

By the Fiscal Responsibility Council and Committee on State Administration and Representatives Brummer, Cantens, Kilmer, Diaz de la Portilla, Barreiro, Andrews, Bilirakis, Arza, Flanagan, Brown, Littlefield, Crow, Fiorentino, Richardson, Atwater, Mayfield, Pickens, Rubio, Garcia and Lynn

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; requiring the Division of
 9 Retirement to request a determination letter
 10 and a private letter ruling from the Internal
 11 Revenue Service; providing a contingent
 12 effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsection (13) of section 121.091, Florida
 17 Statutes, is amended to read:

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

31

1 (13) DEFERRED RETIREMENT OPTION PROGRAM.--In general,
2 and subject to the provisions of this section, the Deferred
3 Retirement Option Program, hereinafter referred to as the
4 DROP, is a program under which an eligible member of the
5 Florida Retirement System may elect to participate, deferring
6 receipt of retirement benefits while continuing employment
7 with his or her Florida Retirement System employer. The
8 deferred monthly benefits shall accrue in the System Trust
9 Fund on behalf of the participant, plus interest compounded
10 monthly, for the specified period of the DROP participation,
11 as provided in paragraph (c). Upon termination of employment,
12 the participant shall receive the total DROP benefits and
13 begin to receive the previously determined normal retirement
14 benefits. Participation in the DROP does not guarantee
15 employment for the specified period of DROP.

16 (a) Eligibility of member to participate in the
17 DROP.--All active Florida Retirement System members in a
18 regularly established position, and all active members of
19 either the Teachers' Retirement System established in chapter
20 238 or the State and County Officers' and Employees'
21 Retirement System established in chapter 122 which systems are
22 consolidated within the Florida Retirement System under s.
23 121.011, are eligible to elect participation in the DROP
24 provided that:

25 1. The member is not a renewed member of the Florida
26 Retirement System under s. 121.122, or a member of the State
27 Community College System Optional Retirement Program under s.
28 121.051, the Senior Management Service Optional Annuity
29 Program under s. 121.055, or the optional retirement program
30 for the State University System under s. 121.35.

31

1 2. Except as provided in subparagraph 6., election to
2 participate is made within 12 months immediately following the
3 date on which the member first reaches normal retirement date,
4 or, for a member who reaches normal retirement date based on
5 service before he or she reaches age 62, or age 55 for Special
6 Risk Class members, election to participate may be deferred to
7 the 12 months immediately following the date the member
8 attains 57, or age 52 for Special Risk Class members. For a
9 member who first reached normal retirement date or the
10 deferred eligibility date described above prior to the
11 effective date of this section, election to participate shall
12 be made within 12 months after the effective date of this
13 section. A member who fails to make an election within such
14 12-month limitation period shall forfeit all rights to
15 participate in the DROP. The member shall advise his or her
16 employer and the division in writing of the date on which the
17 DROP shall begin. Such beginning date may be subsequent to the
18 12-month election period, but must be within the 60-month or,
19 with respect to members who are instructional personnel, as
20 defined in s. 228.041(9)(a)-(d), in grades K-12, the 96-month
21 limitation period as provided in subparagraph (b)1. When
22 establishing eligibility of the member to participate in the
23 DROP for the 60-month or, with respect to members who are
24 instructional personnel, as defined in s. 228.041(9)(a)-(d),
25 in grades K-12, the 96-month maximum participation period, the
26 member may elect to include or exclude any optional service
27 credit purchased by the member from the total service used to
28 establish the normal retirement date. A member with dual
29 normal retirement dates shall be eligible to elect to
30 participate in DROP within 12 months after attaining normal
31 retirement date in either class.

1 3. The employer of a member electing to participate in
2 the DROP, or employers if dually employed, shall acknowledge
3 in writing to the division the date the member's participation
4 in the DROP begins and the date the member's employment and
5 DROP participation will terminate.

6 4. Simultaneous employment of a participant by
7 additional Florida Retirement System employers subsequent to
8 the commencement of participation in the DROP shall be
9 permissible provided such employers acknowledge in writing a
10 DROP termination date no later than the participant's existing
11 termination date or the 60-month limitation period as provided
12 in subparagraph (b)1.

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

15 a. A change of employment must take place without a
16 break in service so that the member receives salary for each
17 month of continuous DROP participation. If a member receives
18 no salary during a month, DROP participation shall cease
19 unless the employer verifies a continuation of the employment
20 relationship for such participant pursuant to s.
21 121.021(39)(b).

22 b. Such participant and new employer shall notify the
23 division on forms required by the division as to the identity
24 of the new employer.

25 c. The new employer shall acknowledge, in writing, the
26 participant's DROP termination date, which may be extended but
27 not beyond the original 60-month or, with respect to members
28 who are instructional personnel, as defined in s.
29 228.041(9)(a)-(d), in grades K-12, the 96-month period
30 provided in subparagraph (b)1., shall acknowledge liability
31 for any additional retirement contributions and interest

1 required if the participant fails to timely terminate
2 employment, and shall be subject to the adjustment required in
3 sub-subparagraph (c)5.d.

4 6. Effective July 1, 2001, for instructional personnel
5 as defined in s. 228.041(9)(a)-(d), election to participate in
6 the DROP shall be made at any time following the date on which
7 the member first reaches normal retirement date. The member
8 shall advise his or her employer and the division in writing
9 of the date on which the Deferred Retirement Option Program
10 shall begin. When establishing eligibility of the member to
11 participate in the DROP for the 60-month or, with respect to
12 members who are instructional personnel, as defined in s.
13 228.041(9)(a)-(d), in grades K-12, the 96-month maximum
14 participation period, as provided in subparagraph (b)1., the
15 member may elect to include or exclude any optional service
16 credit purchased by the member from the total service used to
17 establish the normal retirement date. A member with dual
18 normal retirement dates shall be eligible to elect to
19 participate in either class.

20 (b) Participation in the DROP.--

21 1. An eligible member may elect to participate in the
22 DROP for a period not to exceed a maximum of 60 calendar
23 months or, with respect to members who are instructional
24 personnel, as defined in s. 228.041(9)(a)-(d), in grades K-12,
25 a maximum of 96 calendar months immediately following the date
26 on which the member first reaches his or her normal retirement
27 date or the date to which he or she is eligible to defer his
28 or her election to participate as provided in subparagraph
29 (a)2. However, a member who has reached normal retirement date
30 prior to the effective date of the DROP shall be eligible to
31 participate in the DROP for a period of time not to exceed 60

1 calendar months or, with respect to members who are
2 instructional personnel, as defined in s. 228.041(9)(a)-(d),
3 in grades K-12, 96 calendar months immediately following the
4 effective date of the DROP, except a member of the Special
5 Risk Class who has reached normal retirement date prior to the
6 effective date of the DROP and whose total accrued value
7 exceeds 75 percent of average final compensation as of his or
8 her effective date of retirement shall be eligible to
9 participate in the DROP for no more than 36 calendar months
10 immediately following the effective date of the DROP.

11 2. Upon deciding to participate in the DROP, the
12 member shall submit, on forms required by the division:

13 a. A written election to participate in the DROP;

14 b. Selection of the DROP participation and termination
15 dates, which satisfy the limitations stated in paragraph (a)
16 and subparagraph 1. Such termination date shall be in a
17 binding letter of resignation with the employer, establishing
18 a deferred termination date. The member may change the
19 termination date within the limitations of subparagraph 1.,
20 but only with the written approval of his or her employer;

21 c. A properly completed DROP application for service
22 retirement as provided in this section; and

23 d. Any other information required by the division.

24 3. The DROP participant shall be a retiree under the
25 Florida Retirement System for all purposes, except for
26 paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363,
27 121.053, and 121.122. However, participation in the DROP does
28 not alter the participant's employment status and such
29 employee shall not be deemed retired from employment until his
30 or her deferred resignation is effective and termination
31 occurs as provided in s. 121.021(39).

1 4. Elected officers shall be eligible to participate
2 in the DROP subject to the following:

3 a. An elected officer who reaches normal retirement
4 date during a term of office may defer the election to
5 participate in the DROP until the next succeeding term in that
6 office. Such elected officer who exercises this option may
7 participate in the DROP for up to 60 calendar months or a
8 period of no longer than such succeeding term of office,
9 whichever is less.

10 b. An elected or a nonelected participant may run for
11 a term of office while participating in DROP and, if elected,
12 extend the DROP termination date accordingly, except, however,
13 if such additional term of office exceeds the 60-month or,
14 with respect to members who are instructional personnel, as
15 defined in s. 228.041(9)(a)-(d), in grades K-12, the 96-month
16 limitation established in subparagraph 1., and the officer
17 does not resign from office within such ~~60-month~~ limitation,
18 the retirement and the participant's DROP shall be null and
19 void as provided in sub-subparagraph (c)5.d.

20 c. An elected officer who is dually employed and
21 elects to participate in DROP shall be required to satisfy the
22 definition of termination within the 60-month limitation
23 period as provided in subparagraph 1. for the nonelected
24 position and may continue employment as an elected officer as
25 provided in s. 121.053. The elected officer will be enrolled
26 as a renewed member in the Elected Officers' Class or the
27 Regular Class, as provided in ss. 121.053 and 121.22, on the
28 first day of the month after termination of employment in the
29 nonelected position and termination of DROP. Distribution of
30 the DROP benefits shall be made as provided in paragraph (c).

31

1 d. An elected officer who is elected or appointed to
2 an elective office is not subject to termination limitations
3 as provided in chapter 121.

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

5 1. Effective with the date of DROP participation, the
6 member's initial normal monthly benefit, including creditable
7 service, optional form of payment, and average final
8 compensation, and the effective date of retirement shall be
9 fixed. The beneficiary established under the Florida
10 Retirement System shall be the beneficiary eligible to receive
11 any DROP benefits payable if the DROP participant dies prior
12 to the completion of the period of DROP participation. In the
13 event a joint annuitant predeceases the member, the member may
14 name a beneficiary to receive accumulated DROP benefits
15 payable. Such retirement benefit, the annual cost of living
16 adjustments provided in s. 121.101, and interest shall accrue
17 monthly in the System Trust Fund. Such interest shall accrue
18 at an effective annual rate of 6.5 percent compounded monthly,
19 on the prior month's accumulated ending balance, up to the
20 month of termination or death.

21 2. Each employee who elects to participate in the DROP
22 shall be allowed to elect to receive a lump-sum payment for
23 accrued annual leave earned in accordance with agency policy
24 upon beginning participation in the DROP. Such accumulated
25 leave payment certified to the division upon commencement of
26 DROP shall be included in the calculation of the member's
27 average final compensation. The employee electing such
28 lump-sum payment upon beginning participation in DROP will not
29 be eligible to receive a second lump-sum payment upon
30 termination, except to the extent the employee has earned
31 additional annual leave which combined with the original

1 payment does not exceed the maximum lump-sum payment allowed
2 by the employing agency's policy or rules. Such early
3 lump-sum payment shall be based on the hourly wage of the
4 employee at the time he or she begins participation in the
5 DROP. If the member elects to wait and receive such lump-sum
6 payment upon termination of DROP and termination of employment
7 with the employer, any accumulated leave payment made at that
8 time cannot be included in the member's retirement benefit,
9 which was determined and fixed by law when the employee
10 elected to participate in the DROP.

11 3. The effective date of DROP participation and the
12 effective date of retirement of a DROP participant shall be
13 the first day of the month selected by the member to begin
14 participation in the DROP, provided such date is properly
15 established, with the written confirmation of the employer,
16 and the approval of the division, on forms required by the
17 division.

18 4. Normal retirement benefits and interest thereon
19 shall continue to accrue in the DROP until the established
20 termination date of the DROP, or until the participant
21 terminates employment or dies prior to such date. Although
22 individual DROP accounts shall not be established, a separate
23 accounting of each participant's accrued benefits under the
24 DROP shall be calculated and provided to participants.

25 5. At the conclusion of the participant's DROP, the
26 division shall distribute the participant's total accumulated
27 DROP benefits, subject to the following provisions:

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

31

1 b. The terminated DROP participant or, if deceased,
2 such participant's named beneficiary, shall elect on forms
3 provided by the division to receive payment of the DROP
4 benefits in accordance with one of the options listed below.
5 For a participant or beneficiary who fails to elect a method
6 of payment within 60 days of termination of the DROP, the
7 division will pay a lump sum as provided in
8 sub-sub-subparagraph (I).

9 (I) Lump sum.--All accrued DROP benefits, plus
10 interest, less withholding taxes remitted to the Internal
11 Revenue Service, shall be paid to the DROP participant or
12 surviving beneficiary.

13 (II) Direct rollover.--All accrued DROP benefits, plus
14 interest, shall be paid from the DROP directly to the
15 custodian of an eligible retirement plan as defined in s.
16 402(c)(8)(B) of the Internal Revenue Code. However, in the
17 case of an eligible rollover distribution to the surviving
18 spouse of a deceased participant, an eligible retirement plan
19 is an individual retirement account or an individual
20 retirement annuity as described in s. 402(c)(9) of the
21 Internal Revenue Code.

22 (III) Partial lump sum.--A portion of the accrued DROP
23 benefits shall be paid to the DROP participant or surviving
24 spouse, less withholding taxes remitted to the Internal
25 Revenue Service, and the remaining DROP benefits shall be
26 transferred directly to the custodian of an eligible
27 retirement plan as defined in s. 402(c)(8)(B) of the Internal
28 Revenue Code. However, in the case of an eligible rollover
29 distribution to the surviving spouse of a deceased
30 participant, an eligible retirement plan is an individual
31 retirement account or an individual retirement annuity as

1 described in s. 402(c)(9) of the Internal Revenue Code. The
2 proportions shall be specified by the DROP participant or
3 surviving beneficiary.

4 c. The form of payment selected by the DROP
5 participant or surviving beneficiary complies with the minimum
6 distribution requirements of the Internal Revenue Code.

7 d. A DROP participant who fails to terminate
8 employment as defined in s. 121.021(39)(b) shall be deemed not
9 to be retired, and the DROP election shall be null and void.

10 Florida Retirement System membership shall be reestablished
11 retroactively to the date of the commencement of the DROP, and
12 each employer with whom the participant continues employment
13 shall be required to pay to the System Trust Fund the
14 difference between the DROP contributions paid in paragraph
15 (i) and the contributions required for the applicable Florida
16 Retirement System class of membership during the period the
17 member participated in the DROP, plus 6.5 percent interest
18 compounded annually.

19 6. The accrued benefits of any DROP participant, and
20 any contributions accumulated under such program, shall not be
21 subject to assignment, execution, attachment, or to any legal
22 process whatsoever, except for qualified domestic relations
23 orders by a court of competent jurisdiction, income deduction
24 orders as provided in s. 61.1301, and federal income tax
25 levies.

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

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

29 1. Upon the death of a DROP participant, the named
30 beneficiary shall be entitled to apply for and receive the
31

1 accrued benefits in the DROP as provided in sub-subparagraph
2 (c)5.b.

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

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

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

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

18 (f) Retiree health insurance subsidy.--DROP
19 participants are not eligible to apply for the retiree health
20 insurance subsidy payments as provided in s. 112.363 until
21 such participants have terminated employment and participation
22 in the DROP.

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

27 (h) Employment limitation after DROP
28 participation.--Upon satisfying the definition of termination
29 of employment as provided in s. 121.021(39)(b), DROP
30 participants shall be subject to such reemployment limitations
31 as other retirees. Reemployment restrictions applicable to

1 retirees as provided in subsection (9) shall not apply to DROP
2 participants until their employment and participation in the
3 DROP are terminated.

4 (i) Contributions.--

5 1. All employers paying the salary of a DROP
6 participant filling a regularly established position shall
7 contribute 11.56 percent of such participant's gross
8 compensation, which shall constitute the entire employer DROP
9 contribution with respect to such participant. Such
10 contributions, payable to the System Trust Fund in the same
11 manner as required in s. 121.071, shall be made as appropriate
12 for each pay period and are in addition to contributions
13 required for social security and the Retiree Health Insurance
14 Subsidy Trust Fund. Such employer, social security, and
15 health insurance subsidy contributions are not included in the
16 DROP.

17 2. The employer shall, in addition to subparagraph 1.,
18 also withhold one-half of the entire social security
19 contribution required for the participant. Contributions for
20 social security by each participant and each employer, in the
21 amount required for social security coverage as now or
22 hereafter provided by the federal Social Security Act, shall
23 be in addition to contributions specified in subparagraph 1.

24 3. All employers paying the salary of a DROP
25 participant filling a regularly established position shall
26 contribute the percent of such participant's gross
27 compensation required in s. 121.071(4), which shall constitute
28 the employer's health insurance subsidy contribution with
29 respect to such participant. Such contributions shall be
30 deposited by the administrator in the Retiree Health Insurance
31 Subsidy Trust Fund.

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

8 (k) Administration of program.--The division shall
9 make such rules as are necessary for the effective and
10 efficient administration of this subsection. The division
11 shall not be required to advise members of the federal tax
12 consequences of an election related to the DROP but may advise
13 members to seek independent advice.

14 Section 2. The Legislature finds that a proper and
15 legitimate state purpose is served when employees and retirees
16 of the state and of its political subdivisions, and the
17 dependents, survivors, and beneficiaries of such employees and
18 retirees, are extended the basic protections afforded by
19 governmental retirement systems that provide fair and adequate
20 benefits and that are managed, administered, and funded in an
21 actuarially sound manner, as required by s. 14, Art. X of the
22 State Constitution and part VII of chapter 112, Florida
23 Statutes. Therefore, the Legislature hereby determines and
24 declares that the provisions of this act fulfill an important
25 state interest.

26 Section 3. Within 45 days after this act becomes a
27 law, the Division of Retirement of the Department of
28 Management Services shall request from the Internal Revenue
29 Service a written determination letter that the Florida
30 Retirement System, as amended by this act, remains a facially
31 qualified plan, and a private letter ruling regarding

1 continued tax exempt status of retirement contributions for
2 DROP participants and the payment of monthly retirement
3 benefits paid into DROP. If the Internal Revenue Service
4 refuses to act upon a request for a private letter ruling,
5 then a favorable legal opinion from a qualified tax attorney
6 or firm may be substituted for such private letter ruling.
7 The division shall notify the Speaker of the House of
8 Representatives and the President of the Senate within 15 days
9 after receipt of the favorable or unfavorable letters or
10 opinions.

11 Section 4. Except as otherwise provided herein, this
12 act shall take effect July 1, 2002, contingent upon the
13 Division of Retirement's receipt of favorable letters or
14 opinions as specified in section 3 of this act. If no
15 favorable letters or opinions are received by July 1, 2002,
16 this act shall take effect January 1, 2003, provided the
17 division receives the favorable letters or opinions prior to
18 such date. In the event favorable letters or opinions are not
19 received, this act shall not take effect.

20
21
22
23
24
25
26
27
28
29
30
31