

By Representative Brummer

1                                   A bill to be entitled  
2           An act relating to the Florida Retirement  
3           System; amending s. 121.091, F.S.; increasing  
4           the period of time which members of the system  
5           who are employed as instructional personnel in  
6           grades K-12 may participate in the DROP;  
7           providing a statement of proper and legitimate  
8           state purpose; providing a contingent effective  
9           date.

10

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

12

13           Section 1. Subsection (13) of section 121.091, Florida  
14 Statutes, is amended to read:

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

28           (13) DEFERRED RETIREMENT OPTION PROGRAM.--In general,  
29 and subject to the provisions of this section, the Deferred  
30 Retirement Option Program, hereinafter referred to as the  
31 DROP, is a program under which an eligible member of the

1 Florida Retirement System may elect to participate, deferring  
2 receipt of retirement benefits while continuing employment  
3 with his or her Florida Retirement System employer. The  
4 deferred monthly benefits shall accrue in the System Trust  
5 Fund on behalf of the participant, plus interest compounded  
6 monthly, for the specified period of the DROP participation,  
7 as provided in paragraph (c). Upon termination of employment,  
8 the participant shall receive the total DROP benefits and  
9 begin to receive the previously determined normal retirement  
10 benefits. Participation in the DROP does not guarantee  
11 employment for the specified period of DROP.

12 (a) Eligibility of member to participate in the  
13 DROP.--All active Florida Retirement System members in a  
14 regularly established position, and all active members of  
15 either the Teachers' Retirement System established in chapter  
16 238 or the State and County Officers' and Employees'  
17 Retirement System established in chapter 122 which systems are  
18 consolidated within the Florida Retirement System under s.  
19 121.011, are eligible to elect participation in the DROP  
20 provided that:

21 1. The member is not a renewed member of the Florida  
22 Retirement System under s. 121.122, or a member of the State  
23 Community College System Optional Retirement Program under s.  
24 121.051, the Senior Management Service Optional Annuity  
25 Program under s. 121.055, or the optional retirement program  
26 for the State University System under s. 121.35.

27 2. Except as provided in subparagraph 6., election to  
28 participate is made within 12 months immediately following the  
29 date on which the member first reaches normal retirement date,  
30 or, for a member who reaches normal retirement date based on  
31 service before he or she reaches age 62, or age 55 for Special

1 Risk Class members, election to participate may be deferred to  
2 the 12 months immediately following the date the member  
3 attains 57, or age 52 for Special Risk Class members. For a  
4 member who first reached normal retirement date or the  
5 deferred eligibility date described above prior to the  
6 effective date of this section, election to participate shall  
7 be made within 12 months after the effective date of this  
8 section. A member who fails to make an election within such  
9 12-month limitation period shall forfeit all rights to  
10 participate in the DROP. The member shall advise his or her  
11 employer and the division in writing of the date on which the  
12 DROP shall begin. Such beginning date may be subsequent to the  
13 12-month election period, but must be within the 60-month or,  
14 with respect to members who are instructional personnel in  
15 grades K-12, the 96-month limitation period as provided in  
16 subparagraph (b)1. When establishing eligibility of the member  
17 to participate in the DROP for the 60-month or, with respect  
18 to members who are instructional personnel in grades K-12, the  
19 96-month maximum participation period, the member may elect to  
20 include or exclude any optional service credit purchased by  
21 the member from the total service used to establish the normal  
22 retirement date. A member with dual normal retirement dates  
23 shall be eligible to elect to participate in DROP within 12  
24 months after attaining normal retirement date in either class.

25         3. The employer of a member electing to participate in  
26 the DROP, or employers if dually employed, shall acknowledge  
27 in writing to the division the date the member's participation  
28 in the DROP begins and the date the member's employment and  
29 DROP participation will terminate.

30         4. Simultaneous employment of a participant by  
31 additional Florida Retirement System employers subsequent to

1 the commencement of participation in the DROP shall be  
2 permissible provided such employers acknowledge in writing a  
3 DROP termination date no later than the participant's existing  
4 termination date or the 60-month limitation period as provided  
5 in subparagraph (b)1.

6 5. A DROP participant may change employers while  
7 participating in the DROP, subject to the following:

8 a. A change of employment must take place without a  
9 break in service so that the member receives salary for each  
10 month of continuous DROP participation. If a member receives  
11 no salary during a month, DROP participation shall cease  
12 unless the employer verifies a continuation of the employment  
13 relationship for such participant pursuant to s.  
14 121.021(39)(b).

15 b. Such participant and new employer shall notify the  
16 division on forms required by the division as to the identity  
17 of the new employer.

18 c. The new employer shall acknowledge, in writing, the  
19 participant's DROP termination date, which may be extended but  
20 not beyond the original 60-month or, with respect to members  
21 who are instructional personnel in grades K-12, the 96-month  
22 period provided in subparagraph (b)1., shall acknowledge  
23 liability for any additional retirement contributions and  
24 interest required if the participant fails to timely terminate  
25 employment, and shall be subject to the adjustment required in  
26 sub-subparagraph (c)5.d.

27 6. Effective July 1, 2001, for instructional personnel  
28 as defined in s. 228.041(9)(a)-(d), election to participate in  
29 the DROP shall be made at any time following the date on which  
30 the member first reaches normal retirement date. The member  
31 shall advise his or her employer and the division in writing

1 of the date on which the Deferred Retirement Option Program  
2 shall begin. When establishing eligibility of the member to  
3 participate in the DROP for the 60-month or, with respect to  
4 members who are instructional personnel in grades K-12, the  
5 96-month maximum participation period, as provided in  
6 subparagraph (b)1., the member may elect to include or exclude  
7 any optional service credit purchased by the member from the  
8 total service used to establish the normal retirement date. A  
9 member with dual normal retirement dates shall be eligible to  
10 elect to participate in either class.

11 (b) Participation in the DROP.--

12 1. An eligible member may elect to participate in the  
13 DROP for a period not to exceed a maximum of 60 calendar  
14 months or, with respect to members who are instructional  
15 personnel in grades K-12, a maximum of 96 calendar months  
16 immediately following the date on which the member first  
17 reaches his or her normal retirement date or the date to which  
18 he or she is eligible to defer his or her election to  
19 participate as provided in subparagraph (a)2. However, a  
20 member who has reached normal retirement date prior to the  
21 effective date of the DROP shall be eligible to participate in  
22 the DROP for a period of time not to exceed 60 calendar months  
23 or, with respect to members who are instructional personnel in  
24 grades K-12, 96 calendar months immediately following the  
25 effective date of the DROP, except a member of the Special  
26 Risk Class who has reached normal retirement date prior to the  
27 effective date of the DROP and whose total accrued value  
28 exceeds 75 percent of average final compensation as of his or  
29 her effective date of retirement shall be eligible to  
30 participate in the DROP for no more than 36 calendar months  
31 immediately following the effective date of the DROP.

1           2. Upon deciding to participate in the DROP, the  
2 member shall submit, on forms required by the division:  
3           a. A written election to participate in the DROP;  
4           b. Selection of the DROP participation and termination  
5 dates, which satisfy the limitations stated in paragraph (a)  
6 and subparagraph 1. Such termination date shall be in a  
7 binding letter of resignation with the employer, establishing  
8 a deferred termination date. The member may change the  
9 termination date within the limitations of subparagraph 1.,  
10 but only with the written approval of his or her employer;  
11           c. A properly completed DROP application for service  
12 retirement as provided in this section; and  
13           d. Any other information required by the division.  
14           3. The DROP participant shall be a retiree under the  
15 Florida Retirement System for all purposes, except for  
16 paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363,  
17 121.053, and 121.122. However, participation in the DROP does  
18 not alter the participant's employment status and such  
19 employee shall not be deemed retired from employment until his  
20 or her deferred resignation is effective and termination  
21 occurs as provided in s. 121.021(39).  
22           4. Elected officers shall be eligible to participate  
23 in the DROP subject to the following:  
24           a. An elected officer who reaches normal retirement  
25 date during a term of office may defer the election to  
26 participate in the DROP until the next succeeding term in that  
27 office. Such elected officer who exercises this option may  
28 participate in the DROP for up to 60 calendar months or a  
29 period of no longer than such succeeding term of office,  
30 whichever is less.  
31

1           b. An elected or a nonelected participant may run for  
2 a term of office while participating in DROP and, if elected,  
3 extend the DROP termination date accordingly, except, however,  
4 if such additional term of office exceeds the 60-month or,  
5 with respect to members who are instructional personnel in  
6 grades K-12, the 96-month limitation established in  
7 subparagraph 1., and the officer does not resign from office  
8 within such ~~60-month~~ limitation, the retirement and the  
9 participant's DROP shall be null and void as provided in  
10 sub-subparagraph (c)5.d.

11           c. An elected officer who is dually employed and  
12 elects to participate in DROP shall be required to satisfy the  
13 definition of termination within the 60-month limitation  
14 period as provided in subparagraph 1. for the nonelected  
15 position and may continue employment as an elected officer as  
16 provided in s. 121.053. The elected officer will be enrolled  
17 as a renewed member in the Elected Officers' Class or the  
18 Regular Class, as provided in ss. 121.053 and 121.22, on the  
19 first day of the month after termination of employment in the  
20 nonelected position and termination of DROP. Distribution of  
21 the DROP benefits shall be made as provided in paragraph (c).

22           d. An elected officer who is elected or appointed to  
23 an elective office is not subject to termination limitations  
24 as provided in chapter 121.

25           (c) Benefits payable under the DROP.--

26           1. Effective with the date of DROP participation, the  
27 member's initial normal monthly benefit, including creditable  
28 service, optional form of payment, and average final  
29 compensation, and the effective date of retirement shall be  
30 fixed. The beneficiary established under the Florida  
31 Retirement System shall be the beneficiary eligible to receive

1 any DROP benefits payable if the DROP participant dies prior  
2 to the completion of the period of DROP participation. In the  
3 event a joint annuitant predeceases the member, the member may  
4 name a beneficiary to receive accumulated DROP benefits  
5 payable. Such retirement benefit, the annual cost of living  
6 adjustments provided in s. 121.101, and interest shall accrue  
7 monthly in the System Trust Fund. Such interest shall accrue  
8 at an effective annual rate of 6.5 percent compounded monthly,  
9 on the prior month's accumulated ending balance, up to the  
10 month of termination or death.

11         2. Each employee who elects to participate in the DROP  
12 shall be allowed to elect to receive a lump-sum payment for  
13 accrued annual leave earned in accordance with agency policy  
14 upon beginning participation in the DROP. Such accumulated  
15 leave payment certified to the division upon commencement of  
16 DROP shall be included in the calculation of the member's  
17 average final compensation. The employee electing such  
18 lump-sum payment upon beginning participation in DROP will not  
19 be eligible to receive a second lump-sum payment upon  
20 termination, except to the extent the employee has earned  
21 additional annual leave which combined with the original  
22 payment does not exceed the maximum lump-sum payment allowed  
23 by the employing agency's policy or rules. Such early  
24 lump-sum payment shall be based on the hourly wage of the  
25 employee at the time he or she begins participation in the  
26 DROP. If the member elects to wait and receive such lump-sum  
27 payment upon termination of DROP and termination of employment  
28 with the employer, any accumulated leave payment made at that  
29 time cannot be included in the member's retirement benefit,  
30 which was determined and fixed by law when the employee  
31 elected to participate in the DROP.

1           3. The effective date of DROP participation and the  
2 effective date of retirement of a DROP participant shall be  
3 the first day of the month selected by the member to begin  
4 participation in the DROP, provided such date is properly  
5 established, with the written confirmation of the employer,  
6 and the approval of the division, on forms required by the  
7 division.

8           4. Normal retirement benefits and interest thereon  
9 shall continue to accrue in the DROP until the established  
10 termination date of the DROP, or until the participant  
11 terminates employment or dies prior to such date. Although  
12 individual DROP accounts shall not be established, a separate  
13 accounting of each participant's accrued benefits under the  
14 DROP shall be calculated and provided to participants.

15           5. At the conclusion of the participant's DROP, the  
16 division shall distribute the participant's total accumulated  
17 DROP benefits, subject to the following provisions:

18           a. The division shall receive verification by the  
19 participant's employer or employers that such participant has  
20 terminated employment as provided in s. 121.021(39)(b).

21           b. The terminated DROP participant or, if deceased,  
22 such participant's named beneficiary, shall elect on forms  
23 provided by the division to receive payment of the DROP  
24 benefits in accordance with one of the options listed below.  
25 For a participant or beneficiary who fails to elect a method  
26 of payment within 60 days of termination of the DROP, the  
27 division will pay a lump sum as provided in  
28 sub-sub-subparagraph (I).

29           (I) Lump sum.--All accrued DROP benefits, plus  
30 interest, less withholding taxes remitted to the Internal  
31

1 Revenue Service, shall be paid to the DROP participant or  
2 surviving beneficiary.

3 (II) Direct rollover.--All accrued DROP benefits, plus  
4 interest, shall be paid from the DROP directly to the  
5 custodian of an eligible retirement plan as defined in s.  
6 402(c)(8)(B) of the Internal Revenue Code. However, in the  
7 case of an eligible rollover distribution to the surviving  
8 spouse of a deceased participant, an eligible retirement plan  
9 is an individual retirement account or an individual  
10 retirement annuity as described in s. 402(c)(9) of the  
11 Internal Revenue Code.

12 (III) Partial lump sum.--A portion of the accrued DROP  
13 benefits shall be paid to the DROP participant or surviving  
14 spouse, less withholding taxes remitted to the Internal  
15 Revenue Service, and the remaining DROP benefits shall be  
16 transferred directly to the custodian of an eligible  
17 retirement plan as defined in s. 402(c)(8)(B) of the Internal  
18 Revenue Code. However, in the case of an eligible rollover  
19 distribution to the surviving spouse of a deceased  
20 participant, an eligible retirement plan is an individual  
21 retirement account or an individual retirement annuity as  
22 described in s. 402(c)(9) of the Internal Revenue Code. The  
23 proportions shall be specified by the DROP participant or  
24 surviving beneficiary.

25 c. The form of payment selected by the DROP  
26 participant or surviving beneficiary complies with the minimum  
27 distribution requirements of the Internal Revenue Code.

28 d. A DROP participant who fails to terminate  
29 employment as defined in s. 121.021(39)(b) shall be deemed not  
30 to be retired, and the DROP election shall be null and void.  
31 Florida Retirement System membership shall be reestablished

1 retroactively to the date of the commencement of the DROP, and  
2 each employer with whom the participant continues employment  
3 shall be required to pay to the System Trust Fund the  
4 difference between the DROP contributions paid in paragraph  
5 (i) and the contributions required for the applicable Florida  
6 Retirement System class of membership during the period the  
7 member participated in the DROP, plus 6.5 percent interest  
8 compounded annually.

9           6. The accrued benefits of any DROP participant, and  
10 any contributions accumulated under such program, shall not be  
11 subject to assignment, execution, attachment, or to any legal  
12 process whatsoever, except for qualified domestic relations  
13 orders by a court of competent jurisdiction, income deduction  
14 orders as provided in s. 61.1301, and federal income tax  
15 levies.

16           7. DROP participants shall not be eligible for  
17 disability retirement benefits as provided in subsection (4).

18           (d) Death benefits under the DROP.--

19           1. Upon the death of a DROP participant, the named  
20 beneficiary shall be entitled to apply for and receive the  
21 accrued benefits in the DROP as provided in sub-subparagraph  
22 (c)5.b.

23           2. The normal retirement benefit accrued to the DROP  
24 during the month of a participant's death shall be the final  
25 monthly benefit credited for such DROP participant.

26           3. Eligibility to participate in the DROP terminates  
27 upon death of the participant. If the participant dies on or  
28 after the effective date of enrollment in the DROP, but prior  
29 to the first monthly benefit being credited to the DROP,  
30 Florida Retirement System benefits shall be paid in accordance  
31 with subparagraph (7)(c)1. or subparagraph 2.

1           4. A DROP participants' survivors shall not be  
2 eligible to receive Florida Retirement System death benefits  
3 as provided in paragraph (7)(d).

4           (e) Cost-of-living adjustment.--On each July 1, the  
5 participants' normal retirement benefit shall be increased as  
6 provided in s. 121.101.

7           (f) Retiree health insurance subsidy.--DROP  
8 participants are not eligible to apply for the retiree health  
9 insurance subsidy payments as provided in s. 112.363 until  
10 such participants have terminated employment and participation  
11 in the DROP.

12           (g) Renewed membership.--DROP participants shall not  
13 be eligible for renewed membership in the Florida Retirement  
14 System under ss. 121.053 and 121.122 until termination of  
15 employment is effectuated as provided in s. 121.021(39)(b).

16           (h) Employment limitation after DROP  
17 participation.--Upon satisfying the definition of termination  
18 of employment as provided in s. 121.021(39)(b), DROP  
19 participants shall be subject to such reemployment limitations  
20 as other retirees. Reemployment restrictions applicable to  
21 retirees as provided in subsection (9) shall not apply to DROP  
22 participants until their employment and participation in the  
23 DROP are terminated.

24           (i) Contributions.--

25           1. All employers paying the salary of a DROP  
26 participant filling a regularly established position shall  
27 contribute 11.56 percent of such participant's gross  
28 compensation, which shall constitute the entire employer DROP  
29 contribution with respect to such participant. Such  
30 contributions, payable to the System Trust Fund in the same  
31 manner as required in s. 121.071, shall be made as appropriate

1 for each pay period and are in addition to contributions  
2 required for social security and the Retiree Health Insurance  
3 Subsidy Trust Fund. Such employer, social security, and  
4 health insurance subsidy contributions are not included in the  
5 DROP.

6           2. The employer shall, in addition to subparagraph 1.,  
7 also withhold one-half of the entire social security  
8 contribution required for the participant. Contributions for  
9 social security by each participant and each employer, in the  
10 amount required for social security coverage as now or  
11 hereafter provided by the federal Social Security Act, shall  
12 be in addition to contributions specified in subparagraph 1.

13           3. All employers paying the salary of a DROP  
14 participant filling a regularly established position shall  
15 contribute the percent of such participant's gross  
16 compensation required in s. 121.071(4), which shall constitute  
17 the employer's health insurance subsidy contribution with  
18 respect to such participant. Such contributions shall be  
19 deposited by the administrator in the Retiree Health Insurance  
20 Subsidy Trust Fund.

21           (j) Forfeiture of retirement benefits.--Nothing in  
22 this section shall be construed to remove DROP participants  
23 from the scope of s. 8(d), Art. II of the State Constitution,  
24 s. 112.3173, and paragraph (5)(f). DROP participants who  
25 commit a specified felony offense while employed will be  
26 subject to forfeiture of all retirement benefits, including  
27 DROP benefits, pursuant to those provisions of law.

28           (k) Administration of program.--The division shall  
29 make such rules as are necessary for the effective and  
30 efficient administration of this subsection. The division  
31 shall not be required to advise members of the federal tax

1 consequences of an election related to the DROP but may advise  
2 members to seek independent advice.

3       Section 2. The Legislature finds that a proper and  
4 legitimate state purpose is served when employees and retirees  
5 of the state and of its political subdivisions, and the  
6 dependents, survivors, and beneficiaries of such employees and  
7 retirees, are extended the basic protections afforded by  
8 governmental retirement systems that provide fair and adequate  
9 benefits and that are managed, administered, and funded in an  
10 actuarially sound manner, as required by s. 14, Art. X of the  
11 State Constitution and part VII of chapter 112, Florida  
12 Statutes. Therefore, the Legislature hereby determines and  
13 declares that the provisions of this act fulfill an important  
14 state interest.

15       Section 3. This act shall take effect July 1, 2002,  
16 contingent upon the Division of Retirement's receiving a  
17 favorable determination letter and a favorable private letter  
18 ruling, hereinafter referred to as favorable letters, from the  
19 Internal Revenue Service, as provided below prior to the end  
20 of the 2002 legislative session. The division shall request  
21 from the Internal Revenue Service, within 90 days after the  
22 passage of this act, a written determination letter stating:

23       (1) That the Florida Retirement System, as amended by  
24 this act, continues to be a facially qualified plan.

25       (2) That the Florida Retirement System, as amended by  
26 this act, is not a "defined contribution plan" as defined in  
27 ss. 414(i) and 415(k)(1) of the Internal Revenue Code, is not  
28 subject to the separate limitations contained within s. 415(c)  
29 and (e) of the Internal Revenue Code, and is not a "hybrid  
30 plan" as defined in s. 414(k) of the Internal Revenue Code.

31

1       (3) That the Florida Retirement System, as amended by  
2 this act, is not a "cash or deferred arrangement" within the  
3 meaning of s. 401(k) of the Internal Revenue Code.

4       (4) That the monthly retirement benefits paid into the  
5 DROP are not deemed to be constructive receipt of income under  
6 s. 402(a) of the Internal Revenue Code and shall not be  
7 taxable until actual distribution to the retiree.

8  
9 The division shall notify the Speaker of the House of  
10 Representatives and the President of the Senate within 30 days  
11 after receipt of the favorable or unfavorable letters. If no  
12 favorable letters are received by July 1, 2002, this act shall  
13 take effect January 1, 2003, provided the division receives  
14 the favorable letters prior to such date. In the event  
15 favorable letters are not received, this act shall not take  
16 effect.

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19                   HOUSE SUMMARY

20  
21       Revises the provision of the DROP under the Florida  
22       Retirement System to provide that members of the system  
23       who are instructional personnel in grades K-12 may  
24       participate in DROP for 96 months rather than 60 months.  
25       Provides a contingent effective date. See bill for  
26       details.