

By Representative Fasano

1 A bill to be entitled
2 An act relating to the Public Employee Optional
3 Retirement Program; amending s. 121.4501, F.S.;
4 providing requirements for the State Board of
5 Administration in carrying out its duties under
6 the program; providing requirements with
7 respect to administration; revising language
8 with respect to investment options or products;
9 providing an effective date.

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

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13 Section 1. Subsection (1), paragraph (a) of subsection
14 (2), paragraph (b) of subsection (8), and paragraphs (a) and
15 (b) of subsection (9) of section 121.4501, Florida Statutes,
16 are amended, and paragraph (f) is added to subsection (9) of
17 said section, to read:

18 121.4501 Public Employee Optional Retirement
19 Program.--

20 (1) The Trustees of the State Board of Administration
21 shall establish an optional defined contribution retirement
22 program for members of the Florida Retirement System under
23 which retirement benefits will be provided for eligible
24 employees who elect to participate in the program. The
25 benefits to be provided for or on behalf of participants in
26 such optional retirement program shall be provided through
27 employee-directed investments, in accordance with s. 401(a) of
28 the Internal Revenue Code and its related regulations. The
29 employers shall contribute, as provided in this section and s.
30 121.571, to the Public Employee Optional Retirement Program
31 Trust Fund toward the funding of such optional benefits. In

1 carrying out its duties under this section, the board shall
2 offer participants the opportunity to invest their retirement
3 contributions exclusively through private bundled providers
4 that offer individually allocated investment products and
5 services. The board shall not create any of its own investment
6 products or options.

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

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

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

3 (8) ADMINISTRATION OF PROGRAM.--

4 (b)1. The state board shall select and contract with
5 one third-party administrator to provide administrative
6 services. With the approval of the state board, the
7 third-party administrator may subcontract with other
8 organizations or individuals to provide components of the
9 administrative services. As a cost of administration, the
10 board may compensate any such contractor for its services, in
11 accordance with the terms of the contract, as is deemed
12 necessary or proper by the board. The third-party
13 administrator may not be an approved provider or be affiliated
14 with an approved provider.

15 2. These administrative services shall be include, but
16 are not limited to enrollment of eligible employees,
17 collection of employer contributions, disbursement of such
18 contributions to approved providers in accordance with the
19 allocation directions of participants, services relating to
20 consolidated billing; individual and collective, plan-wide
21 recordkeeping and accounting; asset purchase, control, and
22 safekeeping; and direct disbursement of funds to and from the
23 third-party administrator, the division, the board, employers,
24 participants, approved providers, and beneficiaries. Approved
25 providers shall perform all other administrative and customer
26 services, including accounting and administration of
27 individual participant benefits and contributions; individual
28 participant recordkeeping; asset purchase, control, and
29 safekeeping; direct execution of the participants's
30 instructions as to asset and contribution allocation;
31 calculation of daily net asset values; direct access to

1 participant account information; periodic reporting to
2 participants, at least quarterly, on account balances and
3 transactions; direct advice and guidance on investment
4 options; a broad array of distribution options; and asset
5 allocation and retirement counseling and education. Approved
6 providers may, with the approval of the board, subcontract
7 with other organizations or individuals to provide components
8 of the administrative services and customer services.

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,

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 with five ~~for a number of investment~~
13 ~~products as determined by the board. The board shall select~~
14 ~~one~~ or more bundled providers who offer multiple investment
15 products and services, including at least one provider who
16 offers guaranteed annuities ~~when such an approach is~~
17 ~~determined by the board to afford value to the participants~~
18 ~~otherwise not available through individual investment~~
19 ~~products.~~ The board shall review and manage all educational
20 materials, contract terms, fee schedules, and other aspects of
21 the approved provider relationships to ensure that no provider
22 is unduly favored or penalized by virtue of its status within
23 the plan.

24 (b) The board shall consider investment options or
25 products it considers appropriate to give participants the
26 opportunity to accumulate retirement benefits, subject to the
27 following:

28 1. The Public Employee Optional Retirement Program
29 must offer a diversified mix of low-cost investment products
30 that span the risk-return spectrum, and shall include a
31 guaranteed account as well as investment products that offer

1 the option of receiving lifetime income consistent with the
2 long-term retirement security of a pension plan and similar to
3 the lifetime income benefit provided by the Florida Retirement
4 System.

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

14 3. The board shall not contract with any provider that
15 imposes a front-end, back-end, contingent, or deferred sales
16 ~~charge, or any other fee that limits or restricts the ability~~
17 ~~of participants to select any investment product available in~~
18 ~~the optional program.~~ This prohibition shall not apply to fees
19 or charges on lump-sum distributions that are based primarily
20 on liquidity risk management.

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

24 (f)1. An approved provider shall comply with all
25 applicable federal and state securities and insurance laws and
26 regulations, as well as the applicable rules and guidelines of
27 the National Association of Securities Dealers (NASD)
28 governing the ethical marketing of investment products. In
29 furtherance of this mandate, an approved provider must agree
30 in its contract with the board to establish and maintain a
31 compliance education and monitoring system to supervise the

1 activities of all personnel who directly communicate with
2 individual participants and recommend investment products,
3 which system is consistent with NASD rules.

4 2. Approved provider personnel who directly
5 communicate with individual participants and who recommend
6 investment products shall make an independent and unbiased
7 determination as to whether an investment product is suitable
8 for a particular participant.

9 3. The board shall develop procedures to receive and
10 resolve participant complaints against a provider, and, when
11 appropriate, refer such complaints to the appropriate
12 regulatory agency.

13 4. Approved providers shall be responsible for the
14 accuracy of all information presented to participants. An
15 approved provider shall not represent itself to participants
16 as the sole provider of investment products or services under
17 the optional retirement program. Any participant inquiries to
18 an approved provider regarding the products or services of
19 another approved provider shall be referred to the third party
20 administrator.

21 5. Approved providers are prohibited from selling any
22 customer list or participant identification information
23 generated through their offering of products or services
24 through the optional retirement program.

25 Section 2. This act shall take effect upon becoming a
26 law.

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HOUSE SUMMARY

Revises the provisions of the Public Employee Optional Retirement Program to provide for the use of private sector bundled providers that offer public employees a wide variety of choices in both products and services in a competitive environment. See bill for details.