

By the Committee on Governmental Oversight and Productivity;
and Senator Pruitt

302-1778-02

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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 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, as
15 defined in s. 228.041(9)(a)-(d), in grades K-12, the 96-month
16 limitation period as provided in subparagraph (b)1. When
17 establishing eligibility of the member to participate in the
18 DROP for the 60-month or, with respect to members who are
19 instructional personnel, as defined in s. 228.041(9)(a)-(d),
20 in grades K-12, the 96-month maximum participation period, the
21 member may elect to include or exclude any optional service
22 credit purchased by the member from the total service used to
23 establish the normal retirement date. A member with dual
24 normal retirement dates shall be eligible to elect to
25 participate in DROP within 12 months after attaining normal
26 retirement date in either class.

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

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

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

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

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

20 c. The new employer shall acknowledge, in writing, the
21 participant's DROP termination date, which may be extended but
22 not beyond the original 60-month or, with respect to members
23 who are instructional personnel, as defined in s.

24 228.041(9)(a)-(d), in grades K-12, the 96-month period
25 provided in subparagraph (b)1., shall acknowledge liability
26 for any additional retirement contributions and interest
27 required if the participant fails to timely terminate
28 employment, and shall be subject to the adjustment required in
29 sub-subparagraph (c)5.d.

30 6. Effective July 1, 2001, for instructional personnel
31 as defined in s. 228.041(9)(a)-(d), election to participate in

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

15 (b) Participation in the DROP.--

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

1 effective date of the DROP and whose total accrued value
2 exceeds 75 percent of average final compensation as of his or
3 her effective date of retirement shall be eligible to
4 participate in the DROP for no more than 36 calendar months
5 immediately following the effective date of the DROP.

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

8 a. A written election to participate in the DROP;
9 b. Selection of the DROP participation and termination
10 dates, which satisfy the limitations stated in paragraph (a)
11 and subparagraph 1. Such termination date shall be in a
12 binding letter of resignation with the employer, establishing
13 a deferred termination date. The member may change the
14 termination date within the limitations of subparagraph 1.,
15 but only with the written approval of his or her employer;

16 c. A properly completed DROP application for service
17 retirement as provided in this section; and
18 d. Any other information required by the division.

19 3. The DROP participant shall be a retiree under the
20 Florida Retirement System for all purposes, except for
21 paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363,
22 121.053, and 121.122. However, participation in the DROP does
23 not alter the participant's employment status and such
24 employee shall not be deemed retired from employment until his
25 or her deferred resignation is effective and termination
26 occurs as provided in s. 121.021(39).

27 4. Elected officers shall be eligible to participate
28 in the DROP subject to the following:

29 a. An elected officer who reaches normal retirement
30 date during a term of office may defer the election to
31 participate in the DROP until the next succeeding term in that

1 office. Such elected officer who exercises this option may
2 participate in the DROP for up to 60 calendar months or a
3 period of no longer than such succeeding term of office,
4 whichever is less.

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

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

26 d. An elected officer who is elected or appointed to
27 an elective office is not subject to termination limitations
28 as provided in chapter 121.

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

30 1. Effective with the date of DROP participation, the
31 member's initial normal monthly benefit, including creditable

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

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

1 with the employer, any accumulated leave payment made at that
2 time cannot be included in the member's retirement benefit,
3 which was determined and fixed by law when the employee
4 elected to participate in the DROP.

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

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

19 5. At the conclusion of the participant's DROP, the
20 division shall distribute the participant's total accumulated
21 DROP benefits, subject to the following provisions:

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

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

3 | (I) Lump sum.--All accrued DROP benefits, plus
4 | interest, less withholding taxes remitted to the Internal
5 | Revenue Service, shall be paid to the DROP participant or
6 | surviving beneficiary.

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

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

29 | c. The form of payment selected by the DROP
30 | participant or surviving beneficiary complies with the minimum
31 | distribution requirements of the Internal Revenue Code.

1 d. A DROP participant who fails to terminate
2 employment as defined in s. 121.021(39)(b) shall be deemed not
3 to be retired, and the DROP election shall be null and void.
4 Florida Retirement System membership shall be reestablished
5 retroactively to the date of the commencement of the DROP, and
6 each employer with whom the participant continues employment
7 shall be required to pay to the System Trust Fund the
8 difference between the DROP contributions paid in paragraph
9 (i) and the contributions required for the applicable Florida
10 Retirement System class of membership during the period the
11 member participated in the DROP, plus 6.5 percent interest
12 compounded annually.

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

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

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

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

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

30 3. Eligibility to participate in the DROP terminates
31 upon death of the participant. If the participant dies on or

1 after the effective date of enrollment in the DROP, but prior
2 to the first monthly benefit being credited to the DROP,
3 Florida Retirement System benefits shall be paid in accordance
4 with subparagraph (7)(c)1. or subparagraph 2.

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

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

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

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

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

28 (i) Contributions.--

29 1. All employers paying the salary of a DROP
30 participant filling a regularly established position shall
31 contribute 11.56 percent of such participant's gross

1 compensation, which shall constitute the entire employer DROP
2 contribution with respect to such participant. Such
3 contributions, payable to the System Trust Fund in the same
4 manner as required in s. 121.071, shall be made as appropriate
5 for each pay period and are in addition to contributions
6 required for social security and the Retiree Health Insurance
7 Subsidy Trust Fund. Such employer, social security, and
8 health insurance subsidy contributions are not included in the
9 DROP.

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

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

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

1 (k) Administration of program.--The division shall
2 make such rules as are necessary for the effective and
3 efficient administration of this subsection. The division
4 shall not be required to advise members of the federal tax
5 consequences of an election related to the DROP but may advise
6 members to seek independent advice.

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

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

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

29 (2) That the Florida Retirement System, as amended by
30 this act, is not a "defined contribution plan" as defined in
31 ss. 414(i) and 415(k)(1) of the Internal Revenue Code, is not

1 subject to the separate limitations contained within s. 415(c)
2 and (e) of the Internal Revenue Code, and is not a "hybrid
3 plan" as defined in s. 414(k) of the Internal Revenue Code.

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

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

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

19
20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 SB 546

23 The CS clarifies that the extension to DROP eligibility
24 applies only to instructional personnel in the K through 12
25 grade levels.
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