

By the Fiscal Responsibility Council and 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 redefining the term "approved provider";
5 providing requirements for the State Board of
6 Administration in carrying out its duties under
7 the program; providing requirements for
8 approved providers regarding federal and state
9 laws and regulations, and for communications
10 with participants; providing an effective date.

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

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

20 121.4501 Public Employee Optional Retirement
21 Program.--

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

1 121.571, to the Public Employee Optional Retirement Program
2 Trust Fund toward the funding of such optional benefits.
3 (2) DEFINITIONS.--As used in this section, the term:
4 (a) "Approved provider" or "provider" means a private
5 sector company that is selected and approved by the state
6 board to offer one or more investment products or services to
7 the Public Employee Optional Retirement Program, including a
8 "bundled provider" that offers participants a range of
9 individually allocated investment products and may offer a
10 range of administrative and customer services, which may
11 include accounting and administration of individual
12 participant benefits and contributions; individual participant
13 recordkeeping; asset purchase, control, and safekeeping;
14 direct execution of the participant's instructions as to asset
15 and contribution allocation; calculation of daily net asset
16 values; direct access to participant account information;
17 periodic reporting to participants, at least quarterly, on
18 account balances and transactions; direct advice and guidance
19 on its investments options; a broad array of distribution
20 options; and asset allocation and retirement counseling and
21 education. Private sector companies include investment
22 management companies, insurance companies, depositories, and
23 mutual fund companies.
24 (4) PARTICIPATION; ENROLLMENT.--
25 (e) After the period during which an eligible employee
26 had the choice to elect the defined benefit program or the
27 Public Employee Optional Retirement Program, the employee
28 shall have one opportunity, that is, a second election,~~at the~~
29 ~~employee's discretion,~~to choose to move from the defined
30 benefit program to the Public Employee Optional Retirement
31 Program or from the Public Employee Optional Retirement

1 Program to the defined benefit program. This paragraph shall
2 be contingent upon approval from the Internal Revenue Service
3 for including the choice described herein within the programs
4 offered by the Florida Retirement System.

5 1. If the employee chooses to move to the Public
6 Employee Optional Retirement Program, the applicable
7 provisions of this section shall govern the transfer.

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

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

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,

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 may include, but are
10 not limited to, enrollment of eligible employees, collection
11 of employer contributions, disbursement of such contributions
12 to approved providers in accordance with the allocation
13 directions of participants; services relating to consolidated
14 billing; individual and collective recordkeeping and
15 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

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

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

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

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

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

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

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

26 (f)1. An approved provider shall comply with all
27 applicable federal and state securities and insurance laws and
28 regulations, as well as the applicable rules and guidelines of
29 the National Association of Securities Dealers (NASD)
30 governing the ethical marketing of investment products. In
31 furtherance of this mandate, an approved provider must agree

1 in its contract with the board to establish and maintain a
2 compliance education and monitoring system to supervise the
3 activities of all personnel who directly communicate with
4 individual participants and recommend investment products,
5 which system is consistent with National Association of
6 Security Dealers rules.
7 2. Approved provider personnel who directly
8 communicate with individual participants and who recommend
9 investment products shall make an independent and unbiased
10 determination as to whether an investment product is suitable
11 for a particular participant.
12 3. The board shall develop procedures to receive and
13 resolve participant complaints against a provider, and, when
14 appropriate, refer such complaints to the appropriate
15 regulatory agency.
16 4. Approved providers are prohibited from selling any
17 customer list or participant identification information
18 generated through their offering of products or services
19 through the optional retirement program.
20 Section 2. This act shall take effect upon becoming a
21 law.
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