

1                                   A bill to be entitled  
2           An act relating to the Public Employee Optional  
3           Retirement Program; creating the "Officer  
4           Malcolm Thompson Act"; providing legislative  
5           intent; amending s. 121.091, F.S.; revising  
6           provisions relating to benefits payable for  
7           total and permanent disability for certain  
8           Special Risk Class members of the Florida  
9           Retirement System who are injured in the line  
10          of duty; amending ss. 175.191 and 185.18, F.S.;  
11          providing minimum retirement benefits payable  
12          to certain Special Risk Class members who are  
13          injured in the line of duty and who are totally  
14          and permanently disabled due to such injury;  
15          amending s. 121.4501, F.S.; redefining the term  
16          "approved provider"; providing requirements for  
17          the State Board of Administration in carrying  
18          out its duties under the program; providing  
19          requirements for approved providers regarding  
20          federal and state laws and regulations, and for  
21          communications with participants; providing  
22          requirements for the appointment of the  
23          executive director of the State Board of  
24          Administration; amending s. 121.4501, F.S.;  
25          providing additional definitions; providing for  
26          payment of benefits pursuant to s. 121.591,  
27          F.S.; amending s. 121.571, F.S.; revising  
28          employer contribution rates to disability  
29          accounts; creating s. 121.591, F.S.; providing  
30          for payment of normal benefits, disability  
31          retirement benefits, and death benefits under

1 the Public Employee Optional Retirement  
2 Program; providing requirements, criteria,  
3 procedures, and limitations; providing for  
4 disability benefits for certain justices and  
5 judges; limiting application of legal process  
6 to such benefits; providing a declaration of  
7 important state interest; providing an  
8 effective date.

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. It is hereby declared by the Legislature  
13 that firefighters, paramedics, emergency medical technicians,  
14 and police officers, as hereinafter defined, perform state and  
15 municipal functions; that it is their duty to protect life and  
16 property at their own risk and peril; that it is their duty to  
17 continuously instruct school personnel, public officials, and  
18 private citizens about safety; and that their activities are  
19 vital to the public safety. Therefore, the Legislature  
20 declares that it is a proper and legitimate state purpose to  
21 provide a uniform retirement system for the benefit of  
22 firefighters, paramedics, emergency medical technicians, and  
23 police officers as hereinafter defined and intends, in  
24 implementing the provisions of Section 14, Article X of the  
25 State Constitution as they relate to municipal and special  
26 district pension trust fund systems and plans, that such  
27 retirement systems or plans be managed, administered,  
28 operated, and funded in such manner as to maximize the  
29 protection of pension trust funds. Pursuant to Section 18,  
30 Article VII of the State Constitution, the Legislature hereby

1 determines and declares that the provisions of this act  
2 fulfill an important state interest.

3 Section 2. Paragraph (b) of subsection (4) of section  
4 121.091, Florida Statutes, is amended to read:

5 121.091 Benefits payable under the system.--Benefits  
6 may not be paid under this section unless the member has  
7 terminated employment as provided in s. 121.021(39)(a) or  
8 begun participation in the Deferred Retirement Option Program  
9 as provided in subsection (13), and a proper application has  
10 been filed in the manner prescribed by the department. The  
11 department may cancel an application for retirement benefits  
12 when the member or beneficiary fails to timely provide the  
13 information and documents required by this chapter and the  
14 department's rules. The department shall adopt rules  
15 establishing procedures for application for retirement  
16 benefits and for the cancellation of such application when the  
17 required information or documents are not received.

18 (4) DISABILITY RETIREMENT BENEFIT.--

19 (b) Total and permanent disability.--A member shall be  
20 considered totally and permanently disabled if, in the opinion  
21 of the administrator, he or she is prevented, by reason of a  
22 medically determinable physical or mental impairment, from  
23 rendering useful and efficient service as an officer or  
24 employee. A Special Risk Class member who is an officer as  
25 defined in s. 943.10(1), (2), or (3); a firefighter as defined  
26 in s. 633.30(1); an emergency medical technician as defined in  
27 s. 401.23(11); or a paramedic as defined in s. 401.23(17) who  
28 is catastrophically injured as defined in s. 440.02(37) in the  
29 line of duty as a result of a felonious act of another shall  
30 be considered totally and permanently disabled and unable to  
31 render useful and efficient service as an officer, unless the

1 administrator can provide documented competent medical  
2 evidence that the officer is able to render useful and  
3 efficient service as an officer. For purposes of this  
4 subsection, the term "officer" includes law enforcement  
5 officers, correctional officers, correctional probation  
6 officers, firefighters, emergency medical technicians, and  
7 paramedics.

8 Section 3. Subsection (5) of section 175.191, Florida  
9 Statutes, is amended to read:

10 175.191 Disability retirement.--For any municipality,  
11 special fire control district, chapter plan, local law  
12 municipality, local law special fire control district, or  
13 local law plan under this chapter:

14 (5) The benefit payable to a firefighter who retires  
15 from the service of a municipality or special fire control  
16 district due to total and permanent disability as a direct  
17 result of a disability is the monthly income payable for 10  
18 years certain and life for which, if the firefighter's  
19 disability occurred in the line of duty, his or her monthly  
20 benefit shall be the accrued retirement benefit, but shall not  
21 be less than 42 percent of his or her average monthly salary  
22 at the time of disability. If after 10 years of service the  
23 disability is other than in the line of duty, the  
24 firefighter's monthly benefit shall be the accrued normal  
25 retirement benefit, but shall not be less than 25 percent of  
26 his or her average monthly salary at the time of disability.  
27 Notwithstanding any provision to the contrary, the monthly  
28 retirement benefit payable to a firefighter, emergency medical  
29 technician, or paramedic who retires from service due to total  
30 and permanent disability as a result of a catastrophic injury  
31 as defined in s. 440.02(37) where such injury is a result of a

1 felonious act of another shall be the accrued retirement  
2 benefit but shall not be less than 80 percent of his or her  
3 average monthly salary at the time of disability.

4 Section 4. Subsection (5) of section 185.18, Florida  
5 Statutes, is amended to read:

6 185.18 Disability retirement.--For any municipality,  
7 chapter plan, local law municipality, or local law plan under  
8 this chapter:

9 (5) The benefit payable to a police officer who  
10 retires from the service of the city with a total and  
11 permanent disability as a result of a disability is the  
12 monthly income payable for 10 years certain and life for  
13 which, if the police officer's disability occurred in the line  
14 of duty, his or her monthly benefit shall be the accrued  
15 retirement benefit, but shall not be less than 42 percent of  
16 his or her average monthly compensation as of the police  
17 officer's disability retirement date. If after 10 years of  
18 service the disability is other than in the line of duty, the  
19 police officer's monthly benefit shall be the accrued normal  
20 retirement benefit, but shall not be less than 25 percent of  
21 his or her average monthly compensation as of the police  
22 officer's disability retirement date. Notwithstanding any  
23 provision to the contrary, the monthly retirement benefit  
24 payable to a police officer who retires from service due to  
25 total and permanent disability as a result of a catastrophic  
26 injury as defined in s. 440.02(37) where such injury is a  
27 result of a felonious act of another shall be the accrued  
28 retirement benefit but shall not be less than 80 percent of  
29 the officer's average monthly compensation as of the officer's  
30 disability retirement date.

31

1           Section 5. Subsection (1), paragraph (a) of subsection  
2 (2), paragraph (e) of subsection (4), paragraph (b) of  
3 subsection (8), and paragraphs (a) and (b) of subsection (9)  
4 of section 121.4501, Florida Statutes, are amended, and  
5 paragraph (f) is added to subsection (9) of said section, to  
6 read:

7           121.4501 Public Employee Optional Retirement  
8 Program.--

9           (1) The Trustees of the State Board of Administration  
10 shall establish an optional defined contribution retirement  
11 program for members of the Florida Retirement System under  
12 which retirement benefits will be provided for eligible  
13 employees who elect to participate in the program. The  
14 benefits to be provided for or on behalf of participants in  
15 such optional retirement program shall be provided through  
16 employee-directed investments, in accordance with s. 401(a) of  
17 the Internal Revenue Code and its related regulations. The  
18 employers shall contribute, as provided in this section and s.  
19 121.571, to the Public Employee Optional Retirement Program  
20 Trust Fund toward the funding of such optional benefits.

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

22           (a) "Approved provider" or "provider" means a private  
23 sector company that is selected and approved by the state  
24 board to offer one or more investment products or services to  
25 the Public Employee Optional Retirement Program, including a  
26 "bundled provider" that offers participants a range of  
27 individually allocated or unallocated investment products and  
28 may offer a range of administrative and customer services,  
29 which may include accounting and administration of individual  
30 participant benefits and contributions; individual participant  
31 recordkeeping; asset purchase, control, and safekeeping;

1 direct execution of the participant's instructions as to asset  
 2 and contribution allocation; calculation of daily net asset  
 3 values; direct access to participant account information;  
 4 periodic reporting to participants, at least quarterly, on  
 5 account balances and transactions; direct advice and guidance  
 6 on its investments options; a broad array of distribution  
 7 options; and asset allocation and retirement counseling and  
 8 education. Private sector companies include investment  
 9 management companies, insurance companies, depositories, and  
 10 mutual fund companies.

11 (4) PARTICIPATION; ENROLLMENT.--

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

23 1. If the employee chooses to move to the Public  
 24 Employee Optional Retirement Program, the applicable  
 25 provisions of this section shall govern the transfer.

26 2. If the employee chooses to move from the Public  
 27 Employee Optional Retirement Program to the defined benefit  
 28 program, the employee must transfer from his or her optional  
 29 program ~~Public Employee Optional Retirement Program~~ account  
 30 and from other employee moneys as necessary, a sum  
 31 representing all contributions that would have been made to

1 the defined benefit plan for that employee and the actual  
2 return that would have been earned on those contributions had  
3 they been invested in the defined benefit program.

4  
5 If, at the time of a member's election to transfer to the  
6 defined benefit program, the member's optional program account  
7 does not contain the total amount required to be transferred  
8 to the defined benefit program, the member must pay the  
9 remaining balance. If the member's optional program account  
10 contains more than the amount required to be transferred to  
11 the defined benefit program, such additional amount shall  
12 remain in the member's optional program account.

13 (8) ADMINISTRATION OF PROGRAM.--

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

27 2. These administrative services may include, but are  
28 not limited to, enrollment of eligible employees, collection  
29 of employer contributions, disbursement of such contributions  
30 to approved providers in accordance with the allocation  
31 directions of participants;services relating to consolidated



1 billing; individual and collective recordkeeping and  
2 accounting; asset purchase, control, and safekeeping; and  
3 direct disbursement of funds to and from the third-party  
4 administrator, the division, the board, employers,  
5 participants, approved providers, and beneficiaries. Nothing  
6 in this section shall prevent or prohibit a bundled provider  
7 from providing any administrative or customer service,  
8 including accounting and administration of individual  
9 participant benefits and contributions; individual participant  
10 recordkeeping; asset purchase, control, and safekeeping;  
11 direct execution of the participant's instructions as to asset  
12 and contribution allocation; calculation of daily net asset  
13 values; direct access to participant account information;  
14 periodic reporting to participants, at least quarterly, on  
15 account balances and transactions.

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

26         4. Educational services shall be designed by the board  
27 and department to assist employers, eligible employees,  
28 participants, and beneficiaries in order to maintain  
29 compliance with United States Department of Labor regulations  
30 under s. 404(c) of the Employee Retirement Income Security Act  
31 of 1974 and to assist employees in their choice of defined

1 benefit or defined contribution retirement alternatives.  
2 Educational services include, but are not limited to,  
3 disseminating educational materials; providing retirement  
4 planning education; explaining the differences between the  
5 defined benefit retirement plan and the defined contribution  
6 retirement plan; and offering financial planning guidance on  
7 matters such as investment diversification, investment risks,  
8 investment costs, and asset allocation. An approved provider  
9 may also provide educational information, including retirement  
10 planning and investment allocation information concerning its  
11 products and services.

12 (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE  
13 REVIEW.--

14 (a) The board shall develop policy and procedures for  
15 selecting, evaluating, and monitoring the performance of  
16 approved providers and investment products to which employees  
17 may direct retirement contributions under the program. In  
18 accordance with such policy and procedures, the board shall  
19 designate and contract for a number of investment products as  
20 determined by the board. The board shall also select one or  
21 more bundled providers, each of whom ~~who~~ offer nine multiple  
22 investment options and related services ~~products~~ when such an  
23 approach is determined by the board to afford value to the  
24 participants otherwise not available through individual  
25 investment products. Each approved bundled provider may offer  
26 investment options that provide participants with the  
27 opportunity to invest in each of the following asset classes,  
28 to be composed of individual options that represent either a  
29 single asset class or a combination thereof: money markets,  
30 U.S. fixed income, U.S. equities, and foreign stock.The board  
31 shall review and manage all educational materials, contract

1 terms, fee schedules, and other aspects of the approved  
2 provider relationships to ensure that no provider is unduly  
3 favored or penalized by virtue of its status within the plan.

4 (b) The board shall consider investment options or  
5 products it considers appropriate to give participants the  
6 opportunity to accumulate retirement benefits, subject to the  
7 following:

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

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

28 3. The board shall not contract with any provider that  
29 imposes a front-end, back-end, contingent, or deferred sales  
30 charge, or any other fee that limits or restricts the ability  
31 of participants to select any investment product available in

1 the optional program. This prohibition shall not apply to fees  
2 or charges that are imposed on withdrawals from products that  
3 give participants the option of committing their contributions  
4 for an extended time period in an effort to obtain higher  
5 returns than could be obtained from investment products  
6 offering full liquidity, provided that the product in  
7 question, net of all fees and charges, produces material  
8 benefits relative to other comparable products in the program  
9 offering full liquidity.

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

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

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

30 3. The board shall develop procedures to receive and  
31 resolve participant complaints against a provider or approved

1 provider personnel, and, when appropriate, refer such  
2 complaints to the appropriate regulatory agency.

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

7 Section 6. The appointment of the executive director  
8 of the State Board of Administration shall be subject to the  
9 approval by a majority vote of the Board of Trustees of the  
10 State Board of Administration and the Governor must vote on  
11 the prevailing side. Such appointment must be reaffirmed in  
12 the same manner by the Board of Trustees on an annual basis.

13 Section 7. Paragraphs (b) through (j) of subsection  
14 (2) of section 121.4501, Florida Statutes, are redesignated as  
15 paragraphs (d) through (l), respectively, new paragraphs (b)  
16 and (c) are added to said subsection, and subsections (7) and  
17 (16) of said section are amended, to read:

18 121.4501 Public Employee Optional Retirement  
19 Program.--

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

21 (b) "Average monthly compensation" means one-twelfth  
22 of average final compensation as defined in s. 121.021(24).

23 (c) "Covered employment" means employment in a  
24 regularly established position as defined in s. 121.021(52).

25 (7) BENEFITS.--Under the Public Employee Optional  
26 Retirement Program:

27 (a) Benefits shall be provided in accordance with s.  
28 401(a) of the Internal Revenue Code.

29 (b) Benefits shall accrue in individual accounts that  
30 are participant-directed, portable, and funded by employer  
31 contributions and earnings thereon.

1 (c) Benefits shall be payable in accordance with s.  
2 121.591.~~the following terms and conditions:~~

3 ~~1. To the extent vested, benefits shall be payable~~  
4 ~~only to a participant, or to his or her beneficiaries as~~  
5 ~~designated by the participant.~~

6 ~~2. Benefits shall be paid by the third-party~~  
7 ~~administrator or designated approved providers in accordance~~  
8 ~~with the law, the contracts, and any applicable board rule or~~  
9 ~~policy.~~

10 ~~3. To begin receiving the benefits, the participant~~  
11 ~~must be terminated from all employment with all Florida~~  
12 ~~Retirement System employers, as provided in s. 121.021(39), or~~  
13 ~~the participant must be deceased. If a participant elects to~~  
14 ~~receive his or her benefits upon termination of employment,~~  
15 ~~the participant must submit a written application to the~~  
16 ~~third-party administrator indicating his or her preferred~~  
17 ~~distribution date and selecting an authorized method of~~  
18 ~~distribution as provided in paragraph (d). The participant may~~  
19 ~~defer receipt of benefits until he or she chooses to make such~~  
20 ~~application, subject to federal requirements.~~

21 ~~4. In the event of a participant's death, moneys~~  
22 ~~accumulated by, or on behalf of, the participant, less~~  
23 ~~withholding taxes remitted to the Internal Revenue Service,~~  
24 ~~shall be distributed to the participant's designated~~  
25 ~~beneficiary or beneficiaries, or to the participant's estate,~~  
26 ~~as if the participant retired on the date of death, as~~  
27 ~~provided in paragraph (e). No other death benefits shall be~~  
28 ~~available for survivors of participants under the Public~~  
29 ~~Employee Optional Retirement Program, except for such~~  
30 ~~benefits, or coverage for such benefits, as are separately~~  
31 ~~afforded by the employer, at the employer's discretion.~~

1           ~~(d) Upon receipt by the third-party administrator of a~~  
2 ~~properly executed application for distribution of benefits,~~  
3 ~~the total accumulated benefit shall be payable to the~~  
4 ~~participant, as:~~

5           ~~1. A lump-sum distribution to the participant;~~

6           ~~2. A lump-sum direct rollover distribution whereby all~~  
7 ~~accrued benefits, plus interest and investment earnings, are~~  
8 ~~paid from the participant's account directly to the custodian~~  
9 ~~of an eligible retirement plan, as defined in s. 402(c)(8)(B)~~  
10 ~~of the Internal Revenue Code, on behalf of the participant; or~~

11           ~~3. Periodic distributions, as authorized by the state~~  
12 ~~board.~~

13           ~~(e) Survivor benefits shall be payable as:~~

14           ~~1. A lump-sum distribution payable to the~~  
15 ~~beneficiaries, or to the deceased participant's estate;~~

16           ~~2. An eligible rollover distribution on behalf of the~~  
17 ~~surviving spouse of a deceased participant, whereby all~~  
18 ~~accrued benefits, plus interest and investment earnings, are~~  
19 ~~paid from the deceased participant's account directly to the~~  
20 ~~custodian of an individual retirement account or an individual~~  
21 ~~retirement annuity, as described in s. 402(c)(9) of the~~  
22 ~~Internal Revenue Code, on behalf of the surviving spouse; or~~

23           ~~3. A partial lump-sum payment whereby a portion of the~~  
24 ~~accrued benefit is paid to the deceased participant's~~  
25 ~~surviving spouse or other designated beneficiaries, less~~  
26 ~~withholding taxes remitted to the Internal Revenue Service,~~  
27 ~~and the remaining amount is transferred directly to the~~  
28 ~~custodian of an individual retirement account or an individual~~  
29 ~~retirement annuity, as described in s. 402(c)(9) of the~~  
30 ~~Internal Revenue Code, on behalf of the surviving spouse. The~~

31

1 ~~proportions must be specified by the participant or the~~  
2 ~~surviving beneficiary.~~

3  
4 ~~This paragraph does not abrogate other applicable provisions~~  
5 ~~of state or federal law providing for payment of death~~  
6 ~~benefits.~~

7 ~~(f) The benefits payable to any person under the~~  
8 ~~Public Employee Optional Retirement Program, and any~~  
9 ~~contributions accumulated under such program, are not subject~~  
10 ~~to assignment, execution, attachment, or any legal process,~~  
11 ~~except for qualified domestic relations orders by a court of~~  
12 ~~competent jurisdiction, income deduction orders as provided in~~  
13 ~~s. 61.1301, and federal income tax levies.~~

14 (16) ~~DISABILITY BENEFITS.--For any participant of the~~  
15 ~~optional retirement program who becomes totally and~~  
16 ~~permanently disabled, benefits shall be paid in accordance~~  
17 ~~with s. 121.591 as defined in s. 121.091(4)(b), the~~  
18 ~~participant shall be entitled to receive those moneys that~~  
19 ~~have accrued in his or her participant account. It is the~~  
20 ~~intent of the Legislature to design a disability benefit for~~  
21 ~~participants of the optional program similar to those~~  
22 ~~disability benefits afforded defined benefit program members.~~  
23 ~~The department is directed to study the potential options of~~  
24 ~~such coverage, including self-insurance and commercial~~  
25 ~~coverage, the alternative methods of administering such~~  
26 ~~benefits, and the fiscal impacts on the employees and~~  
27 ~~employers, and to make recommendations to the Legislature by~~  
28 ~~January 15, 2001.~~

29 Section 8. Subsection (3) of section 121.571, Florida  
30 Statutes, is amended to read:



1           121.571 Contributions.--Contributions to the Public  
2 Employee Optional Retirement Program shall be made as follows:

3           (3) CONTRIBUTIONS TO DISABILITY ACCOUNT.--

4           (a) All contributions made on behalf of a participant  
5 pursuant to this subsection shall be transferred by the  
6 employer to the third-party administrator for deposit in the  
7 Public Employee Disability Trust Fund administered by the  
8 Division of Retirement. Such contributions, less any fees or  
9 charges authorized by the Legislature to offset the costs of  
10 administering the disability component of the optional  
11 retirement program, shall be used to provide disability  
12 coverage for participants in the optional retirement program.

13           (b) Disability contributions for Regular Class members  
14 of the optional retirement plan are as follows:

15		
16	Dates of Contribution	Employers
17	Rate Changes	
18	Effective July 1, 2002:	<u>0.25%</u> <del>0.39%</del>
19		

20           (c) Disability contributions for Special Risk Class  
21 members of the optional retirement plan are as follows:

22		
23	Dates of Contribution	Employers
24	Rate Changes	
25	Effective July 1, 2002:	<u>1.33%</u> <del>1.25%</del>
26		

27           (d) Disability contributions for Special Risk  
28 Administrative Support Class members of the optional  
29 retirement plan are as follows:

30  
31

1 Dates of Contribution Employers  
 2 Rate Changes  
 3 Effective July 1, 2002: 0.45%~~0.73%~~  
 4  
 5 (e) Disability contributions for Elected Officers'  
 6 Class members of the optional retirement plan are as follows:  
 7  
 8 Dates of Contribution Employers  
 9 Rate Changes  
 10 Effective July 1, 2002:  
 11 Legislators 0.41%~~0.61%~~  
 12 Governor, Lt. Governor, 0.41%~~0.61%~~  
 13 Cabinet Officers  
 14 State Attorneys, Public 0.41%~~0.61%~~  
 15 Defenders  
 16 Justices, Judges 0.73%~~1.45%~~  
 17 County Elected Officers 0.41%~~0.86%~~  
 18

19 (f) Disability contributions for Senior Management  
 20 Service Class members of the optional retirement plan are as  
 21 follows:  
 22

23 Dates of Contribution Employers  
 24 Rate Changes  
 25  
 26 Effective July 1, 2002: 0.26%~~0.50%~~  
 27

28 Section 9. Section 121.591, Florida Statutes, is  
 29 created to read:

30 121.591 Benefits payable under the Public Employee  
 31 Optional Retirement Program of the Florida Retirement

1 System.--Benefits may not be paid under this section unless  
 2 the member has terminated employment as provided in s.  
 3 121.021(39)(a) or is deceased and a proper application has  
 4 been filed in the manner prescribed by the state board or the  
 5 department. The state board or the department, as appropriate,  
 6 may cancel an application for retirement benefits when the  
 7 member or beneficiary fails to timely provide the information  
 8 and documents required by this chapter and the rules of the  
 9 state board and the department. In accordance with their  
 10 respective responsibilities as provided in this section, the  
 11 state board and the department shall adopt rules establishing  
 12 procedures for application for retirement benefits and for the  
 13 cancellation of such application when the required information  
 14 or documents are not received.

15 (1) NORMAL BENEFIT.--Under the optional program:

16 (a) Benefits, in the form of vested accumulations as  
 17 described in s. 121.4501(6), shall be payable under this  
 18 subsection as follows:

19 1. To the extent vested, benefits shall be payable  
 20 only to a participant.

21 2. Benefits shall be paid by the third-party  
 22 administrator or designated approved providers in accordance  
 23 with the law, the contracts, and any applicable board rule or  
 24 policy.

25 3. To receive benefits under this subsection, the  
 26 participant must be terminated from all employment with all  
 27 Florida Retirement System employers, as provided in s.  
 28 121.021(39).

29 (b) If a participant elects to receive his or her  
 30 benefits upon termination of employment, the participant must  
 31 submit a written application to the third-party administrator

1 indicating his or her preferred distribution date and  
2 selecting an authorized method of distribution as provided in  
3 paragraph (c). The participant may defer receipt of benefits  
4 until he or she chooses to make such application, subject to  
5 federal requirements.

6 (c) Upon receipt by the third-party administrator of a  
7 properly executed application for distribution of benefits,  
8 the total accumulated benefit shall be payable to the  
9 participant as:

- 10 1. A lump-sum distribution to the participant;
- 11 2. A lump-sum direct rollover distribution whereby all  
12 accrued benefits, plus interest and investment earnings, are  
13 paid from the participant's account directly to the custodian  
14 of an eligible retirement plan, as defined in s. 402(c)(8)(B)  
15 of the Internal Revenue Code, as amended, on behalf of the  
16 participant; or
- 17 3. Periodic distributions, as authorized by the state  
18 board.

19 (2) DISABILITY RETIREMENT BENEFIT.--Benefits provided  
20 under this subsection are payable in lieu of the benefits  
21 which would otherwise be payable under the provisions of  
22 subsection (1).

23 (a)1. If the participant has no credit under the  
24 defined benefit program of the Florida Retirement System or  
25 such credit has been nullified as provided under s.  
26 121.4501(3)(c), all moneys accumulated in the participant's  
27 optional program account, including vested and nonvested  
28 accumulations as described in s. 121.4501(6), shall be  
29 transferred from such individual account to the Division of  
30 Retirement for deposit into the Public Employee Disability  
31 Trust Fund; or

1           2. If the participant is a former member of the  
2 defined benefit program of the Florida Retirement System who  
3 elected to retain the retirement credit he or she had earned  
4 under that program as provided in s. 121.4501(3)(b), a sum  
5 representing the actuarial present value of such credit shall  
6 be transferred by the Division of Retirement from the Florida  
7 Retirement System Trust Fund to the Public Employee Disability  
8 Trust Fund. In addition, all moneys accumulated in the  
9 participant's optional program account, including vested and  
10 nonvested accumulations as described in s. 121.4501(6), shall  
11 be transferred from such individual account to the Division of  
12 Retirement for deposit into the Public Employee Disability  
13 Trust Fund.

14           (b)1. A participant of the optional program who  
15 becomes totally and permanently disabled, as defined in  
16 paragraph (d), after completing 8 years of creditable service,  
17 or a participant who becomes totally and permanently disabled  
18 in the line of duty regardless of his or her length of  
19 service, shall be entitled to a monthly disability benefit as  
20 provided in this subsection.

21           2. For purposes of this subsection, the 8 years of  
22 creditable service required to vest for regular disability  
23 benefits must be creditable service under the defined benefit  
24 program of the Florida Retirement System or service under the  
25 optional program, subject to the following conditions:

26           a. In the case of present value transfers to a  
27 participant's account under s. 121.4501(3)(c), the period of  
28 service under the defined benefit program represented in the  
29 present value amounts transferred shall only be considered  
30 creditable service for purposes of vesting for disability  
31

1 benefits as long as such funds remain in the participant's  
2 accounts under the optional program.

3 b. In the case of contributions made to a  
4 participant's accounts under s. 121.4501(5), the period of  
5 service under the optional program shall only be considered  
6 creditable service for purposes of vesting for disability  
7 benefits as long as such funds remain in the participant's  
8 accounts under the optional program.

9  
10 If a participant terminates employment and takes distribution  
11 of such funds as provided in subsection (1), all credit for  
12 the service represented by such distributed funds is forfeited  
13 for purposes of qualifying for disability benefits under this  
14 subsection.

15 (c)1. If the division has received from the employer  
16 the required documentation of the participant's termination of  
17 employment, the effective retirement date for a participant  
18 who applies and is approved for disability retirement shall be  
19 established by rule of the division.

20 2. For a participant who is receiving workers'  
21 compensation payments, the effective disability retirement  
22 date may not precede the date the participant reaches maximum  
23 medical improvement, unless the participant terminates  
24 employment prior to reaching maximum medical improvement.

25 (d) A participant shall be considered totally and  
26 permanently disabled if, in the opinion of the division, he or  
27 she is prevented by reason of a medically determinable  
28 physical or mental impairment from rendering useful and  
29 efficient service as an officer or employee.

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1           (e) The division, before approving payment of any  
2 disability retirement benefit, shall require proof that the  
3 participant is totally and permanently disabled as follows:

4           1. Such proof shall include the certification of the  
5 participant's total and permanent disability by two licensed  
6 physicians in this state and such other evidence of disability  
7 as the division may require, including reports from vocational  
8 rehabilitation, evaluation, or testing specialists who have  
9 evaluated the applicant for employment.

10           2. It shall be documented that:

11           a. The participant's medical condition occurred or  
12 became symptomatic during the time the participant was  
13 employed in an employee/employer relationship with his or her  
14 employer.

15           b. The participant was totally and permanently  
16 disabled at the time he or she terminated covered employment.

17           c. The participant has not been employed with any  
18 other employer after such termination.

19           3. If the application is for in-line-of-duty  
20 disability, in addition to the requirements of subparagraph  
21 2., it must be documented by competent medical evidence that  
22 the disability was caused by a job-related illness or accident  
23 which occurred while the participant was in an  
24 employee/employer relationship with his or her employer.

25           4. The unavailability of an employment position that  
26 the participant is physically and mentally capable of  
27 performing shall not be considered as proof of total and  
28 permanent disability.

29           (f) A participant whose application for regular  
30 disability retirement has been denied and who has filed an  
31 appeal to the State Retirement Commission under s. 121.23 may,

1 if eligible, elect to terminate employment and take  
2 distribution of benefits as provided under subsection (1)  
3 while he or she is awaiting the decision on the appeal. In  
4 that event:

5 1. If disability benefits are later approved as a  
6 result of the appeal, to receive the disability benefit  
7 payable under this subsection, the participant shall first  
8 repay to the division for deposit in the Public Employee  
9 Disability Trust Fund the total amount withdrawn under  
10 subsection (1), less the amount that would have otherwise been  
11 payable as a monthly disability benefit while the appeal was  
12 pending if the application had been initially approved.

13 2. If the appeal is later denied, no further benefits  
14 are payable to the terminated participant.

15 (g) Upon the disability retirement of a participant  
16 under this subsection, the participant shall receive a monthly  
17 benefit that shall begin to accrue on the first day of the  
18 month of disability retirement, as approved by the division,  
19 and shall be payable on the last day of that month and each  
20 month thereafter during his or her lifetime and continued  
21 disability.

22 (h) The amount of each monthly payment shall be  
23 computed in the same manner as that computed for a normal  
24 retirement benefit but shall be based on disability option  
25 actuarial equivalency tables and the average monthly  
26 compensation and creditable service of the participant as of  
27 his or her disability retirement date, subject to the  
28 following:

29 1. If the participant's disability occurred in the  
30 line of duty, the monthly Option 1 benefit shall be a minimum  
31 of:



1           a. Forty-two percent of the participant's average  
2 monthly compensation as of the disability retirement date; or

3           b. Sixty-five percent of the participant's average  
4 monthly compensation as of the disability retirement date for  
5 a participant of the special risk class who retires on or  
6 after July 1, 2002.

7           2. If the participant's disability occurred other than  
8 in the line of duty, the monthly Option 1 benefit shall be a  
9 minimum of 25 percent of the participant's average monthly  
10 compensation as of the disability retirement date.

11           (i) A participant whose initial application for  
12 disability retirement has been denied may reapply for  
13 disability benefits. However, such participant's reapplication  
14 may be considered only if the participant presents new medical  
15 evidence of a medical condition that existed prior to the  
16 participant's termination of employment. The division may  
17 prescribe by rule procedures for reapplication and for review  
18 and approval or disapproval of reapplication.

19           (j) Nothing in this subsection shall be construed to  
20 prevent a participant who has been approved for a disability  
21 retirement benefit payable under this subsection from electing  
22 to receive, in lieu of the benefit payable under this  
23 subsection, the benefit payable to him or her under the  
24 provisions of subsection (1), provided such election is made  
25 prior to the deposit or cashing of a disability retirement  
26 warrant or receipt of such warrant by electronic funds  
27 transfer in accordance with the participant's authorization of  
28 direct deposit of such funds.

29           (k) The division may require periodic reexaminations  
30 at the expense of the Public Employee Disability Trust Fund.  
31 The division may adopt rules establishing procedures for

1 conducting and review of such reexaminations. If the division  
2 finds that a participant who is receiving disability benefits  
3 is no longer disabled, the division shall direct that the  
4 disability benefits be discontinued and no further benefits  
5 shall be payable under this subsection. The decision of the  
6 division on this question shall be final and binding. Upon  
7 termination of the monthly disability benefit:

8 1. If such participant does not reenter covered  
9 employment following recovery from disability and had not  
10 satisfied the vesting requirement as of the disability  
11 retirement date for any or all of the moneys which had  
12 accumulated in his or her participant accounts, the remainder  
13 of the nonvested accumulation as described under subparagraph  
14 5., if any, shall be held in a suspense account in the Public  
15 Employee Disability Trust Fund.

16 a. If the participant returns to covered employment as  
17 an eligible employee as defined in s. 121.4501(2) within 5  
18 years after the date of recovery, the division shall transfer  
19 any such moneys held in the suspense account, plus interest  
20 calculated at an effective annual rate of 6 percent, to the  
21 State Board of Administration for deposit in the participant's  
22 individual account under the optional program, as directed by  
23 the participant.

24 b. If the participant fails to return to covered  
25 employment within 5 years after recovery, any such moneys held  
26 in the suspense account in the Public Employee Disability  
27 Trust Fund shall be forfeited.

28 2. If such participant does not reenter covered  
29 employment following recovery from disability but had  
30 satisfied vesting requirements as of the disability retirement  
31 date for any or all of the moneys which had accumulated in his

1 or her accounts under the optional program, the amount  
2 representing the remainder of his or her vested accumulation  
3 as described under subparagraph 5., if any, shall be  
4 transferred from the Public Employee Disability Trust Fund to  
5 the Public Employee Optional Retirement Program Trust Fund and  
6 shall be payable as provided in subsection (1).

7 3. If such participant returns to covered employment  
8 following recovery from disability as a participant in the  
9 optional program, the amount representing the remainder of his  
10 or her nonvested accumulation or the remainder of his or her  
11 vested accumulation as described under subparagraph 5., if  
12 any, shall be transferred from the Public Employee Disability  
13 Trust Fund to the third-party administrator for deposit in the  
14 participant's individual investment accounts as directed by  
15 the participant. Vested accumulations shall be accounted for  
16 separately from nonvested accumulations.

17 4. If such participant reenters covered employment as  
18 a member of the defined benefit program of the Florida  
19 Retirement System, and is continuously employed for a minimum  
20 of 1 year of creditable service, he or she may claim as  
21 creditable service the months during which he or she was  
22 receiving a disability benefit, upon payment of the required  
23 contributions as provided in s. 121.091(4)(h)1.d.

24 5. As used in reference to funds deposited in the  
25 Public Employee Disability Trust Fund under paragraph (a):

26 a. The term "remainder of the nonvested accumulation"  
27 means all employer contributions deposited on behalf of a  
28 participant who had not met the vesting requirement set forth  
29 in s. 121.4501(6)(a)1. as of his or her disability retirement  
30 date and any transferred present value amount deposited on  
31 behalf of a participant who had not met the vesting

1 requirement set forth in s. 121.4501(6)(b)1. as of his or her  
2 disability retirement date, plus interest and earnings  
3 thereon, less the total amount of disability benefits received  
4 by that participant.

5 b. The term "remainder of the vested accumulation"  
6 means all employer contributions deposited on behalf of any  
7 participant who had met the vesting requirement set forth in  
8 s. 121.4501(6)(a)1. as of his or her disability retirement  
9 date and any transferred present value amount deposited on  
10 behalf of any participant who had met the vesting requirement  
11 set forth in s. 121.4501(6)(b)1. as of his or her disability  
12 retirement date, plus interest and earnings thereon, less the  
13 total amount of disability benefits received by that  
14 participant.

15 (1) Both the participant receiving disability benefits  
16 who reenters employment and the employer employing such  
17 disability retiree shall notify the division immediately upon  
18 reemployment and the division shall terminate such  
19 participant's disability benefits, effective upon the first  
20 day of the month following the month in which notification of  
21 recovery is received. If the participant is reemployed with a  
22 Florida Retirement System employer at the time of benefit  
23 termination and he or she has received disability retirement  
24 benefit and salary payments concurrently prior to notifying  
25 the division, he or she may elect within 30 days to:

26 1. Retain the retirement benefits received prior to  
27 termination of disability benefits and begin receiving  
28 retirement service credit effective upon the date of  
29 termination of benefits; or

30 2. Repay, within 12 months after his or her decision  
31 to receive service credit, the retirement benefits received

1 for each month of reemployment prior to termination of  
2 disability benefits and begin receiving retirement service  
3 credit effective upon the date of reemployment. Any such  
4 unpaid benefits shall have compound interest of 6.5 percent  
5 added each June 30.

6  
7 A participant may not receive both retirement service credit  
8 for employment and retirement benefits for the same month.

9 (m) If, after recovery from disability and reentry  
10 into covered employment, the participant again becomes  
11 disabled and is again approved for disability retirement, the  
12 Option 1 monthly retirement benefit shall not be less than the  
13 Option 1 monthly benefit calculated at the time of the  
14 previous disability, plus any cost-of-living increases payable  
15 up to the time the disability benefit was terminated upon his  
16 or her reentry into covered employment.

17 (n) A participant shall not be entitled to receive any  
18 disability retirement benefit if the disability is a result  
19 of:

20 1. Injury or disease sustained by the participant  
21 while willfully participating in a riot, civil insurrection,  
22 or other act of violence or while committing a felony;

23 2. Injury or disease sustained by the participant  
24 after his or her employment has terminated; or

25 3. Intentional, self-inflicted injury.

26 (o)1. If a participant is a justice of the Supreme  
27 Court, judge of a district court of appeal, circuit judge, or  
28 judge of a county court who has served for 6 years or more as  
29 an elected constitutional judicial officer, including service  
30 as a judicial officer in any court abolished pursuant to Art.  
31 V of the State Constitution, and who is retired for disability

1 by order of the Supreme Court upon recommendation of the  
2 Judicial Qualifications Commission pursuant to the provisions  
3 of Art. V of the State Constitution, the participant's Option  
4 1 monthly disability benefit amount as provided in s.  
5 121.091(6)(a)1. shall be two-thirds of his or her monthly  
6 compensation as of the participant's disability retirement  
7 date. Such a participant may alternatively elect to receive an  
8 actuarially adjusted disability retirement benefit under any  
9 other option as provided in s. 121.091(6)(a), or to receive  
10 the normal benefit payable under the optional program as set  
11 forth under subsection (1).

12 2. If any justice or judge who is a participant of the  
13 optional program is retired for disability by order of the  
14 Supreme Court upon recommendation of the Judicial  
15 Qualifications Commission pursuant to the provisions of Art. V  
16 of the State Constitution and elects to receive a monthly  
17 disability benefit under the provisions of this paragraph:

18 a. Any present value amount which was transferred to  
19 his or her program account and all employer contributions made  
20 to such account on his or her behalf, plus interest and  
21 earnings thereon, shall be transferred to and deposited in the  
22 Public Employee Disability Trust Fund.

23 b. The monthly benefits payable under this paragraph  
24 for any affected justice or judge retired from the Florida  
25 Retirement System pursuant to Art. V of the State Constitution  
26 shall be paid from the Public Employee Disability Trust Fund.

27 (3) DEATH BENEFITS.--Under the optional program:

28 (a) Survivor benefits shall be payable in accordance  
29 with the following terms and conditions:  
30  
31

1           1. To the extent vested, benefits shall be payable  
2 only to a participant's beneficiary or beneficiaries as  
3 designated by the participant.

4           2. Benefits shall be paid by the third-party  
5 administrator or designated approved providers in accordance  
6 with the law, the contracts, and any applicable board rule or  
7 policy.

8           3. To receive benefits under this subsection, the  
9 participant must be deceased.

10           (b) In the event of a participant's death, all vested  
11 accumulations as described in s. 121.4501(6), less withholding  
12 taxes remitted to the Internal Revenue Service, shall be  
13 distributed, as provided in paragraph (c), to the  
14 participant's designated beneficiary or beneficiaries, or to  
15 the participant's estate, as if the participant retired on the  
16 date of death. No other death benefits shall be available for  
17 survivors of participants under the optional program, except  
18 for such benefits, or coverage for such benefits, as are  
19 otherwise provided by law or are separately afforded by the  
20 employer, at the employer's discretion.

21           (c) Upon receipt by the third-party administrator of a  
22 properly executed application for distribution of benefits,  
23 the total accumulated benefit shall be payable by the  
24 third-party administrator to the participant's surviving  
25 beneficiary or beneficiaries as:

26           1. A lump-sum distribution payable to the beneficiary  
27 or beneficiaries or to the deceased participant's estate;

28           2. An eligible rollover distribution on behalf of the  
29 surviving spouse of a deceased participant, whereby all  
30 accrued benefits, plus interest and investment earnings, are  
31 paid from the deceased participant's account directly to the

1 custodian of an individual retirement account or an individual  
2 retirement annuity, as described in s. 402(c)(9) of the  
3 Internal Revenue Code, on behalf of the surviving spouse; or

4 3. A partial lump-sum payment whereby a portion of the  
5 accrued benefit is paid to the deceased participant's  
6 surviving spouse or other designated beneficiaries, less  
7 withholding taxes remitted to the Internal Revenue Service,  
8 and the remaining amount is transferred directly to the  
9 custodian of an individual retirement account or an individual  
10 retirement annuity, as described in s. 402(c)(9) of the  
11 Internal Revenue Code, on behalf of the surviving spouse. The  
12 proportions must be specified by the participant or the  
13 surviving beneficiary.

14  
15 This paragraph does not abrogate other applicable provisions  
16 of state or federal law providing for payment of death  
17 benefits.

18 (4) LIMITATION ON LEGAL PROCESS.--The benefits payable  
19 to any person under the optional program and any contributions  
20 accumulated under such program are not subject to assignment,  
21 execution, attachment, or any legal process, except for  
22 qualified domestic relations orders by a court of competent  
23 jurisdiction, income deduction orders as provided in s.  
24 61.1301, and federal income tax levies.

25 Section 10. The Legislature finds that a proper and  
26 legitimate state purpose is served when employees and retirees  
27 of the state and of its political subdivisions, and the  
28 dependents, survivors, and beneficiaries of such employees and  
29 retirees, are extended the basic protections afforded by  
30 governmental retirement systems that provide fair and adequate  
31 benefits that are managed, administered, and funded in an



1 actuarially sound manner, as required by section 14, Article X  
2 of the State Constitution and part VII of chapter 112, Florida  
3 Statutes. Therefore, the Legislature determines and declares  
4 that this act fulfills an important state interest.

5           Section 11. This act shall take effect upon becoming a  
6 law.

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