

CHAMBER ACTION

1 The Committee on State Administration recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to state financial matters; amending s.
7 112.363, F.S.; specifying spouse at time of death as
8 beneficiary for purposes of the retiree health insurance
9 subsidy; providing an exception; amending s. 121.4501,
10 F.S., relating to the Public Employee Optional Retirement
11 Program; providing a definition; providing deadlines for
12 certain employees for election and removal from the
13 optional retirement program; requiring an employer to
14 communicate retirement options to employees; authorizing
15 certain employees to change retirement plans under certain
16 circumstances; amending s. 121.591, F.S., relating to
17 benefits payable under the optional retirement program;
18 authorizing the State Board of Administration and the
19 Department of Management Services to cash out certain
20 accounts under certain circumstances; removing the ability
21 of a deceased disabled retiree's beneficiary to receive
22 certain trust fund account balances; amending s. 121.78,
23 F.S.; revising criteria for certain employer

24 | contributions; requiring certain participants to repay
 25 | excess employer contributions under certain circumstances;
 26 | amending s. 215.47, F.S.; providing that expenditures for
 27 | acquisition and operation of investments in private equity
 28 | or other private investment partnerships or limited
 29 | liability companies shall be included in the cost of the
 30 | investment; providing criteria for certain fixed income
 31 | obligations for investments; deleting a provision allowing
 32 | certain general foreign government-backed investments;
 33 | amending s. 215.475, F.S.; providing for a Florida
 34 | Retirement System Defined Benefit Plan Investment Policy
 35 | Statement instead of a plan; revising provisions to
 36 | conform; amending s. 215.5601, F.S., to conform; providing
 37 | an effective date.

38 |
 39 | Be It Enacted by the Legislature of the State of Florida:

40 |
 41 | Section 1. Paragraph (e) of subsection (3) of section
 42 | 112.363, Florida Statutes, is amended to read:

43 | 112.363 Retiree health insurance subsidy.--

44 | (3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.--

45 | (e)1. Beginning July 1, 2001, each eligible retiree of the
 46 | defined benefit program of the Florida Retirement System, or, if
 47 | the retiree is deceased, his or her beneficiary who is receiving
 48 | a monthly benefit from such retiree's account and who is a
 49 | spouse, or a person who meets the definition of joint annuitant
 50 | in s. 121.021(28), shall receive a monthly retiree health
 51 | insurance subsidy payment equal to the number of years of

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52 | creditable service, as defined in s. 121.021(17), completed at
53 | the time of retirement multiplied by \$5; however, no eligible
54 | retiree or beneficiary may receive a subsidy payment of more
55 | than \$150 or less than \$30. If there are multiple beneficiaries,
56 | the total payment must not be greater than the payment to which
57 | the retiree was entitled. The health insurance subsidy amount
58 | payable to any person receiving the retiree health insurance
59 | subsidy payment on July 1, 2001, shall not be reduced solely by
60 | operation of this subparagraph.

61 | 2. Beginning July 1, 2002, each eligible participant of
62 | the Public Employee Optional Retirement Program of the Florida
63 | Retirement System who has met the requirements of this section,
64 | or, if the participant is deceased, his or her spouse who is the
65 | participant's designated beneficiary, shall receive a monthly
66 | retiree health insurance subsidy payment equal to the number of
67 | years of creditable service, as provided in this subparagraph,
68 | completed at the time of retirement, multiplied by \$5; however,
69 | no eligible retiree or beneficiary may receive a subsidy payment
70 | of more than \$150 or less than \$30. For purposes of determining
71 | a participant's creditable service used to calculate the health
72 | insurance subsidy, a participant's years of service credit or
73 | fraction thereof shall be based on the participant's work year
74 | as defined in s. 121.021(54). Credit shall be awarded for a full
75 | work year whenever health insurance subsidy contributions have
76 | been made as required by law for each month in the participant's
77 | work year. In addition, all years of creditable service retained
78 | under the Florida Retirement System defined benefit program
79 | shall be included as creditable service for purposes of this

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80 section. Notwithstanding any other provisions of this section,
 81 the participant's spouse at the time of the participant's death
 82 shall be the beneficiary unless such participant designates a
 83 different beneficiary subsequent to the participant's most
 84 recent marriage.

85 Section 2. Paragraphs (j), (k), and (l) of subsection (2)
 86 of section 121.4501, Florida Statutes, are redesignated as
 87 paragraphs (k), (l), and (m), respectively, a new paragraph (j)
 88 is added to said subsection, subsection (4) and paragraph (c) of
 89 subsection (15) of said section are amended, and paragraph (h)
 90 is added to subsection (10) of said section, to read:

91 121.4501 Public Employee Optional Retirement Program.--

92 (2) DEFINITIONS.--As used in this part, the term:

93 (j) "Retiree" means a former participant of the Public
 94 Employee Optional Retirement Program of the Florida Retirement
 95 System who has terminated employment and has taken a
 96 distribution as provided in s. 121.591, except for a mandatory
 97 distribution of a de minimis account authorized by the state
 98 board.

99 (4) PARTICIPATION; ENROLLMENT.--

100 (a)1. With respect to an eligible employee who is employed
 101 in a regularly established position on June 1, 2002, by a state
 102 employer:

103 a. Any such employee may elect to participate in the
 104 Public Employee Optional Retirement Program in lieu of retaining
 105 his or her membership in the defined benefit program of the
 106 Florida Retirement System. The election must be made in writing
 107 or by electronic means and must be filed with the third-party

108 administrator by August 31, 2002, or, in the case of an active
 109 employee who is on a leave of absence on April 1, 2002, by
 110 August 31, 2002, or by the last business day of the 5th month
 111 following ~~within 90 days after~~ the conclusion of the leave of
 112 absence, whichever is later. This election is irrevocable,
 113 except as provided in paragraph (e). Upon making such election,
 114 the employee shall be enrolled as a participant of the Public
 115 Employee Optional Retirement Program, the employee's membership
 116 in the Florida Retirement System shall be governed by the
 117 provisions of this part, and the employee's membership in the
 118 defined benefit program of the Florida Retirement System shall
 119 terminate. The employee's enrollment in the Public Employee
 120 Optional Retirement Program shall be effective the first day of
 121 the month for which a full month's employer contribution is made
 122 to the optional program.

123 b. Any such employee who fails to elect to participate in
 124 the Public Employee Optional Retirement Program within the
 125 prescribed time period is deemed to have elected to retain
 126 membership in the defined benefit program of the Florida
 127 Retirement System, and the employee's option to elect to
 128 participate in the optional program is forfeited.

129 2. With respect to employees who become eligible to
 130 participate in the Public Employee Optional Retirement Program
 131 by reason of employment in a regularly established position with
 132 a state employer commencing after April 1, 2002:

133 a. Any such employee shall, by default, be enrolled in the
 134 defined benefit retirement program of the Florida Retirement
 135 System at the commencement of employment, and may, by the last

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136 business day ~~end~~ of the 5th month following the employee's month
137 of hire, elect to participate in the Public Employee Optional
138 Retirement Program. The employee's election must be made in
139 writing or by electronic means and must be filed with the third-
140 party administrator. The election to participate in the optional
141 program is irrevocable, except as provided in paragraph (e).

142 b. If the employee files such election within the
143 prescribed time period, enrollment in the optional program shall
144 be effective on the first day of employment. The employer
145 retirement contributions paid through the month of the employee
146 plan change shall be transferred to the optional program, and,
147 effective the first day of the next month, the employer shall
148 pay the applicable contributions based on the employee
149 membership class in the optional program.

150 c. Any such employee who fails to elect to participate in
151 the Public Employee Optional Retirement Program within the
152 prescribed time period is deemed to have elected to retain
153 membership in the defined benefit program of the Florida
154 Retirement System, and the employee's option to elect to
155 participate in the optional program is forfeited.

156 3. With respect to employees who become eligible to
157 participate in the Public Employee Optional Retirement Program
158 pursuant to s. 121.051(2)(c)3., any such employee may elect to
159 participate in the Public Employee Optional Retirement Program
160 in lieu of retaining his or her participation in the State
161 Community College Optional Retirement Program. The election must
162 be made in writing or by electronic means and must be filed with
163 the third-party administrator. This election is irrevocable,

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164 | except as provided in paragraph (e). Upon making such election,
 165 | the employee shall be enrolled as a participant of the Public
 166 | Employee Optional Retirement Program, the employee's membership
 167 | in the Florida Retirement System shall be governed by the
 168 | provisions of this part, and the employee's participation in the
 169 | State Community College Optional Retirement Program shall
 170 | terminate. The employee's enrollment in the Public Employee
 171 | Optional Retirement Program shall be effective the first day of
 172 | the month for which a full month's employer contribution is made
 173 | to the optional program.

174 | 4. For purposes of this paragraph, "state employer" means
 175 | any agency, board, branch, commission, community college,
 176 | department, institution, institution of higher education, or
 177 | water management district of the state, which participates in
 178 | the Florida Retirement System for the benefit of certain
 179 | employees.

180 | (b)1. With respect to an eligible employee who is employed
 181 | in a regularly established position on September 1, 2002, by a
 182 | district school board employer:

183 | a. Any such employee may elect to participate in the
 184 | Public Employee Optional Retirement Program in lieu of retaining
 185 | his or her membership in the defined benefit program of the
 186 | Florida Retirement System. The election must be made in writing
 187 | or by electronic means and must be filed with the third-party
 188 | administrator by November 30, or, in the case of an active
 189 | employee who is on a leave of absence on July 1, 2002, by
 190 | November 30, 2002, or by the last business day of the 5th month
 191 | following ~~within 90 days after~~ the conclusion of the leave of

192 absence, whichever is later. This election is irrevocable,
 193 except as provided in paragraph (e). Upon making such election,
 194 the employee shall be enrolled as a participant of the Public
 195 Employee Optional Retirement Program, the employee's membership
 196 in the Florida Retirement System shall be governed by the
 197 provisions of this part, and the employee's membership in the
 198 defined benefit program of the Florida Retirement System shall
 199 terminate. The employee's enrollment in the Public Employee
 200 Optional Retirement Program shall be effective the first day of
 201 the month for which a full month's employer contribution is made
 202 to the optional program.

203 b. Any such employee who fails to elect to participate in
 204 the Public Employee Optional Retirement Program within the
 205 prescribed time period is deemed to have elected to retain
 206 membership in the defined benefit program of the Florida
 207 Retirement System, and the employee's option to elect to
 208 participate in the optional program is forfeited.

209 2. With respect to employees who become eligible to
 210 participate in the Public Employee Optional Retirement Program
 211 by reason of employment in a regularly established position with
 212 a district school board employer commencing after July 1, 2002:

213 a. Any such employee shall, by default, be enrolled in the
 214 defined benefit retirement program of the Florida Retirement
 215 System at the commencement of employment, and may, by the last
 216 business day ~~end~~ of the 5th month following the employee's month
 217 of hire, elect to participate in the Public Employee Optional
 218 Retirement Program. The employee's election must be made in
 219 writing or by electronic means and must be filed with the third-

220 party administrator. The election to participate in the optional
221 program is irrevocable, except as provided in paragraph (e).

222 b. If the employee files such election within the
223 prescribed time period, enrollment in the optional program shall
224 be effective on the first day of employment. The employer
225 retirement contributions paid through the month of the employee
226 plan change shall be transferred to the optional program, and,
227 effective the first day of the next month, the employer shall
228 pay the applicable contributions based on the employee
229 membership class in the optional program.

230 c. Any such employee who fails to elect to participate in
231 the Public Employee Optional Retirement Program within the
232 prescribed time period is deemed to have elected to retain
233 membership in the defined benefit program of the Florida
234 Retirement System, and the employee's option to elect to
235 participate in the optional program is forfeited.

236 3. For purposes of this paragraph, "district school board
237 employer" means any district school board that participates in
238 the Florida Retirement System for the benefit of certain
239 employees, or a charter school or charter technical career
240 center that participates in the Florida Retirement System as
241 provided in s. 121.051(2)(d).

242 (c)1. With respect to an eligible employee who is employed
243 in a regularly established position on December 1, 2002, by a
244 local employer:

245 a. Any such employee may elect to participate in the
246 Public Employee Optional Retirement Program in lieu of retaining
247 his or her membership in the defined benefit program of the

248 Florida Retirement System. The election must be made in writing
 249 or by electronic means and must be filed with the third-party
 250 administrator by February 28, 2003, or, in the case of an active
 251 employee who is on a leave of absence on October 1, 2002, by
 252 February 28, 2003, or by the last business day of the 5th month
 253 following ~~within 90 days after~~ the conclusion of the leave of
 254 absence, whichever is later. This election is irrevocable,
 255 except as provided in paragraph (e). Upon making such election,
 256 the employee shall be enrolled as a participant of the Public
 257 Employee Optional Retirement Program, the employee's membership
 258 in the Florida Retirement System shall be governed by the
 259 provisions of this part, and the employee's membership in the
 260 defined benefit program of the Florida Retirement System shall
 261 terminate. The employee's enrollment in the Public Employee
 262 Optional Retirement Program shall be effective the first day of
 263 the month for which a full month's employer contribution is made
 264 to the optional program.

265 b. Any such employee who fails to elect to participate in
 266 the Public Employee Optional Retirement Program within the
 267 prescribed time period is deemed to have elected to retain
 268 membership in the defined benefit program of the Florida
 269 Retirement System, and the employee's option to elect to
 270 participate in the optional program is forfeited.

271 2. With respect to employees who become eligible to
 272 participate in the Public Employee Optional Retirement Program
 273 by reason of employment in a regularly established position with
 274 a local employer commencing after October 1, 2002:

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275 | a. Any such employee shall, by default, be enrolled in the
 276 | defined benefit retirement program of the Florida Retirement
 277 | System at the commencement of employment, and may, by the last
 278 | business day ~~end~~ of the 5th month following the employee's month
 279 | of hire, elect to participate in the Public Employee Optional
 280 | Retirement Program. The employee's election must be made in
 281 | writing or by electronic means and must be filed with the third-
 282 | party administrator. The election to participate in the optional
 283 | program is irrevocable, except as provided in paragraph (e).

284 | b. If the employee files such election within the
 285 | prescribed time period, enrollment in the optional program shall
 286 | be effective on the first day of employment. The employer
 287 | retirement contributions paid through the month of the employee
 288 | plan change shall be transferred to the optional program, and,
 289 | effective the first day of the next month, the employer shall
 290 | pay the applicable contributions based on the employee
 291 | membership class in the optional program.

292 | c. Any such employee who fails to elect to participate in
 293 | the Public Employee Optional Retirement Program within the
 294 | prescribed time period is deemed to have elected to retain
 295 | membership in the defined benefit program of the Florida
 296 | Retirement System, and the employee's option to elect to
 297 | participate in the optional program is forfeited.

298 | 3. For purposes of this paragraph, "local employer" means
 299 | any employer not included in paragraph (a) or paragraph (b).

300 | (d) Contributions available for self-direction by a
 301 | participant who has not selected one or more specific investment
 302 | products shall be allocated as prescribed by the board. The

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303 | third-party administrator shall notify any such participant at
304 | least quarterly that the participant should take an affirmative
305 | action to make an asset allocation among the optional program
306 | products.

307 | (e) After the period during which an eligible employee had
308 | the choice to elect the defined benefit program or the Public
309 | Employee Optional Retirement Program, or the month following the
310 | eligible employee's plan selection effective date, if sooner,
311 | the employee shall have one opportunity, at the employee's
312 | discretion, to choose to move from the defined benefit program
313 | to the Public Employee Optional Retirement Program or from the
314 | Public Employee Optional Retirement Program to the defined
315 | benefit program. This paragraph shall be contingent upon
316 | approval from the Internal Revenue Service for including the
317 | choice described herein within the programs offered by the
318 | Florida Retirement System.

319 | 1. If the employee chooses to move to the Public Employee
320 | Optional Retirement Program, the applicable provisions of this
321 | section shall govern the transfer.

322 | 2. If the employee chooses to move to the defined benefit
323 | program, the employee must transfer from his or her Public
324 | Employee Optional Retirement Program account and from other
325 | employee moneys as necessary, a sum representing the present
326 | value of that employee's accumulated benefit obligation
327 | immediately following the time of such movement, determined
328 | assuming that attained service equals the sum of service in the
329 | defined benefit program and service in the Public Employee
330 | Optional Retirement Program. Benefit commencement occurs on the

331 first date the employee would become eligible for unreduced
332 benefits, using the discount rate and other relevant actuarial
333 assumptions that were used to value the Florida Retirement
334 System defined benefit plan liabilities in the most recent
335 actuarial valuation. For any employee who, at the time of the
336 second election, already maintains an accrued benefit amount in
337 the defined benefit plan, the then-present value of such accrued
338 benefit shall be deemed part of the required transfer amount
339 described in this subparagraph. The division shall ensure that
340 the transfer sum is prepared using a formula and methodology
341 certified by an enrolled actuary.

342 3. Notwithstanding subparagraph 2., an employee who
343 chooses to move to the defined benefit program and who became
344 eligible to participate in the Public Employee Optional
345 Retirement Program by reason of employment in a regularly
346 established position with a state employer after June 1, 2002; a
347 district school board employer after September 1, 2002; or a
348 local employer after December 1, 2002, must transfer from his or
349 her Public Employee Optional Retirement Program account and,
350 from other employee moneys as necessary, a sum representing that
351 employee's actuarial accrued liability.

352 4. Employees' ability to transfer from the Florida
353 Retirement System defined benefit program to the Public Employee
354 Optional Retirement Program pursuant to paragraphs (a) through
355 (d), and the ability for current employees to have an option to
356 later transfer back into the defined benefit program under
357 subparagraph 2., shall be deemed a significant system amendment.
358 Pursuant to s. 121.031(4), any such resulting unfunded liability

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359 arising from actual original transfers from the defined benefit
 360 program to the optional program shall be amortized within 30
 361 plan years as a separate unfunded actuarial base independent of
 362 the reserve stabilization mechanism defined in s. 121.031(3)(f).
 363 For the first 25 years, no direct amortization payment shall be
 364 calculated for this base. During this 25-year period, such
 365 separate base shall be used to offset the impact of employees
 366 exercising their second program election under this paragraph.
 367 It is the legislative intent that the actuarial funded status of
 368 the Florida Retirement System defined benefit plan is neither
 369 beneficially nor adversely impacted by such second program
 370 elections in any significant manner, after due recognition of
 371 the separate unfunded actuarial base. Following this initial 25-
 372 year period, any remaining balance of the original separate base
 373 shall be amortized over the remaining 5 years of the required
 374 30-year amortization period.

375 (10) EDUCATION COMPONENT.--

376 (h) Pursuant to paragraph (8)(a), all Florida Retirement
 377 System employers have an obligation to regularly communicate the
 378 existence of the two Florida Retirement System plans and the
 379 plan choice in the natural course of administering their
 380 personnel functions using the educational materials supplied by
 381 the state board and the Department of Management Services.

382 (15) STATEMENT OF FIDUCIARY STANDARDS AND
 383 RESPONSIBILITIES.--

384 (c) Subparagraph (8)(b)4. and paragraph (15)(b)
 385 incorporate the federal law concept of participant control,
 386 established by regulations of the United States Department of

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387 Labor under s. 404(c) of the Employee Retirement Income Security
 388 Act of 1974 (ERISA). The purpose of this paragraph is to assist
 389 employers and the State Board of Administration in maintaining
 390 compliance with s. 404(c), while avoiding unnecessary costs and
 391 eroding participant benefits under the Public Employee Optional
 392 Retirement Program. Pursuant to 29 C.F.R. s. 2550.404c-
 393 1(b)(2)(i)(B)(1)(viii), the State Board of Administration or its
 394 designated agents shall deliver to participants of the Public
 395 Employee Optional Retirement Program a copy of the prospectus
 396 most recently provided to the plan and, pursuant to 29 C.F.R. s.
 397 2550.404c-1(b)(2), ~~or~~ shall provide such participants an
 398 opportunity to obtain this information, except that:

399 1. The requirement to deliver a prospectus shall be deemed
 400 to be satisfied by delivery of a fund profile that contains the
 401 information that would be included in a summary prospectus as
 402 described by Rule 498 under the Securities Act of 1933, 17
 403 C.F.R. s. 230.498. When the transaction fees, expense
 404 information or other information provided by a mutual fund in
 405 the prospectus does not reflect terms negotiated by the State
 406 Board of Administration or its designated agents, the
 407 aforementioned requirement is deemed to be satisfied by delivery
 408 of a separate document described by Rule 498 substituting
 409 accurate information; and

410 2. Delivery shall be deemed to have been effected if
 411 delivery is through electronic means and the following standards
 412 are satisfied:

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413 a. Electronically-delivered documents are prepared and
414 provided consistent with style, format, and content requirements
415 applicable to printed documents;

416 b. Each participant is provided timely and adequate notice
417 of the documents that are to be delivered and their significance
418 thereof, and of the participant's right to obtain a paper copy
419 of such documents free of charge;

420 c.(I) Participants have adequate access to the electronic
421 documents, at locations such as their worksites or public
422 facilities, and have the ability to convert the documents to
423 paper free of charge by the State Board of Administration, and
424 the board or its designated agents take appropriate and
425 reasonable measures to ensure that the system for furnishing
426 electronic documents results in actual receipt, or

427 (II) Participants have provided consent to receive
428 information in electronic format, which consent may be revoked;
429 and

430 d. The State Board of Administration, or its designated
431 agent, actually provides paper copies of the documents free of
432 charge, upon request.

433 Section 3. Section 121.591, Florida Statutes, is amended
434 to read:

435 121.591 Benefits payable under the Public Employee
436 Optional Retirement Program of the Florida Retirement
437 System.--Benefits may not be paid under this section unless the
438 member has terminated employment as provided in s.
439 121.021(39)(a) or is deceased and a proper application has been
440 filed in the manner prescribed by the state board or the

441 department. The state board or department, as appropriate, may
 442 cancel an application for retirement benefits when the member or
 443 beneficiary fails to timely provide the information and
 444 documents required by this chapter and the rules of the state
 445 board and department. In accordance with their respective
 446 responsibilities as provided herein, the State Board of
 447 Administration and the Department of Management Services shall
 448 adopt rules establishing procedures for application for
 449 retirement benefits and for the cancellation of such application
 450 when the required information or documents are not received. The
 451 State Board of Administration and the Department of Management
 452 Services, as appropriate, are authorized to cash out a de
 453 minimis account of a participant who has been terminated from
 454 Florida Retirement System covered employment for a minimum of 6
 455 calendar months. A de minimis account is an account containing
 456 employer contributions and accumulated earnings of not more than
 457 \$5,000 made under the provisions of this chapter. Such cash-out
 458 must either be a complete lump-sum liquidation of the account
 459 balance, subject to the provisions of the Internal Revenue Code,
 460 or a lump-sum direct rollover distribution paid directly to the
 461 custodian of an eligible retirement plan, as defined by the
 462 Internal Revenue Code, on behalf of the participant.

463 (1) NORMAL BENEFITS.--Under the Public Employee Optional
 464 Retirement Program:

465 (a) Benefits in the form of vested accumulations as
 466 described in s. 121.4501(6) shall be payable under this
 467 subsection in accordance with the following terms and
 468 conditions:

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469 1. To the extent vested, benefits shall be payable only to
470 a participant.

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

474 3. To receive benefits under this subsection, the
475 participant must be terminated from all employment with all
476 Florida Retirement System employers, as provided in s.
477 121.021(39).

478 (b) If a participant elects to receive his or her benefits
479 upon termination of employment, the participant must submit a
480 written application to the third-party administrator indicating
481 his or her preferred distribution date and selecting an
482 authorized method of distribution as provided in paragraph (c).
483 The participant may defer receipt of benefits until he or she
484 chooses to make such application, subject to federal
485 requirements.

486 (c) Upon receipt by the third-party administrator of a
487 properly executed application for distribution of benefits, the
488 total accumulated benefit shall be payable to the participant,
489 as:

490 1. A lump-sum distribution to the participant;

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

496 | 3. Periodic distributions, as authorized by the state
497 | board.

498 | (2) DISABILITY RETIREMENT BENEFITS.--Benefits provided
499 | under this subsection are payable in lieu of the benefits which
500 | would otherwise be payable under the provisions of subsection
501 | (1). Such benefits shall be funded entirely from employer
502 | contributions made under s. 121.571, transferred participant
503 | funds accumulated pursuant to paragraph (a), and interest and
504 | earnings thereon. Pursuant thereto:

505 | (a) Transfer of funds.--To qualify to receive monthly
506 | disability benefits under this subsection:

507 | 1. All moneys accumulated in the participant's Public
508 | Employee Optional Retirement Program accounts, including vested
509 | and nonvested accumulations as described in s. 121.4501(6),
510 | shall be transferred from such individual accounts to the
511 | Division of Retirement for deposit in the disability account of
512 | the Florida Retirement System Trust Fund. Such moneys shall be
513 | separately accounted for. Earnings shall be credited on an
514 | annual basis for amounts held in the disability accounts of the
515 | Florida Retirement System Trust Fund based on actual earnings of
516 | the Florida Retirement System Trust Fund.

517 | 2. If the participant has retained retirement credit he or
518 | she had earned under the defined benefit program of the Florida
519 | Retirement System as provided in s. 121.4501(3)(b), a sum
520 | representing the actuarial present value of such credit within
521 | the Florida Retirement System Trust Fund shall be reassigned by
522 | the Division of Retirement from the defined benefit program to
523 | the disability program as implemented under this subsection and

524 shall be deposited in the disability account of the Florida
525 Retirement System Trust Fund. Such moneys shall be separately
526 accounted for.

527 (b) Disability retirement; entitlement.--

528 1. A participant of the Public Employee Optional
529 Retirement Program who becomes totally and permanently disabled,
530 as defined in s. 121.091(4)(b), after completing 8 years of
531 creditable service, or a participant who becomes totally and
532 permanently disabled in the line of duty regardless of his or
533 her length of service, shall be entitled to a monthly disability
534 benefit as provided herein.

535 2. In order for service to apply toward the 8 years of
536 service required to vest for regular disability benefits, or
537 toward the creditable service used in calculating a service-
538 based benefit as provided for under paragraph (g), the service
539 must be creditable service as described below:

540 a. The participant's period of service under the Public
541 Employee Optional Retirement Program will be considered
542 creditable service, except as provided in subparagraph d.

543 b. If the participant has elected to retain credit for his
544 or her service under the defined benefit program of the Florida
545 Retirement System as provided under s. 121.4501(3)(b), all such
546 service will be considered creditable service.

547 c. If the participant has elected to transfer to his or
548 her participant accounts a sum representing the present value of
549 his or her retirement credit under the defined benefit program
550 as provided under s. 121.4501(3)(c), the period of service under
551 the defined benefit program represented in the present value

552 amounts transferred will be considered creditable service for
 553 purposes of vesting for disability benefits, except as provided
 554 in subparagraph d.

555 d. Whenever a participant has terminated employment and
 556 has taken distribution of his or her funds as provided in
 557 subsection (1), all creditable service represented by such
 558 distributed funds is forfeited for purposes of this subsection.

559 (c) Disability retirement effective date.--The effective
 560 retirement date for a participant who applies and is approved
 561 for disability retirement shall be established as provided under
 562 s. 121.091(4)(a)2. and 3.

563 (d) Total and permanent disability.--A participant shall
 564 be considered totally and permanently disabled if, in the
 565 opinion of the division, he or she is prevented, by reason of a
 566 medically determinable physical or mental impairment, from
 567 rendering useful and efficient service as an officer or
 568 employee.

569 (e) Proof of disability.--The division, before approving
 570 payment of any disability retirement benefit, shall require
 571 proof that the participant is totally and permanently disabled
 572 in the same manner as provided for members of the defined
 573 benefit program of the Florida Retirement System under s.
 574 121.091(4)(c).

575 (f) Disability retirement benefit.--Upon the disability
 576 retirement of a participant under this subsection, the
 577 participant shall receive a monthly benefit that shall begin to
 578 accrue on the first day of the month of disability retirement,
 579 as approved by the division, and shall be payable on the last

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580 day of that month and each month thereafter during his or her
581 lifetime and continued disability. All disability benefits
582 payable to such member shall be paid out of the disability
583 account of the Florida Retirement System Trust Fund established
584 under this subsection.

585 (g) Computation of disability retirement benefit.--The
586 amount of each monthly payment shall be calculated in the same
587 manner as provided for members of the defined benefit program of
588 the Florida Retirement System under s. 121.091(4)(f). For such
589 purpose, creditable service under both the defined benefit
590 program and the Public Employee Optional Retirement Program of
591 the Florida Retirement System shall be applicable as provided
592 under paragraph (b).

593 (h) Reapplication.--A participant whose initial
594 application for disability retirement has been denied may
595 reapply for disability benefits in the same manner, and under
596 the same conditions, as provided for members of the defined
597 benefit program of the Florida Retirement System under s.
598 121.091(4)(g).

599 (i) Membership.--Upon approval of an application for
600 disability benefits under this subsection, the applicant shall
601 be transferred to the defined benefit program of the Florida
602 Retirement System, effective upon his or her disability
603 retirement effective date.

604 (j) Option to cancel.--Any participant whose application
605 for disability benefits is approved may cancel his or her
606 application for disability benefits, provided that the
607 cancellation request is received by the division before a

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608 disability retirement warrant has been deposited, cashed, or
609 received by direct deposit. Upon such cancellation:

610 1. The participant's transfer to the defined benefit
611 program under paragraph (i) shall be nullified;

612 2. The participant shall be retroactively reinstated in
613 the Public Employee Optional Retirement Program without hiatus;

614 3. All funds transferred to the Florida Retirement System
615 Trust Fund under paragraph (a) shall be returned to the
616 participant accounts from which such funds were drawn; and

617 4. The participant may elect to receive the benefit
618 payable under the provisions of subsection (1) in lieu of
619 disability benefits as provided under this subsection.

620 (k) Recovery from disability.--

621 1. The division may require periodic reexaminations at the
622 expense of the disability program account of the Florida
623 Retirement System Trust Fund. Except as otherwise provided in
624 subparagraph 2., the requirements, procedures, and restrictions
625 relating to the conduct and review of such reexaminations,
626 discontinuation or termination of benefits, reentry into
627 employment, disability retirement after reentry into covered
628 employment, and all other matters relating to recovery from
629 disability shall be the same as are set forth under s.

630 121.091(4)(h).

631 2. Upon recovery from disability, any recipient of
632 disability retirement benefits under this subsection shall be a
633 compulsory member of the Public Employee Optional Retirement
634 Program of the Florida Retirement System. The net difference
635 between the recipient's original account balance transferred to

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636 the Florida Retirement System Trust Fund, including earnings,
637 under paragraph (a) and total disability benefits paid to such
638 recipient, if any, shall be determined as provided in sub-
639 subparagraph a.

640 a. An amount equal to the total benefits paid shall be
641 subtracted from that portion of the transferred account balance
642 consisting of vested accumulations as described under s.
643 121.4501(6), if any, and an amount equal to the remainder of
644 benefit amounts paid, if any, shall then be subtracted from any
645 remaining portion consisting of nonvested accumulations as
646 described under s. 121.4501(6).

647 b. Amounts subtracted under sub-subparagraph a. shall be
648 retained within the disability account of the Florida Retirement
649 System Trust Fund. Any remaining account balance shall be
650 transferred to the third-party administrator for disposition as
651 provided under sub-subparagraph c. or sub-subparagraph d., as
652 appropriate.

653 c. If the recipient returns to covered employment,
654 transferred amounts shall be deposited in individual accounts
655 under the Public Employee Optional Retirement Program, as
656 directed by the participant. Vested and nonvested amounts shall
657 be separately accounted for as provided in s. 121.4501(6).

658 d. If the recipient fails to return to covered employment
659 upon recovery from disability:

660 (I) Any remaining vested amount shall be deposited in
661 individual accounts under the Public Employee Optional
662 Retirement Program, as directed by the participant, and shall be
663 payable as provided in subsection (1).

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664 (II) Any remaining nonvested amount shall be held in a
665 suspense account and shall be forfeitable after 5 years as
666 provided in s. 121.4501(6).

667 3. If present value was reassigned from the defined
668 benefit program to the disability program of the Florida
669 Retirement System as provided under subparagraph (a)2., the full
670 present value amount shall be returned to the defined benefit
671 account within the Florida Retirement System Trust Fund and the
672 affected individual's associated retirement credit under the
673 defined benefit program shall be reinstated in full. Any benefit
674 based upon such credit shall be calculated as provided in s.
675 121.091(4)(h)1.

676 (1) Nonadmissible causes of disability.--A participant
677 shall not be entitled to receive a disability retirement benefit
678 if the disability results from any injury or disease sustained
679 or inflicted as described in s. 121.091(4)(i).

680 (m) Disability retirement of justice or judge by order of
681 Supreme Court.--

682 1. If a participant is a justice of the Supreme Court,
683 judge of a district court of appeal, circuit judge, or judge of
684 a county court who has served for 6 years or more as an elected
685 constitutional judicial officer, including service as a judicial
686 officer in any court abolished pursuant to Art. V of the State
687 Constitution, and who is retired for disability by order of the
688 Supreme Court upon recommendation of the Judicial Qualifications
689 Commission pursuant to the provisions of Art. V of the State
690 Constitution, the participant's Option 1 monthly disability
691 benefit amount as provided in s. 121.091(6)(a)1. shall be two-

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692 thirds of his or her monthly compensation as of the
 693 participant's disability retirement date. Such a participant may
 694 alternatively elect to receive an actuarially adjusted
 695 disability retirement benefit under any other option as provided
 696 in s. 121.091(6)(a), or to receive the normal benefit payable
 697 under the Public Employee Optional Retirement Program as set
 698 forth in subsection (1).

699 2. If any justice or judge who is a participant of the
 700 Public Employee Optional Retirement Program of the Florida
 701 Retirement System is retired for disability by order of the
 702 Supreme Court upon recommendation of the Judicial Qualifications
 703 Commission pursuant to the provisions of Art. V of the State
 704 Constitution and elects to receive a monthly disability benefit
 705 under the provisions of this paragraph:

706 a. Any present value amount that was transferred to his or
 707 her program account and all employer contributions made to such
 708 account on his or her behalf, plus interest and earnings
 709 thereon, shall be transferred to and deposited in the disability
 710 account of the Florida Retirement System Trust Fund; and

711 b. The monthly benefits payable under this paragraph for
 712 any affected justice or judge retired from the Florida
 713 Retirement System pursuant to Art. V of the State Constitution
 714 shall be paid from the disability account of the Florida
 715 Retirement System Trust Fund.

716 (n) Death of retiree or beneficiary.--Upon the death of a
 717 disabled retiree or beneficiary thereof who is receiving monthly
 718 benefits under this subsection, the monthly benefits shall be
 719 paid through the last day of the month of death and shall

720 terminate, or be adjusted, if applicable, as of that date in
 721 accordance with the optional form of benefit selected at the
 722 time of retirement. ~~The deceased disabled retiree's beneficiary~~
 723 ~~shall also receive the amount of the participant's remaining~~
 724 ~~account balance, if any, in the Florida Retirement System Trust~~
 725 ~~Fund.~~ The Department of Management Services may adopt rules
 726 necessary to administer this paragraph.

727 (3) DEATH BENEFITS.--Under the Public Employee Optional
 728 Retirement Program:

729 (a) Survivor benefits shall be payable in accordance with
 730 the following terms and conditions:

731 1. To the extent vested, benefits shall be payable only to
 732 a participant's beneficiary or beneficiaries as designated by
 733 the participant. If a participant designates a primary
 734 beneficiary other than the participant's spouse, the
 735 participant's spouse shall be notified of the designation. This
 736 requirement shall not apply to the designation of one or more
 737 contingent beneficiaries to receive any benefits remaining upon
 738 the death of the primary beneficiary or beneficiaries.

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

742 3. To receive benefits under this subsection, the
 743 participant must be deceased.

744 (b) In the event of a participant's death, all vested
 745 accumulations as described in s. 121.4501(6), less withholding
 746 taxes remitted to the Internal Revenue Service, shall be
 747 distributed, as provided in paragraph (c), to the participant's

748 designated beneficiary or beneficiaries, or to the participant's
 749 estate, as if the participant retired on the date of death. No
 750 other death benefits shall be available for survivors of
 751 participants under the Public Employee Optional Retirement
 752 Program, except for such benefits, or coverage for such
 753 benefits, as are otherwise provided by law or are separately
 754 afforded by the employer, at the employer's discretion.

755 (c) Upon receipt by the third-party administrator of a
 756 properly executed application for distribution of benefits, the
 757 total accumulated benefit shall be payable by the third-party
 758 administrator to the participant's surviving beneficiary or
 759 beneficiaries, as:

760 1. A lump-sum distribution payable to the beneficiary or
 761 beneficiaries, or to the deceased participant's estate;

762 2. An eligible rollover distribution on behalf of the
 763 surviving spouse of a deceased participant, whereby all accrued
 764 benefits, plus interest and investment earnings, are paid from
 765 the deceased participant's account directly to the custodian of
 766 an eligible retirement plan, as described in s. 402(c)(8)(B) of
 767 the Internal Revenue Code, on behalf of the surviving spouse; or

768 3. A partial lump-sum payment whereby a portion of the
 769 accrued benefit is paid to the deceased participant's surviving
 770 spouse or other designated beneficiaries, less withholding taxes
 771 remitted to the Internal Revenue Service, and the remaining
 772 amount is transferred directly to the custodian of an eligible
 773 retirement plan, as described in s. 402(c)(8)(B) of the Internal
 774 Revenue Code, on behalf of the surviving spouse. The proportions

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775 | must be specified by the participant or the surviving
776 | beneficiary.

777 |
778 | This paragraph does not abrogate other applicable provisions of
779 | state or federal law providing for payment of death benefits.

780 | (4) LIMITATION ON LEGAL PROCESS.--The benefits payable to
781 | any person under the Public Employee Optional Retirement
782 | Program, and any contributions accumulated under such program,
783 | are not subject to assignment, execution, attachment, or any
784 | legal process, except for qualified domestic relations orders by
785 | a court of competent jurisdiction, income deduction orders as
786 | provided in s. 61.1301, and federal income tax levies.

787 | Section 4. Paragraph (b) of subsection (3) of section
788 | 121.78, Florida Statutes, is amended to read:

789 | 121.78 Payment and distribution of contributions.--

790 | (3)

791 | (b) If contributions made by an employer on behalf of
792 | participants of the optional retirement program or accompanying
793 | payroll data are not received within the calendar month they are
794 | due, including, but not limited to, contribution adjustments as
795 | a result of employer errors or corrections, and if that
796 | delinquency results in market losses to participants, the
797 | employer shall reimburse each participant's account for market
798 | losses resulting from the late contributions. In the event a
799 | participant has terminated employment and taken a distribution,
800 | the participant is responsible for returning any excess
801 | contributions erroneously provided by employers, adjusted for
802 | any investment gain or loss incurred during the period such

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803 excess contributions were in the participant's Public Employee
804 Optional Retirement Program account. The State Board of
805 Administration, or its designated agent, shall communicate to
806 terminated participants any obligation to repay such excess
807 contribution amounts. However, the State Board of
808 Administration, its designated agent, the Public Employee
809 Optional Retirement Program Trust Fund, the Department of
810 Management Services, or the Florida Retirement System Trust Fund
811 shall not incur any loss or gain as a result of employer
812 correction of such excess contributions. The third-party
813 administrator, hired by the board pursuant to s. 121.4501(8),
814 shall calculate the market losses for each affected participant.
815 When contributions made on behalf of participants of the
816 optional retirement program or accompanying payroll data are not
817 received within the calendar month due, the employer shall also
818 pay the cost of the third-party administrator's calculation and
819 reconciliation adjustments resulting from the late
820 contributions. The third-party administrator shall notify the
821 employer of the results of the calculations and the total amount
822 due from the employer for such losses and the costs of
823 calculation and reconciliation. The employer shall remit to the
824 division the amount due within 10 working days after the date of
825 the penalty notice sent by the division. The division shall
826 transfer said amount to the third-party administrator, who shall
827 deposit proceeds from the 1-percent assessment and from
828 individual market losses into participant accounts, as
829 appropriate. The board is authorized to adopt rules to implement
830 the provisions regarding late contributions, late submission of

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831 payroll data, the process for reimbursing participant accounts
832 for resultant market losses, and the penalties charged to the
833 employers.

834 Section 5. Paragraphs (f), (g), and (i) of subsection (2)
835 of section 215.47, Florida Statutes, are amended to read:

836 215.47 Investments; authorized securities; loan of
837 securities.--Subject to the limitations and conditions of the
838 State Constitution or of the trust agreement relating to a trust
839 fund, moneys available for investments under ss. 215.44-215.53
840 may be invested as follows:

841 (2) With no more than 25 percent of any fund in:

842 (f) Certain interests in real property and related
843 personal property, including mortgages and related instruments
844 on commercial or industrial real property, with provisions for
845 equity or income participation or with provisions for
846 convertibility to equity ownership; and interests in collective
847 investment funds. Associated expenditures for acquisition and
848 operation of assets purchased under this provision or of
849 investments in private equity or other private investment
850 partnerships or limited liability companies shall be included as
851 a part of the cost of the investment.

852 1. The title to real property acquired under this
853 paragraph shall be vested in the name of the respective fund.

854 2. For purposes of taxation of property owned by any fund,
855 the provisions of s. 196.199(2)(b) do not apply.

856 3. Real property acquired under the provisions of this
857 paragraph shall not be considered state lands or public lands

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858 and property as defined in chapter 253, and the provisions of
859 that chapter do not apply to such real property.

860 (g) Fixed-income obligations not otherwise authorized by
861 this section issued by foreign governments, or political
862 subdivisions or agencies thereof, supranational agencies,
863 foreign corporations, or foreign commercial entities, provided
864 the obligations are rated investment grade by at least one
865 nationally recognized rating service ~~General obligations backed~~
866 ~~by the full faith and credit of a foreign government which has~~
867 ~~not defaulted on similar obligations for a minimum period of 25~~
868 ~~years prior to purchase of the obligation and has met its~~
869 ~~payments of similar obligations when due.~~

870 (i) Obligations of agencies of the government of the
871 United States, provided such obligations have been included in
872 and authorized by the Florida Retirement System Defined Benefit
873 ~~Total Fund Investment Plan~~ Investment Policy Statement
874 established in s. 215.475.

875 Section 6. Section 215.475, Florida Statutes, is amended
876 to read:

877 215.475 Investment policy statement ~~plan~~.--

878 (1) In making investments for the System Trust Fund
879 pursuant to ss. 215.44-215.53, the board shall make no
880 investment which is not in conformance with the Florida
881 Retirement System Defined Benefit ~~Total Fund Investment~~ Plan
882 Investment Policy Statement, hereinafter referred to as "the
883 statement ~~plan~~," as developed by the executive director and
884 approved by the board. The statement ~~plan~~ must include, among
885 other items, the investment objectives of the System Trust Fund;

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886 permitted types of securities in which the board may invest; and
887 evaluation criteria necessary to measure the investment
888 performance of the fund. As required from time to time, the
889 executive director of the board may present recommended changes
890 in the statement plan to the board for approval.

891 (2) Prior to any recommended changes in the statement plan
892 being presented to the board, the executive director of the
893 board shall present such changes to the Investment Advisory
894 Council for review. The council shall present the results of its
895 review to the board prior to the board's final approval of the
896 statement plan or changes in the statement plan.

897 Section 7. Paragraph (a) of subsection (4) of section
898 215.5601, Florida Statutes, is amended to read:

899 215.5601 Lawton Chiles Endowment Fund.--

900 (4) ADMINISTRATION.--

901 (a) The board may invest and reinvest funds of the
902 endowment in accordance with s. 215.47 and consistent with an
903 investment policy statement plan developed by the executive
904 director and approved by the board.

905 Section 8. This act shall take effect July 1, 2004.