

Amendment No. ____ (for drafter's use only)

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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The Committee on State Administration offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof: Subsection (1), paragraph (a) of subsection (2), paragraph (e) of subsection (4), paragraph (b) of subsection (8), and paragraphs (a) and (b) of subsection (9) of section 121.4501, Florida Statutes, are amended, and paragraph (f) is added to subsection (9) of said section, to read:

121.4501 Public Employee Optional Retirement Program.--

(1) The Trustees of the State Board of Administration shall establish an optional defined contribution retirement program for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program. The benefits to be provided for or on behalf of participants in such optional retirement program shall be provided through employee-directed investments, in accordance with s. 401(a) of

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1 the Internal Revenue Code and its related regulations. The
2 employers shall contribute, as provided in this section and s.
3 121.571, to the Public Employee Optional Retirement Program
4 Trust Fund toward the funding of such optional benefits.

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

6 (a) "Approved provider" or "provider" means a private
7 sector company that is selected and approved by the state
8 board to offer one or more investment products or services to
9 the Public Employee Optional Retirement Program, including a
10 "bundled provider" that offers participants both a full range
11 of individually allocated investment products and a full range
12 of administrative and customer services, to include accounting
13 and administration of individual participant benefits and
14 contributions; individual participant recordkeeping; asset
15 purchase, control, and safekeeping; direct execution of the
16 participant's instructions as to asset and contribution
17 allocation; calculation of daily net asset values; direct
18 access to participant account information; periodic reporting
19 to participants, at least quarterly, on account balances and
20 transactions; direct advice and guidance on its investments
21 options; a broad array of distribution options; and asset
22 allocation and retirement counseling and education. Private
23 sector companies include investment management companies,
24 insurance companies, depositories, and mutual fund companies.

25
26 The term does not include any renewed member of the Florida
27 Retirement System, any member participating in the Deferred
28 Retirement Option Program established under s. 121.091(13), or
29 any employee participating in an optional retirement program
30 established under s. 121.051(2)(c) or s. 121.35.

31 (4) PARTICIPATION; ENROLLMENT.--

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1 (e) After the period during which an eligible employee
2 had the choice to elect the defined benefit program or the
3 Public Employee Optional Retirement Program, the employee
4 shall have one opportunity, that is, a second election,~~at the~~
5 ~~employee's discretion,~~to choose to move from the defined
6 benefit program to the Public Employee Optional Retirement
7 Program or from the Public Employee Optional Retirement
8 Program to the defined benefit program. This paragraph shall
9 be contingent upon approval from the Internal Revenue Service
10 for including the choice described herein within the programs
11 offered by the Florida Retirement System.

12 1. If the employee chooses to move to the Public
13 Employee Optional Retirement Program, the applicable
14 provisions of this section shall govern the transfer.

15 2. If the employee chooses to move from the Public
16 Employee Optional Retirement Program to the defined benefit
17 program, the employee must transfer from his or her optional
18 program ~~Public Employee Optional Retirement Program~~ account an
19 amount equal to the sum of the following:

20 a. The value of any account balance representing the
21 actuarial present value of the employee's accrued benefit
22 transferred to the optional program at the time of the initial
23 transfer, and

24 b. The product of the participant's salary during the
25 period of participation in the optional program times the
26 greater of the applicable contribution rate or the applicable
27 employer normal cost rate in effect for the Florida Retirement
28 System defined benefit program membership class to which the
29 member belonged during each fiscal year of such period, and

30 c. Interest on the sum of the amounts calculated under
31 a. and b. The interest rate shall be equal to the greater of

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1 the annualized rate of return earned on investments of the
2 assets of the Florida Retirement System Trust Fund as
3 calculated by the State Board of Administration for each fiscal
4 year of the participation period or the Florida Retirement
5 System Actuarial Valuation assumed rate of return of 8 percent
6 ~~and from other employee moneys as necessary, a sum~~
7 ~~representing all contributions that would have been made to~~
8 ~~the defined benefit plan for that employee and the actual~~
9 ~~return that would have been earned on those contributions had~~
10 ~~they been invested in the defined benefit program.~~

11
12 If, at the time of a member's election to transfer to the
13 defined benefit program, the member's optional program account
14 does not contain the total amount required to be transferred
15 to the defined benefit program, the member must pay the
16 remaining balance. If the member's optional program account
17 contains more than the amount required to be transferred to
18 the defined benefit program, such additional amount shall
19 remain in the member's optional program account.

20 3. The second election must be made no later than 3
21 years after the initial election.

22 4. The second election shall be voided if, within 3
23 years of the second election, the participant terminates his
24 or her employment with his or her employer for reasons other
25 than death or disability.

26 (8) ADMINISTRATION OF PROGRAM.--

27 (b)1. The state board shall select and contract with
28 one third-party administrator to provide administrative
29 services, where those services do not duplicate services
30 provided by the Division of Retirement within the Department
31 of Management Services. With the approval of the state board,

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1 the third-party administrator may subcontract with other
2 organizations or individuals to provide components of the
3 administrative services. As a cost of administration, the
4 board may compensate any such contractor for its services, in
5 accordance with the terms of the contract, as is deemed
6 necessary or proper by the board. The third-party
7 administrator may not be an approved provider or be affiliated
8 with an approved provider.

9 2. These administrative services include, but are not
10 limited to, enrollment of eligible employees, collection of
11 employer contributions, disbursement of such contributions to
12 approved providers in accordance with the allocation
13 directions of participants; services relating to consolidated
14 billing; individual and collective, plan-wide recordkeeping
15 and accounting; asset purchase, control, and safekeeping; and
16 direct disbursement of funds to and from the third-party
17 administrator, the division, the board, employers,
18 participants, approved providers, and beneficiaries. Nothing
19 in this section shall prevent or prohibit a bundled provider
20 from providing any administrative or customer service,
21 including accounting and administration of individual
22 participant benefits and contributions; individual participant
23 recordkeeping; asset purchase, control, and safekeeping;
24 direct execution of the participant's instructions as to asset
25 and contribution allocation; calculation of daily net asset
26 values; direct access to participant account information;
27 periodic reporting to participants, at least quarterly, on
28 account balances and transactions.

29 3. The state board shall select and contract with one
30 or more organizations to provide educational services. With
31 approval of the board, the organizations may subcontract with

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1 other organizations or individuals to provide components of
2 the educational services. As a cost of administration, the
3 board may compensate any such contractor for its services in
4 accordance with the terms of the contract, as is deemed
5 necessary or proper by the board. The education organization
6 may not be an approved provider or be affiliated with an
7 approved provider.

8 4. Educational services shall be designed by the board
9 and department to assist employers, eligible employees,
10 participants, and beneficiaries in order to maintain
11 compliance with United States Department of Labor regulations
12 under s. 404(c) of the Employee Retirement Income Security Act
13 of 1974 and to assist employees in their choice of defined
14 benefit or defined contribution retirement alternatives.
15 Educational services include, but are not limited to,
16 disseminating educational materials; providing retirement
17 planning education; explaining the differences between the
18 defined benefit retirement plan and the defined contribution
19 retirement plan; and offering financial planning guidance on
20 matters such as investment diversification, investment risks,
21 investment costs, and asset allocation. An approved provider
22 may also provide educational information, including retirement
23 planning and investment allocation information concerning its
24 products and services.

25 (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE
26 REVIEW.--

27 (a) The board shall develop policy and procedures for
28 selecting, evaluating, and monitoring the performance of
29 approved providers and investment products to which employees
30 may direct retirement contributions under the program. In
31 accordance with such policy and procedures, the board shall

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1 designate and contract with five for a number of investment
2 ~~products as determined by the board. The board shall select~~
3 ~~one~~ or more bundled providers who offer nine multiple
4 investment products and related services, including at least
5 one provider who offers guaranteed annuities when such an
6 ~~approach is determined by the board to afford value to the~~
7 ~~participants otherwise not available through individual~~
8 ~~investment products.~~ The board shall review and manage all
9 educational materials, contract terms, fee schedules, and
10 other aspects of the approved provider relationships to ensure
11 that no provider is unduly favored or penalized by virtue of
12 its status within the plan.

13 (b) The board shall consider investment options or
14 products it considers appropriate to give participants the
15 opportunity to accumulate retirement benefits, subject to the
16 following:

17 1. The Public Employee Optional Retirement Program
18 must offer a diversified mix of low-cost investment products
19 that span the risk-return spectrum, and shall include a
20 guaranteed account as well as investment products that offer
21 the option of receiving lifetime income consistent with the
22 long-term retirement security of a pension plan and similar to
23 the lifetime income benefit provided by the Florida Retirement
24 System.

25 2. Investment options or products offered by the group
26 of approved providers may include mutual funds, group annuity
27 contracts, individual retirement annuities, interests in
28 trusts, collective trusts, separate accounts, and other such
29 financial instruments, and shall include products that give
30 participants the option of committing their contributions for
31 an extended time period in an effort to obtain higher returns

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1 than could be obtained from investment products offering full
2 liquidity.

3 3. The board shall not contract with any provider that
4 imposes a front-end, back-end, contingent, or deferred sales
5 charge, or any other fee that limits or restricts the ability
6 of participants to select any investment product available in
7 the optional program. This prohibition shall not apply to fees
8 or charges that are imposed on withdrawals from products that
9 give participants the option of committing their contributions
10 for an extended time period in an effort to obtain higher
11 returns than could be obtained from investment products
12 offering full liquidity.

13 4. Fees or charges for insurance features, such as
14 mortality and expense risk charges, shall be reasonable
15 relative to the benefits provided.

16 (f)1. An approved provider shall comply with all
17 applicable federal and state securities and insurance laws and
18 regulations, as well as the applicable rules and guidelines of
19 the National Association of Securities Dealers (NASD)
20 governing the ethical marketing of investment products. In
21 furtherance of this mandate, an approved provider must agree
22 in its contract with the board to establish and maintain a
23 compliance education and monitoring system to supervise the
24 activities of all personnel who directly communicate with
25 individual participants and recommend investment products,
26 which system is consistent with NASD rules.

27 2. Approved provider personnel who directly
28 communicate with individual participants and who recommend
29 investment products shall make an independent and unbiased
30 determination as to whether an investment product is suitable
31 for a particular participant.

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1 3. The board shall develop procedures to receive and
2 resolve participant complaints against a provider, and, when
3 appropriate, refer such complaints to the appropriate
4 regulatory agency.

5 4. Approved providers shall be responsible for the
6 accuracy of all information presented to participants. An
7 approved provider shall not represent itself to participants
8 as the sole provider of investment products or services under
9 the optional retirement program. Any participant inquiries to
10 an approved provider regarding the products or services of
11 another approved provider shall be referred to the third party
12 administrator.

13 5. Approved providers are prohibited from selling any
14 customer list or participant identification information
15 generated through their offering of products or services
16 through the optional retirement program.

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18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 1, lines 6 through 8,
22 remove from the title of the bill: all of said lines

23
24 and insert in lieu thereof:

25 the program; revising sum required for
26 participant transfer; limiting participants'
27 second election; providing requirements for
28 approved providers regarding federal and state
29 laws and regulations, and for communications
30 with participants;

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