensure that each participant in  
23 the optional retirement program is provided an accounting of  
24 the total contribution and the annual contribution made by and  
25 on behalf of such participant.

26 Section 2. This act shall take effect July 1, 2000.  
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SENATE SUMMARY

Establishes an optional retirement program for employees of the State of Florida. Provides for the program to be administered by the Division of Retirement. Provides for the employee to be vested in the program upon execution of the annuity contract. Provides for the employee to retain any retirement credit earned under the Florida Retirement System. Provides requirements for electing to participate in the optional program. Provides for employer and employee contributions to the optional program. Provides requirements for the payment of benefits. Authorizes the division to adopt rules for administering the program. (See bill for details.)