

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

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

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13 **Amendment to Senate Amendment (912778) (with title**
14 **amendment)**

15 On page 5, line 15, through page 21, line 30,
16 remove from the amendment: all of said lines

17

18 and insert in lieu thereof:

19 Section 6. Effective October 1, 2001, subsection (1)
20 of section 121.055, Florida Statutes, is amended to read:

21 121.055 Senior Management Service Class.--There is
22 hereby established a separate class of membership within the
23 Florida Retirement System to be known as the "Senior
24 Management Service Class," which shall become effective
25 February 1, 1987.

26 (1)(a) Participation in the Senior Management Service
27 Class shall be limited to and compulsory for any member of the
28 Florida Retirement System who holds a position in the Senior
29 Management Service of the State of Florida, established by
30 part III of chapter 110, unless such member elects, within the
31 time specified herein, to participate in the Senior Management

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1 Service Optional Annuity Program as established in subsection
2 (6).

3 (b)1. Except as provided in subparagraph 2., effective
4 January 1, 1990, participation in the Senior Management
5 Service Class shall be compulsory for the president of each
6 community college, the manager of each participating city or
7 county, and all appointed district school superintendents.
8 Effective January 1, 1994, additional positions may be
9 designated for inclusion in the Senior Management Service
10 Class of the Florida Retirement System, provided that:

11 a. Positions to be included in the class shall be
12 designated by the local agency employer. Notice of intent to
13 designate positions for inclusion in the class shall be
14 published once a week for 2 consecutive weeks in a newspaper
15 of general circulation published in the county or counties
16 affected, as provided in chapter 50.

17 b. Up to 10 nonelective full-time positions may be
18 designated for each local agency employer reporting to the
19 Department of Management Services; for local agencies with 100
20 or more regularly established positions, additional
21 nonelective full-time positions may be designated, not to
22 exceed 1 percent of the regularly established positions within
23 the agency.

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

29 (I) Heads an organizational unit; or

30 (II) Has responsibility to effect or recommend

31 personnel, budget, expenditure, or policy decisions in his or

1 her areas of responsibility.

2 2. In lieu of participation in the Senior Management
3 Service Class, members of the Senior Management Service Class
4 pursuant to the provisions of subparagraph 1. may withdraw
5 from the Florida Retirement System altogether. The decision to
6 withdraw from the Florida Retirement System shall be
7 irrevocable for as long as the employee holds such a position.
8 Any service creditable under the Senior Management Service
9 Class shall be retained after the member withdraws from the
10 Florida Retirement System; however, additional service credit
11 in the Senior Management Service Class shall not be earned
12 after such withdrawal. Such members shall not be eligible to
13 participate in the Senior Management Service Optional Annuity
14 Program.

15 (c)1. Effective January 1, 1990, participation in the
16 Senior Management Service Class shall be compulsory for up to
17 75 nonelective positions at the level of committee staff
18 director or higher or equivalent managerial or policymaking
19 positions within the House of Representatives, as selected by
20 the Speaker of the House of Representatives, up to 50
21 nonelective positions at the level of committee staff director
22 or higher or equivalent managerial or policymaking positions
23 within the Senate, as selected by the President of the Senate,
24 all staff directors of joint committees and service offices of
25 the Legislature, the Auditor General and up to 9 managerial or
26 policymaking positions within his or her office as selected by
27 the Auditor General, and the executive director of the
28 Commission on Ethics.

29 2. Participation in this class shall be compulsory,
30 except as provided in subparagraph 3., for any legislative
31 employee who holds a position designated for coverage in the

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1 Senior Management Service Class, and such participation shall
2 continue until the employee terminates employment in a covered
3 position.

4 3. In lieu of participation in the Senior Management
5 Service Class, at the discretion of the President of the
6 Senate and the Speaker of the House of Representatives, such
7 members may participate in the Senior Management Service
8 Optional Annuity Program as established in subsection (6).

9 (d) Effective January 1, 1991, participation in the
10 Senior Management Service Class shall be compulsory for any
11 member of the Florida Retirement System in a position that has
12 been designated eligible for inclusion in the Executive
13 Service of the State University System or who holds a position
14 as president of a state university, unless such member elects,
15 pursuant to s. 121.35, to participate in the optional
16 retirement program.

17 (e) Effective January 1, 1991, participation in the
18 Senior Management Service Class shall be compulsory for the
19 number of senior managers who have policymaking authority with
20 the State Board of Administration, as determined by the
21 Governor, Treasurer, and Comptroller acting as the State Board
22 of Administration, unless such member elects to participate in
23 the Senior Management Service Optional Annuity Program as
24 established in subsection (6) in lieu of participation in the
25 Senior Management Service Class. Such election shall be made
26 in writing and filed with the division and the personnel
27 officer of the State Board of Administration within 90 days
28 after becoming eligible for membership in the Senior
29 Management Service Class.

30 (f) Effective July 1, 1997:

31 1. Any elected state officer eligible for membership

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1 in the Elected Officers' Class under s. 121.052(2)(a), (b), or
2 (c) who elects membership in the Senior Management Service
3 Class under s. 121.052(3)(c) may, within 6 months after
4 assuming office or within 6 months after this act becomes a
5 law for serving elected state officers, elect to participate
6 in the Senior Management Service Optional Annuity Program, as
7 provided in subsection (6), in lieu of membership in the
8 Senior Management Service Class.

9 2. Any elected county officer eligible for membership
10 in the Elected Officers' Class under s. 121.052(2)(d) who
11 elects membership in the Senior Management Service Class under
12 s. 121.052(3)(c) may, within 6 months after assuming office,
13 or within 6 months after this act becomes a law for serving
14 elected county officers, elect to participate in a lifetime
15 monthly annuity program, as provided in subparagraph (b)2., in
16 lieu of membership in the Senior Management Service Class.

17 (g) Effective July 1, 1996, participation in the
18 Senior Management Service Class shall be compulsory for any
19 member of the Florida Retirement System employed with the
20 Department of Military Affairs in the positions of the
21 Adjutant General, Assistant Adjutant General-Army, Assistant
22 Adjutant General-Air, State Quartermaster, Director of
23 Military Personnel, Director of Administration, and additional
24 directors as designated by the agency head, not to exceed a
25 total of 10 positions. In lieu of participation in the Senior
26 Management Service Class, such members may participate in the
27 Senior Management Service Optional Annuity Program as
28 established in subsection (6).

29 (h)1. Except as provided in subparagraph 3., effective
30 January 1, 1994, participation in the Senior Management
31 Service Class shall be compulsory for the State Courts

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1 Administrator and the Deputy State Courts Administrators, the
2 Clerk of the Supreme Court, the Marshal of the Supreme Court,
3 the Executive Director of the Justice Administrative
4 Commission, the Capital Collateral Regional Counsels, the
5 clerks of the district courts of appeals, the marshals of the
6 district courts of appeals, and the trial court administrator
7 in each judicial circuit. Effective January 1, 1994,
8 additional positions in the offices of the state attorney and
9 public defender in each judicial circuit may be designated for
10 inclusion in the Senior Management Service Class of the
11 Florida Retirement System, provided that:

12 a. Positions to be included in the class shall be
13 designated by the state attorney or public defender, as
14 appropriate. Notice of intent to designate positions for
15 inclusion in the class shall be published once a week for 2
16 consecutive weeks in a newspaper of general circulation
17 published in the county or counties affected, as provided in
18 chapter 50.

19 b. One nonelective full-time position may be
20 designated for each state attorney and public defender
21 reporting to the Department of Management Services; for
22 agencies with 200 or more regularly established positions
23 under the state attorney or public defender, additional
24 nonelective full-time positions may be designated, not to
25 exceed 0.5 percent of the regularly established positions
26 within the agency.

27 c. Each position added to the class must be a
28 managerial or policymaking position filled by an employee who
29 serves at the pleasure of the state attorney or public
30 defender without civil service protection, and who:

31 (I) Heads an organizational unit; or

1 (II) Has responsibility to effect or recommend
2 personnel, budget, expenditure, or policy decisions in his or
3 her areas of responsibility.

4 2. Participation in this class shall be compulsory,
5 except as provided in subparagraph 3., for any judicial
6 employee who holds a position designated for coverage in the
7 Senior Management Service Class, and such participation shall
8 continue until the employee terminates employment in a covered
9 position. Effective January 1, 2001, participation in this
10 class is compulsory for assistant state attorneys, assistant
11 statewide prosecutors, assistant public defenders, and
12 assistant capital collateral regional counsels. Effective
13 January 1, 2002, participation in this class is compulsory for
14 assistant attorneys general.

15 3. In lieu of participation in the Senior Management
16 Service Class, such members, excluding assistant state
17 attorneys, assistant public defenders, assistant statewide
18 prosecutors, assistant attorneys general, and assistant
19 capital collateral regional counsels, may participate in the
20 Senior Management Service Optional Annuity Program as
21 established in subsection (6).

22 (i)1. Except as provided in subparagraph 2., effective
23 July 1, 1999, participation in the Senior Management Service
24 Class is compulsory for any member of the Florida Retirement
25 System who is employed as a judge of compensation claims with
26 the Office of the Judges of Compensation Claims within the
27 Department of Labor and Employment Security.

28 2. In lieu of participating in the Senior Management
29 Service Class, a judge of compensation claims may participate
30 in the Senior Management Service Optional Annuity Program
31 established under subsection (6).

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1 (j) Except as may otherwise be provided, any member of
2 the Senior Management Service Class may purchase additional
3 retirement credit in such class for creditable service within
4 the purview of the Senior Management Service Class retroactive
5 to February 1, 1987, and may upgrade retirement credit for
6 such service, to the extent of 2 percent of the member's
7 average monthly compensation as specified in paragraph (4)(d)
8 for such service. Contributions for upgrading the additional
9 Senior Management Service credit pursuant to this paragraph
10 shall be equal to the difference in the contributions paid and
11 the Senior Management Service Class contribution rate as a
12 percentage of gross salary in effect for the period being
13 claimed, plus interest thereon at the rate of 6.5 percent a
14 year, compounded annually until the date of payment. This
15 service credit may be purchased by the employer on behalf of
16 the member.

17 Section 7. Subsection (1), paragraph (a) of subsection
18 (2), paragraph (e) of subsection (4), paragraph (b) of
19 subsection (8), and paragraphs (a) and (b) of subsection (9)
20 of section 121.4501, Florida Statutes, are amended, and
21 paragraph (f) is added to subsection (9) of said section, to
22 read:

23 121.4501 Public Employee Optional Retirement
24 Program.--

25 (1) The Trustees of the State Board of Administration
26 shall establish an optional defined contribution retirement
27 program for members of the Florida Retirement System under
28 which retirement benefits will be provided for eligible
29 employees who elect to participate in the program. The
30 benefits to be provided for or on behalf of participants in
31 such optional retirement program shall be provided through

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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. The term
11 includes a bundled provider that offers participants a range
12 of individually allocated or unallocated investment products
13 and 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; guidance, advice, and
22 allocation services directly relating to its own investment
23 options or products, but only if the bundled provider complies
24 with the standard of care of s. 404(a)(1)(A-B) of the Employee
25 Retirement Income Security Act of 1974 (ERISA) and if
26 providing such guidance, advice, or allocation services does
27 not constitute a prohibited transaction under s. 4975(c)(1) of
28 the Internal Revenue Code or s. 406 of ERISA, notwithstanding
29 that such prohibited transaction provisions do not apply to
30 the optional retirement program; a broad array of distribution
31 options; asset allocation; and retirement counseling and

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1 education. Private sector companies include investment
2 management companies, insurance companies, depositories, and
3 mutual fund companies.

4 (4) PARTICIPATION; ENROLLMENT.--

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

16 1. If the employee chooses to move to the Public
17 Employee Optional Retirement Program, the applicable
18 provisions of this section shall govern the transfer.

19 2. If the employee chooses to move from the Public
20 Employee Optional Retirement Program to the defined benefit
21 program, the employee must transfer from his or her optional
22 program ~~Public Employee Optional Retirement Program~~ account
23 and from other employee moneys as necessary, a sum
24 representing all contributions that would have been made to
25 the defined benefit plan for that employee and the actual
26 return that would have been earned on those contributions had
27 they been invested in the defined benefit program.

28
29 If, at the time of a member's election to transfer to the
30 defined benefit program, the member's optional program account
31 does not contain the total amount required to be transferred

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1 to the defined benefit program, the member must pay the
2 remaining balance. If the member's optional program account
3 contains more than the amount required to be transferred to
4 the defined benefit program, such additional amount shall
5 remain in the member's optional program account.

6 (8) ADMINISTRATION OF PROGRAM.--

7 (b)1. The state board shall select and contract with
8 one third-party administrator to provide administrative
9 services, where those services do not duplicate services
10 provided by the Division of Retirement within the Department
11 of Management Services. With the approval of the state board,
12 the third-party administrator may subcontract with other
13 organizations or individuals to provide components of the
14 administrative services. As a cost of administration, the
15 board may compensate any such contractor for its services, in
16 accordance with the terms of the contract, as is deemed
17 necessary or proper by the board. The third-party
18 administrator may not be an approved provider or be affiliated
19 with an approved provider.

20 2. These administrative services may include, but are
21 not limited to, enrollment of eligible employees, collection
22 of employer contributions, disbursement of such contributions
23 to approved providers in accordance with the allocation
24 directions of participants; services relating to consolidated
25 billing; individual and collective recordkeeping and
26 accounting; asset purchase, control, and safekeeping; and
27 direct disbursement of funds to and from the third-party
28 administrator, the division, the board, employers,
29 participants, approved providers, and beneficiaries. Nothing
30 in this section shall prevent or prohibit a bundled provider
31 from providing any administrative or customer service,

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1 including accounting and administration of individual
2 participant benefits and contributions; individual participant
3 recordkeeping; asset purchase, control, and safekeeping;
4 direct execution of the participant's instructions as to asset
5 and contribution allocation; calculation of daily net asset
6 values; direct access to participant account information;
7 periodic reporting to participants, at least quarterly, on
8 account balances and transactions.

9 3. The state board shall select and contract with one
10 or more organizations to provide educational services. With
11 approval of the board, the organizations may subcontract with
12 other organizations or individuals to provide components of
13 the educational services. As a cost of administration, the
14 board may compensate any such contractor for its services in
15 accordance with the terms of the contract, as is deemed
16 necessary or proper by the board. The education organization
17 may not be an approved provider or be affiliated with an
18 approved provider.

19 4. Educational services shall be designed by the board
20 and department to assist employers, eligible employees,
21 participants, and beneficiaries in order to maintain
22 compliance with United States Department of Labor regulations
23 under s. 404(c) of the Employee Retirement Income Security Act
24 of 1974 and to assist employees in their choice of defined
25 benefit or defined contribution retirement alternatives.
26 Educational services include, but are not limited to,
27 disseminating educational materials; providing retirement
28 planning education; explaining the differences between the
29 defined benefit retirement plan and the defined contribution
30 retirement plan; and offering financial planning guidance on
31 matters such as investment diversification, investment risks,

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1 investment costs, and asset allocation. An approved provider
2 may also provide educational information, including retirement
3 planning and investment allocation information concerning its
4 products and services.

5 (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE
6 REVIEW.--

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

28 (b) The board shall consider investment options or
29 products it considers appropriate to give participants the
30 opportunity to accumulate retirement benefits, subject to the
31 following:

1 1. The Public Employee Optional Retirement Program
2 must offer a diversified mix of low-cost investment products
3 that span the risk-return spectrum, and may include a
4 guaranteed account as well as investment products such as
5 individually allocated guaranteed and variable annuities, that
6 meet the requirements of this subsection and that combine the
7 ability to accumulate investment returns with the option of
8 receiving lifetime income consistent with the long-term
9 retirement security of a pension plan and similar to the
10 lifetime income benefit provided by the Florida Retirement
11 System.

12 2. Investment options or products offered by the group
13 of approved providers may include mutual funds, group annuity
14 contracts, individual retirement annuities, interests in
15 trusts, collective trusts, separate accounts, and other such
16 financial instruments, and shall include products that give
17 participants the option of committing their contributions for
18 an extended time period in an effort to obtain higher returns
19 than could be obtained from investment products offering full
20 liquidity.

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

1 benefits relative to other comparable products in the program
2 offering full liquidity.

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

6 (f)1. An approved provider shall comply with all
7 applicable federal and state securities and insurance laws and
8 regulations, as well as the applicable rules and guidelines of
9 the National Association of Securities Dealers (NASD)
10 governing the ethical marketing of investment products. In
11 furtherance of this mandate, an approved provider must agree
12 in its contract with the board to establish and maintain a
13 compliance education and monitoring system to supervise the
14 activities of all personnel who directly communicate with
15 individual participants and recommend investment products,
16 which system is consistent with National Association of
17 Security Dealers rules.

18 2. Approved provider personnel who directly
19 communicate with individual participants and who recommend
20 investment products shall make an independent and unbiased
21 determination as to whether an investment product is suitable
22 for a particular participant.

23 3. The board shall develop procedures to receive and
24 resolve participant complaints against a provider or approved
25 provider personnel, and, when appropriate, refer such
26 complaints to the appropriate regulatory agency.

27 4. Approved providers are prohibited from selling or
28 in any way distributing any customer list or participant
29 identification information generated through their offering of
30 products or services through the optional retirement program.

31 Section 8. The appointment of the executive director

1 of the State Board of Administration shall be subject to the
2 approval by a majority vote of the Board of Trustees of the
3 State Board of Administration and the Governor must vote on
4 the prevailing side. Such appointment must be reaffirmed in
5 the same manner by the Board of Trustees on an annual basis.

6 Section 9. Section 112.18, Florida Statutes, is
7 amended to read:

8 112.18 Firefighters and ~~state~~ law enforcement
9 officers; special provisions relative to disability.--

10 (1) Any condition or impairment of health of any
11 Florida state, municipal, county, port authority, special tax
12 district, or fire control district firefighter or any state
13 law enforcement officer, correctional officer, or correctional
14 probation officer as defined in s. 943.10(1), (2), or (3),
15 respectively, caused by tuberculosis, heart disease, or
16 hypertension resulting in total or partial disability or death
17 shall be presumed to have been accidental and to have been
18 suffered in the line of duty unless the contrary be shown by
19 competent evidence. However, any such firefighter or ~~state~~ law
20 enforcement officer shall have successfully passed a physical
21 examination upon entering into any such service as a
22 firefighter or ~~state~~ law enforcement officer, correctional
23 officer, or correctional probation officer, which examination
24 failed to reveal any evidence of any such condition. Such
25 presumption shall not apply to benefits payable under or
26 granted in a policy of life insurance or disability insurance,
27 unless the insurer and insured have negotiated for such
28 additional benefits to be included in the policy contract.

29 (2) This section shall be construed to authorize the
30 above governmental entities to negotiate policy contracts for
31 life and disability insurance to include accidental death

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1 benefits or double indemnity coverage which shall include the
 2 presumption that any condition or impairment of health of any
 3 firefighter, law enforcement officer, correctional officer, or
 4 correctional probation officer caused by tuberculosis, heart
 5 disease, or hypertension resulting in total or partial
 6 disability or death was accidental and suffered in the line of
 7 duty, unless the contrary be shown by competent evidence.

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

11 And the title is amended as follows:

12 On page 23, line 27, through page 24, line 22, of the
13 amendment

14 remove: all of said lines

15

16 and insert in lieu thereof:

17 technicians, or paramedics; amending s.
 18 121.055, F.S., relating to the Senior
 19 Management Service Class; requiring
 20 participation in the class by assistant
 21 attorneys general; amending s. 121.4501, F.S.;
 22 redefining the term "approved provider";
 23 providing requirements for the State Board of
 24 Administration in carrying out its duties under
 25 the program; providing requirements for
 26 approved providers regarding federal and state
 27 laws and regulations, and for communications
 28 with participants; providing requirements for
 29 the appointment of the executive director of
 30 the State Board of Administration; amending s.
 31 112.18, F.S.; expanding the provisions of law

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1 with respect to disability in the line of duty
2 to include all law enforcement officers and
3 certain correctional officers and correctional
4 probation officers; amending s. 121.0515, F.S.;
5 allowing
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