

By Senator Pruitt

27-722-02

See HB 259

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

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

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

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

(13) DEFERRED RETIREMENT OPTION PROGRAM.--In general, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter referred to as the 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.
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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
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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 Section 14, Article X
11 of the 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.

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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.

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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 LEGISLATIVE SUMMARY

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