

565-192AXA-06

Bill No. CS/HB 347

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Fasano offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause  
and insert in lieu thereof:

Section 1. 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

1 employee-directed investments, in accordance with s. 401(a) of  
2 the Internal Revenue Code and its related regulations. The  
3 employers shall contribute, as provided in this section and s.  
4 121.571, to the Public Employee Optional Retirement Program  
5 Trust Fund toward the funding of such optional benefits.

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

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

27 (4) PARTICIPATION; ENROLLMENT.--

28 (e) After the period during which an eligible employee  
29 had the choice to elect the defined benefit program or the  
30 Public Employee Optional Retirement Program, the employee  
31 shall have one opportunity, that is, a second election,~~at the~~

1 ~~employee's discretion,~~to choose to move from the defined  
2 benefit program to the Public Employee Optional Retirement  
3 Program or from the Public Employee Optional Retirement  
4 Program to the defined benefit program. This paragraph shall  
5 be contingent upon approval from the Internal Revenue Service  
6 for including the choice described herein within the programs  
7 offered by the Florida Retirement System.

8           1. If the employee chooses to move to the Public  
9 Employee Optional Retirement Program, the applicable  
10 provisions of this section shall govern the transfer.

11           2. If the employee chooses to move from the Public  
12 Employee Optional Retirement Program to the defined benefit  
13 program, the employee must transfer from his or her optional  
14 program ~~Public Employee Optional Retirement Program~~ account  
15 and from other employee moneys as necessary, a sum  
16 representing all contributions that would have been made to  
17 the defined benefit plan for that employee and the actual  
18 return that would have been earned on those contributions had  
19 they been invested in the defined benefit program.

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21 If, at the time of a member's election to transfer to the  
22 defined benefit program, the member's optional program account  
23 does not contain the total amount required to be transferred  
24 to the defined benefit program, the member must pay the  
25 remaining balance. If the member's optional program account  
26 contains more than the amount required to be transferred to  
27 the defined benefit program, such additional amount shall  
28 remain in the member's optional program account.

29           (8) ADMINISTRATION OF PROGRAM.--

30           (b)1. The state board shall select and contract with  
31 one third-party administrator to provide administrative

1 services, where those services do not duplicate services  
2 provided by the Division of Retirement within the Department  
3 of Management Services. With the approval of the state board,  
4 the third-party administrator may subcontract with other  
5 organizations or individuals to provide components of the  
6 administrative services. As a cost of administration, the  
7 board may compensate any such contractor for its services, in  
8 accordance with the terms of the contract, as is deemed  
9 necessary or proper by the board. The third-party  
10 administrator may not be an approved provider or be affiliated  
11 with an approved provider.

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

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

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

28           (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE  
29 REVIEW.--

30           (a) The board shall develop policy and procedures for  
31 selecting, evaluating, and monitoring the performance of

1 approved providers and investment products to which employees  
2 may direct retirement contributions under the program. In  
3 accordance with such policy and procedures, the board shall  
4 designate and contract for a number of investment products as  
5 determined by the board. The board shall also select one or  
6 more bundled providers, each of whom ~~who~~ offer nine multiple  
7 investment options and related services ~~products~~ when such an  
8 approach is determined by the board to afford value to the  
9 participants otherwise not available through individual  
10 investment products. Each approved bundled provider may offer  
11 investment options that provide participants with the  
12 opportunity to invest in each of the following asset classes,  
13 to be composed of individual options that represent either a  
14 single asset class or a combination thereof: money markets,  
15 U.S. fixed income, U.S. equities, and foreign stock.The board  
16 shall review and manage all educational materials, contract  
17 terms, fee schedules, and other aspects of the approved  
18 provider relationships to ensure that no provider is unduly  
19 favored or penalized by virtue of its status within the plan.

20 (b) The board shall consider investment options or  
21 products it considers appropriate to give participants the  
22 opportunity to accumulate retirement benefits, subject to the  
23 following:

24 1. The Public Employee Optional Retirement Program  
25 must offer a diversified mix of low-cost investment products  
26 that span the risk-return spectrum, and may include a  
27 guaranteed account as well as investment products such as  
28 individually allocated guaranteed and variable annuities, that  
29 meet the requirements of this subsection and that combine the  
30 ability to accumulate investment returns with the option of  
31 receiving lifetime income consistent with the long-term

1 retirement security of a pension plan and similar to the  
2 lifetime income benefit provided by the Florida Retirement  
3 System.

4           2. Investment options or products offered by the group  
5 of approved providers may include mutual funds, group annuity  
6 contracts, individual retirement annuities, interests in  
7 trusts, collective trusts, separate accounts, and other such  
8 financial instruments, and shall include products that give  
9 participants the option of committing their contributions for  
10 an extended time period in an effort to obtain higher returns  
11 than could be obtained from investment products offering full  
12 liquidity.

13           3. The board shall not contract with any provider that  
14 imposes a front-end, back-end, contingent, or deferred sales  
15 charge, or any other fee that limits or restricts the ability  
16 of participants to select any investment product available in  
17 the optional program. This prohibition shall not apply to fees  
18 or charges that are imposed on withdrawals from products that  
19 give participants the option of committing their contributions  
20 for an extended time period in an effort to obtain higher  
21 returns than could be obtained from investment products  
22 offering full liquidity, provided that the product in  
23 question, net of all fees and charges, produces material  
24 benefits relative to other comparable products in the program  
25 offering full liquidity.

26           4. Fees or charges for insurance features, such as  
27 mortality and expense risk charges, shall be reasonable  
28 relative to the benefits provided.

29           (f)1. An approved provider shall comply with all  
30 applicable federal and state securities and insurance laws and  
31 regulations, as well as the applicable rules and guidelines of

1 the National Association of Securities Dealers (NASD)  
 2 governing the ethical marketing of investment products. In  
 3 furtherance of this mandate, an approved provider must agree  
 4 in its contract with the board to establish and maintain a  
 5 compliance education and monitoring system to supervise the  
 6 activities of all personnel who directly communicate with  
 7 individual participants and recommend investment products,  
 8 which system is consistent with National Association of  
 9 Security Dealers rules.

10 2. Approved provider personnel who directly  
 11 communicate with individual participants and who recommend  
 12 investment products shall make an independent and unbiased  
 13 determination as to whether an investment product is suitable  
 14 for a particular participant.

15 3. The board shall develop procedures to receive and  
 16 resolve participant complaints against a provider or approved  
 17 provider personnel, and, when appropriate, refer such  
 18 complaints to the appropriate regulatory agency.

19 4. Approved providers are prohibited from selling or  
 20 in any way distributing any customer list or participant  
 21 identification information generated through their offering of  
 22 products or services through the optional retirement program.

23 Section 2. The appointment of the executive director  
 24 of the State Board of Administration shall be subject to the  
 25 approval by a majority vote of the Board of Trustees of the  
 26 State Board of Administration and the Governor must vote on  
 27 the prevailing side. Such appointment must be reaffirmed in  
 28 the same manner by the Board of Trustees on an annual basis.

29 Section 3. This act shall take effect upon becoming a  
 30 law.

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

2 And the title is amended as follows:

3 remove from the title of the bill: the entire title

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5 and insert in lieu thereof:

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A bill to be entitled

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An act relating to the Public Employee Optional

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Retirement Program; amending s. 121.4501, F.S.;

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redefining the term "approved provider";

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providing requirements for the State Board of

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Administration in carrying out its duties under

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the program; providing requirements for

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approved providers regarding federal and state

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laws and regulations, and for communications

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with participants; providing requirements for

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the appointment of the executive director of

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the State Board of Administration; providing an

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effective date.

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