

CHAMBER ACTION

1 The State Administration Council recommends the following:

2
3 **Council/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.
7 121.021, F.S.; redefining the term "termination"; amending
8 s. 121.091, F.S.; providing reemployment requirements for
9 the Public Employee Optional Retirement Program; amending
10 s. 121.35, F.S.; changing the requirements of the
11 Department of Management Services' designation of a fifth
12 company to provide services under the state university
13 optional retirement program; amending s. 121.4501, F.S.;
14 redefining the terms "eligible employee" and "participant"
15 for purposes of the Public Employee Optional Retirement
16 Program; prescribing certain conditions on participation
17 in the program; deleting references to the program's
18 advisory committees; prescribing procedures for, and
19 certain presumptions relating to, designation of
20 beneficiaries; providing for participation by terminated
21 DROP participants; amending s. 121.591, F.S.; providing
22 for cancellation of certain payment instruments under the
23 program when not presented for payment; providing for

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24 payment upon subsequent application and for forfeiture
 25 when not claimed within a certain period; providing for
 26 designation of beneficiaries for death benefits; amending
 27 s. 215.47, F.S.; authorizing investments in asset-backed
 28 securities; providing an effective date.

29

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

31

32 Section 1. Subsection (39) of section 121.021, Florida
 33 Statutes, is amended to read:

34 121.021 Definitions.--The following words and phrases as
 35 used in this chapter have the respective meanings set forth
 36 unless a different meaning is plainly required by the context:

37 (39)(a) "Termination" occurs, except as provided in
 38 paragraph (b), when a member ceases all employment relationships
 39 with employers under this system, as defined in subsection (10),
 40 but in the event a member should be employed by any such
 41 employer within the next calendar month, termination shall be
 42 deemed not to have occurred. A leave of absence shall constitute
 43 a continuation of the employment relationship, except that a
 44 leave of absence without pay due to disability may constitute
 45 termination for a member, if such member makes application for
 46 and is approved for disability retirement in accordance with s.
 47 121.091(4). The department or State Board of Administration may
 48 require other evidence of termination as it deems necessary.

49 (b) "Termination" for a member electing to participate
 50 under the Deferred Retirement Option Program occurs when the
 51 Deferred Retirement Option Program participant ceases all

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52 employment relationships with employers under this system in
 53 accordance with s. 121.091(13), but in the event the Deferred
 54 Retirement Option Program participant should be employed by any
 55 such employer within the next calendar month, termination will
 56 be deemed not to have occurred, except as provided in s.
 57 121.091(13)(b)4.c. A leave of absence shall constitute a
 58 continuation of the employment relationship.

59 Section 2. Paragraph (c) is added to subsection (9) of
 60 section 121.091, Florida Statutes, to read:

61 121.091 Benefits payable under the system.--Benefits may
 62 not be paid under this section unless the member has terminated
 63 employment as provided in s. 121.021(39)(a) or begun
 64 participation in the Deferred Retirement Option Program as
 65 provided in subsection (13), and a proper application has been
 66 filed in the manner prescribed by the department. The department
 67 may cancel an application for retirement benefits when the
 68 member or beneficiary fails to timely provide the information
 69 and documents required by this chapter and the department's
 70 rules. The department shall adopt rules establishing procedures
 71 for application for retirement benefits and for the cancellation
 72 of such application when the required information or documents
 73 are not received.

74 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.--

75 (c) The provisions of this subsection apply to retirees,
 76 as defined in s. 121.4501(2)(j), of the Public Employee Optional
 77 Retirement Program created in part II, subject to the following
 78 conditions:

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79 1. Such retirees may not be reemployed with an employer
 80 participating in the Florida Retirement System as provided in
 81 paragraph (b) until such retiree has been retired for 3 calendar
 82 months, unless the retiree has reached the normal retirement
 83 requirements of the defined benefit plan as provided in s.
 84 121.021(29).

85 2. Such retiree employed in violation of this subsection
 86 and any employing agency that knowingly employs or appoints such
 87 retiree shall be jointly and severally liable for reimbursement
 88 of any benefits paid to the retirement trust fund from which the
 89 benefits were paid, including the Florida Retirement System
 90 Trust Fund and the Public Employee Optional Retirement Program
 91 Trust Fund, as appropriate. To avoid liability, such employing
 92 agency shall have a written statement from the retiree that he
 93 or she is not retired from a state-administered retirement
 94 system.

95 Section 3. Paragraph (b) of subsection (6) of section
 96 121.35, Florida Statutes, is amended to read:

97 121.35 Optional retirement program for the State
 98 University System.--

99 (6) ADMINISTRATION OF PROGRAM.--

100 (b) After receiving and considering the recommendations of
 101 the State Board of Education, the department shall designate no
 102 more than five ~~four~~ companies from which contracts may be
 103 purchased under the program and shall approve the form and
 104 content of the optional retirement program contracts. Any
 105 domestic company which has been designated as of July 1, 2005,
 106 shall be included in the five companies until expiration of its

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107 existing contract with the department. The domestic company may
 108 assign its contract with the department to an affiliated
 109 qualified company which is wholly owned by the domestic
 110 company's parent company and which has assumed 100 percent of
 111 the responsibility for the contracts purchased from the domestic
 112 company. ~~Upon application by a qualified Florida domestic~~
 113 ~~company, the department shall give reasonable notice to all~~
 114 ~~other such companies that it intends to designate one of such~~
 115 ~~companies as a fifth company from which contracts may be~~
 116 ~~purchased pursuant to this section and that they may apply for~~
 117 ~~such designation prior to the deadline established by said~~
 118 ~~notice. At least 60 days after giving such notice and upon~~
 119 ~~receipt of the recommendation of the State Board of Education,~~
 120 ~~the department shall so designate one of such companies as the~~
 121 ~~fifth company from which such contracts may be purchased.~~

122 Section 4. Paragraphs (f) and (h) of subsection (2),
 123 paragraph (e) of subsection (4), paragraph (c) of subsection
 124 (8), and subsection (12) of section 121.4501, Florida Statutes,
 125 are amended, and subsections (20) and (21) are added to that
 126 section, to read:

127 121.4501 Public Employee Optional Retirement Program.--

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

129 (f) "Eligible employee" means an officer or employee, as
 130 defined in s. 121.021(11), who:

131 1. Is a member of, or is eligible for membership in, the
 132 Florida Retirement System, including any renewed member of the
 133 Florida Retirement System;

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134 2. Participates in, or is eligible to participate in, the
135 Senior Management Service Optional Annuity Program as
136 established under s. 121.055(6) or the State Community College
137 Optional Retirement Program as established under s.
138 121.051(2)(c); or

139 3. Is eligible to participate in, but does not participate
140 in, the State University System Optional Retirement Program
141 established under s. 121.35.

142
143 The term does not include any member participating in the
144 Deferred Retirement Option Program established under s.
145 121.091(13) or any employee participating in an optional
146 retirement program established under ~~s. 121.051(2)(c)~~ or s.
147 121.35.

148 (h) "Participant" means an eligible employee who elects to
149 participate in the Public Employee Optional Retirement Program
150 and enrolls in such optional program as provided in subsection
151 (4) or a terminated Deferred Retirement Option Program
152 participant as described in subsection (21).

153 (4) PARTICIPATION; ENROLLMENT.--

154 (e) After the period during which an eligible employee had
155 the choice to elect the defined benefit program or the Public
156 Employee Optional Retirement Program, or the month following the
157 receipt of the eligible employee's plan election ~~selection~~
158 ~~effective date~~, if sooner, the employee shall have one
159 opportunity, at the employee's discretion, to choose to move
160 from the defined benefit program to the Public Employee Optional
161 Retirement Program or from the Public Employee Optional

162 Retirement Program to the defined benefit program. Eligible
 163 employees may elect to move between Florida Retirement System
 164 programs only if they are earning service credit in an employer-
 165 employee relationship consistent with the requirements under s.
 166 121.021(17)(b), excluding leaves of absence without pay.
 167 Effective July 1, 2005, such elections shall be effective on the
 168 first day of the month following the receipt of the election by
 169 the third-party administrator and are not subject to the
 170 requirements regarding an employer-employee relationship or
 171 receipt of contributions for the eligible employee in the
 172 effective month, except that the employee must meet the
 173 conditions of the previous sentence when the election is
 174 received by the third-party administrator. This paragraph shall
 175 be contingent upon approval from the Internal Revenue Service
 176 for including the choice described herein within the programs
 177 offered by the Florida Retirement System.

178 1. If the employee chooses to move to the Public Employee
 179 Optional Retirement Program, the applicable provisions of this
 180 section shall govern the transfer.

181 2. If the employee chooses to move to the defined benefit
 182 program, the employee must transfer from his or her Public
 183 Employee Optional Retirement Program account and from other
 184 employee moneys as necessary, a sum representing the present
 185 value of that employee's accumulated benefit obligation
 186 immediately following the time of such movement, determined
 187 assuming that attained service equals the sum of service in the
 188 defined benefit program and service in the Public Employee
 189 Optional Retirement Program. Benefit commencement occurs on the

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190 first date the employee would become eligible for unreduced
 191 benefits, using the discount rate and other relevant actuarial
 192 assumptions that were used to value the Florida Retirement
 193 System defined benefit plan liabilities in the most recent
 194 actuarial valuation. For any employee who, at the time of the
 195 second election, already maintains an accrued benefit amount in
 196 the defined benefit plan, the then-present value of such accrued
 197 benefit shall be deemed part of the required transfer amount
 198 described in this subparagraph. The division shall ensure that
 199 the transfer sum is prepared using a formula and methodology
 200 certified by an enrolled actuary.

201 3. Notwithstanding subparagraph 2., an employee who
 202 chooses to move to the defined benefit program and who became
 203 eligible to participate in the Public Employee Optional
 204 Retirement Program by reason of employment in a regularly
 205 established position with a state employer after June 1, 2002; a
 206 district school board employer after September 1, 2002; or a
 207 local employer after December 1, 2002, must transfer from his or
 208 her Public Employee Optional Retirement Program account and,
 209 from other employee moneys as necessary, a sum representing that
 210 employee's actuarial accrued liability.

211 4. Employees' ability to transfer from the Florida
 212 Retirement System defined benefit program to the Public Employee
 213 Optional Retirement Program pursuant to paragraphs (a) through
 214 (d), and the ability for current employees to have an option to
 215 later transfer back into the defined benefit program under
 216 subparagraph 2., shall be deemed a significant system amendment.
 217 Pursuant to s. 121.031(4), any such resulting unfunded liability

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218 arising from actual original transfers from the defined benefit
 219 program to the optional program shall be amortized within 30
 220 plan years as a separate unfunded actuarial base independent of
 221 the reserve stabilization mechanism defined in s. 121.031(3)(f).
 222 For the first 25 years, no direct amortization payment shall be
 223 calculated for this base. During this 25-year period, such
 224 separate base shall be used to offset the impact of employees
 225 exercising their second program election under this paragraph.
 226 It is the legislative intent that the actuarial funded status of
 227 the Florida Retirement System defined benefit plan is neither
 228 beneficially nor adversely impacted by such second program
 229 elections in any significant manner, after due recognition of
 230 the separate unfunded actuarial base. Following this initial 25-
 231 year period, any remaining balance of the original separate base
 232 shall be amortized over the remaining 5 years of the required
 233 30-year amortization period.

234 (8) ADMINISTRATION OF PROGRAM.--

235 (c)1. In evaluating and selecting a third-party
 236 administrator, the board shall establish criteria under which it
 237 shall consider the relative capabilities and qualifications of
 238 each proposed administrator. In developing such criteria, the
 239 board shall consider:

240 a. The administrator's demonstrated experience in
 241 providing administrative services to public or private sector
 242 retirement systems.

243 b. The administrator's demonstrated experience in
 244 providing daily valued recordkeeping to defined contribution
 245 plans.

246 c. The administrator's ability and willingness to
 247 coordinate its activities with the Florida Retirement System
 248 employers, the board, and the division, and to supply to such
 249 employers, the board, and the division the information and data
 250 they require, including, but not limited to, monthly management
 251 reports, quarterly participant reports, and ad hoc reports
 252 requested by the department or board.

253 d. The cost-effectiveness and levels of the administrative
 254 services provided.

255 e. The administrator's ability to interact with the
 256 participants, the employers, the board, the division, and the
 257 providers; the means by which participants may access account
 258 information, direct investment of contributions, make changes to
 259 their accounts, transfer moneys between available investment
 260 vehicles, and transfer moneys between investment products; and
 261 any fees that apply to such activities.

262 f. Any other factor deemed necessary by the Trustees of
 263 the State Board of Administration.

264 ~~g. The recommendations of the Public Employee Optional~~
 265 ~~Retirement Program Advisory Committee established in subsection~~
 266 ~~(12).~~

267 2. In evaluating and selecting an educational provider,
 268 the board shall establish criteria under which it shall consider
 269 the relative capabilities and qualifications of each proposed
 270 educational provider. In developing such criteria, the board
 271 shall consider:

272 a. Demonstrated experience in providing educational
 273 services to public or private sector retirement systems.

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274 b. Ability and willingness to coordinate its activities
275 with the Florida Retirement System employers, the board, and the
276 division, and to supply to such employers, the board, and the
277 division the information and data they require, including, but
278 not limited to, reports on educational contacts.

279 c. The cost-effectiveness and levels of the educational
280 services provided.

281 d. Ability to provide educational services via different
282 media, including, but not limited to, the Internet, personal
283 contact, seminars, brochures, and newsletters.

284 e. Any other factor deemed necessary by the Trustees of
285 the State Board of Administration.

286 ~~f. The recommendations of the Public Employee Optional
287 Retirement Program Advisory Committee established in subsection
288 (12).~~

289 3. The establishment of the criteria shall be solely
290 within the discretion of the board.

291 (12) ADVISORY COUNCIL ~~COMMITTEES~~ TO PROVIDE ADVICE AND
292 ASSISTANCE.--The Investment Advisory Council shall assist the
293 board in implementing and administering the Public Employee
294 Optional Retirement Program. The Investment Advisory Council,
295 created pursuant to s. 215.444, shall review the board's initial
296 recommendations regarding the criteria to be used in selecting
297 and evaluating approved providers and investment products. The
298 council may provide comments on the recommendations to the board
299 within 45 days after receiving the initial recommendations. The
300 board shall make the final determination as to whether any

301 investment provider or product, any contractor, or any and all
 302 contract provisions shall be approved for the program.

303 (20) DESIGNATION OF BENEFICIARIES.--

304 (a) Each participant may, on a form provided for that
 305 purpose, signed and filed with the third-party administrator,
 306 designate a choice of one or more persons, named sequentially or
 307 jointly, as his or her beneficiary who shall receive the
 308 benefits, if any, which may be payable pursuant to this chapter
 309 in the event of the participant's death. If no beneficiary is
 310 named in this manner, or if no beneficiary designated by the
 311 participant survives the participant, the beneficiary shall be
 312 the spouse of the deceased, if living. If the participant's
 313 spouse is not alive at his or her death, the beneficiary shall
 314 be the living children of the participant. If no children
 315 survive, the beneficiary shall be the participant's father or
 316 mother, if living; otherwise, the beneficiary shall be the
 317 participant's estate. The beneficiary most recently designated
 318 by a participant on a form or letter filed with the third-party
 319 administrator shall be the beneficiary entitled to any benefits
 320 payable at the time of the participant's death. Notwithstanding
 321 any other provision in this subsection to the contrary, for a
 322 participant who dies prior to his or her effective date of
 323 retirement, the spouse at the time of death shall be the
 324 participant's beneficiary unless such participant designates a
 325 different beneficiary as provided in this subsection subsequent
 326 to the participant's most recent marriage.

327 (b) If a participant designates a primary beneficiary
 328 other than the participant's spouse, the participant's spouse

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329 must sign the beneficiary designation form to acknowledge the
 330 designation. This requirement does not apply to the designation
 331 of one or more contingent beneficiaries to receive benefits
 332 remaining upon the death of the primary beneficiary or
 333 beneficiaries.

334 (c) Notwithstanding the participant's designation of
 335 benefits to be paid through a trust to a beneficiary that is a
 336 natural person, and notwithstanding the provisions of the trust,
 337 benefits shall be paid directly to the beneficiary if such
 338 person is no longer a minor or incapacitated as defined in s.
 339 744.102(11) and (12).

340 (21) PARTICIPATION BY TERMINATED DEFERRED RETIREMENT
 341 OPTION PROGRAM PARTICIPANTS.--Notwithstanding any provision of
 342 law to the contrary, participants in the Deferred Retirement
 343 Option Program offered under part I may, after conclusion of
 344 their participation in the program, elect to roll over or
 345 authorize a direct trustee-to-trustee transfer to an account
 346 under the Public Employee Optional Retirement Program of their
 347 Deferred Retirement Option Program proceeds distributed as
 348 provided under s. 121.091(13)(c)5. The transaction must
 349 constitute an "eligible rollover distribution" within the
 350 meaning of s. 402(c)(4) of the Internal Revenue Code.

351 (a) The Public Employee Optional Retirement Program may
 352 accept such amounts for deposit into participant accounts as
 353 provided in paragraph (5)(c).

354 (b) The affected participant shall direct the investment
 355 of his or her investment account; however, unless he or she
 356 becomes a renewed member of the Florida Retirement System under

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357 | s. 121.122 and elects to participate in the Public Employee
 358 | Optional Retirement Program, employer contributions may not be
 359 | made to the participant's account as provided under paragraph
 360 | (5)(a).

361 | (c) The state board or the department is not responsible
 362 | for locating those persons who may be eligible to participate in
 363 | the Public Employee Optional Retirement Program under this
 364 | subsection.

365 | Section 5. Section 121.591, Florida Statutes, is amended
 366 | to read:

367 | 121.591 Benefits payable under the Public Employee
 368 | Optional Retirement Program of the Florida Retirement
 369 | System.--Benefits may not be paid under this section unless the
 370 | member has terminated employment as provided in s.
 371 | 121.021(39)(a) or is deceased and a proper application has been
 372 | filed in the manner prescribed by the state board or the
 373 | department. The state board or department, as appropriate, may
 374 | cancel an application for retirement benefits when the member or
 375 | beneficiary fails to timely provide the information and
 376 | documents required by this chapter and the rules of the state
 377 | board and department. In accordance with their respective
 378 | responsibilities as provided herein, the State Board of
 379 | Administration and the Department of Management Services shall
 380 | adopt rules establishing procedures for application for
 381 | retirement benefits and for the cancellation of such application
 382 | when the required information or documents are not received. The
 383 | State Board of Administration and the Department of Management
 384 | Services, as appropriate, are authorized to cash out a de

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385 | minimis account of a participant who has been terminated from
 386 | Florida Retirement System covered employment for a minimum of 6
 387 | calendar months. A de minimis account is an account containing
 388 | employer contributions and accumulated earnings of not more than
 389 | \$5,000 made under the provisions of this chapter. Such cash-out
 390 | must either be a complete lump-sum liquidation of the account
 391 | balance, subject to the provisions of the Internal Revenue Code,
 392 | or a lump-sum direct rollover distribution paid directly to the
 393 | custodian of an eligible retirement plan, as defined by the
 394 | Internal Revenue Code, on behalf of the participant. If any
 395 | financial instrument issued for the payment of retirement
 396 | benefits under this section is not presented for payment within
 397 | 180 days after the last day of the month in which it was
 398 | originally issued, the third-party administrator or other duly
 399 | authorized agent of the State Board of Administration shall
 400 | cancel the instrument and credit the amount of the instrument to
 401 | the suspense account of the Public Employee Optional Retirement
 402 | Program Trust Fund authorized under s. 121.4501(6). Any such
 403 | amounts transferred to the suspense account are payable upon a
 404 | proper application, not to include earnings thereon, as provided
 405 | in this section, within 10 years after the last day of the month
 406 | in which the instrument was originally issued, after which time
 407 | such amounts and any earnings thereon shall be forfeited. Any
 408 | such forfeited amounts are assets of the Public Employee
 409 | Optional Retirement Program Trust Fund and are not subject to
 410 | the provisions of chapter 717.

411 | (1) NORMAL BENEFITS.--Under the Public Employee Optional
 412 | Retirement Program:

413 (a) Benefits in the form of vested accumulations as
 414 described in s. 121.4501(6) shall be payable under this
 415 subsection in accordance with the following terms and
 416 conditions:

417 1. To the extent vested, benefits shall be payable only to
 418 a participant.

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

422 3. To receive benefits under this subsection, the
 423 participant must be terminated from all employment with all
 424 Florida Retirement System employers, as provided in s.
 425 121.021(39).

426 4. Benefit payments may not be made until the participant
 427 has been terminated for 3 calendar months, except that the board
 428 may authorize by rule for the distribution of up to 10 percent
 429 of the participant's account after the participant has been
 430 terminated for 1 calendar month if the participant has reached
 431 the normal retirement requirements of the defined benefit plan,
 432 as provided in s. 121.021(29).

433 (b) If a participant elects to receive his or her benefits
 434 upon termination of employment, the participant must submit a
 435 written application or an equivalent form to the third-party
 436 administrator indicating his or her preferred distribution date
 437 and selecting an authorized method of distribution as provided
 438 in paragraph (c). The participant may defer receipt of benefits
 439 until he or she chooses to make such application, subject to
 440 federal requirements.

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441 (c) Upon receipt by the third-party administrator of a
 442 properly executed application for distribution of benefits, the
 443 total accumulated benefit shall be payable to the participant,
 444 as:

- 445 1. A lump-sum distribution to the participant;
- 446 2. A lump-sum direct rollover distribution whereby all
 447 accrued benefits, plus interest and investment earnings, are
 448 paid from the participant's account directly to the custodian of
 449 an eligible retirement plan, as defined in s. 402(c)(8)(B) of
 450 the Internal Revenue Code, on behalf of the participant; or
- 451 3. Periodic distributions, as authorized by the state
 452 board.

453 (2) DISABILITY RETIREMENT BENEFITS.--Benefits provided
 454 under this subsection are payable in lieu of the benefits which
 455 would otherwise be payable under the provisions of subsection
 456 (1). Such benefits shall be funded entirely from employer
 457 contributions made under s. 121.571, transferred participant
 458 funds accumulated pursuant to paragraph (a), and interest and
 459 earnings thereon. Pursuant thereto:

460 (a) Transfer of funds.--To qualify to receive monthly
 461 disability benefits under this subsection:

- 462 1. All moneys accumulated in the participant's Public
 463 Employee Optional Retirement Program accounts, including vested
 464 and nonvested accumulations as described in s. 121.4501(6),
 465 shall be transferred from such individual accounts to the
 466 Division of Retirement for deposit in the disability account of
 467 the Florida Retirement System Trust Fund. Such moneys shall be
 468 separately accounted for. Earnings shall be credited on an

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469 annual basis for amounts held in the disability accounts of the
470 Florida Retirement System Trust Fund based on actual earnings of
471 the Florida Retirement System Trust Fund.

472 2. If the participant has retained retirement credit he or
473 she had earned under the defined benefit program of the Florida
474 Retirement System as provided in s. 121.4501(3)(b), a sum
475 representing the actuarial present value of such credit within
476 the Florida Retirement System Trust Fund shall be reassigned by
477 the Division of Retirement from the defined benefit program to
478 the disability program as implemented under this subsection and
479 shall be deposited in the disability account of the Florida
480 Retirement System Trust Fund. Such moneys shall be separately
481 accounted for.

482 (b) Disability retirement; entitlement.--

483 1. A participant of the Public Employee Optional
484 Retirement Program who becomes totally and permanently disabled,
485 as defined in s. 121.091(4)(b), after completing 8 years of
486 creditable service, or a participant who becomes totally and
487 permanently disabled in the line of duty regardless of his or
488 her length of service, shall be entitled to a monthly disability
489 benefit as provided herein.

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

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

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

502 c. If the participant has elected to transfer to his or
503 her participant accounts a sum representing the present value of
504 his or her retirement credit under the defined benefit program
505 as provided under s. 121.4501(3)(c), the period of service under
506 the defined benefit program represented in the present value
507 amounts transferred will be considered creditable service for
508 purposes of vesting for disability benefits, except as provided
509 in subparagraph d.

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

514 (c) Disability retirement effective date.--The effective
515 retirement date for a participant who applies and is approved
516 for disability retirement shall be established as provided under
517 s. 121.091(4)(a)2. and 3.

518 (d) Total and permanent disability.--A participant shall
519 be considered totally and permanently disabled if, in the
520 opinion of the division, he or she is prevented, by reason of a
521 medically determinable physical or mental impairment, from

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522 rendering useful and efficient service as an officer or
523 employee.

524 (e) Proof of disability.--The division, before approving
525 payment of any disability retirement benefit, shall require
526 proof that the participant is totally and permanently disabled
527 in the same manner as provided for members of the defined
528 benefit program of the Florida Retirement System under s.
529 121.091(4)(c).

530 (f) Disability retirement benefit.--Upon the disability
531 retirement of a participant under this subsection, the
532 participant shall receive a monthly benefit that shall begin to
533 accrue on the first day of the month of disability retirement,
534 as approved by the division, and shall be payable on the last
535 day of that month and each month thereafter during his or her
536 lifetime and continued disability. All disability benefits
537 payable to such member shall be paid out of the disability
538 account of the Florida Retirement System Trust Fund established
539 under this subsection.

540 (g) Computation of disability retirement benefit.--The
541 amount of each monthly payment shall be calculated in the same
542 manner as provided for members of the defined benefit program of
543 the Florida Retirement System under s. 121.091(4)(f). For such
544 purpose, creditable service under both the defined benefit
545 program and the Public Employee Optional Retirement Program of
546 the Florida Retirement System shall be applicable as provided
547 under paragraph (b).

548 (h) Reapplication.--A participant whose initial
549 application for disability retirement has been denied may

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550 reapply for disability benefits in the same manner, and under
 551 the same conditions, as provided for members of the defined
 552 benefit program of the Florida Retirement System under s.
 553 121.091(4)(g).

554 (i) Membership.--Upon approval of an application for
 555 disability benefits under this subsection, the applicant shall
 556 be transferred to the defined benefit program of the Florida
 557 Retirement System, effective upon his or her disability
 558 retirement effective date.

559 (j) Option to cancel.--Any participant whose application
 560 for disability benefits is approved may cancel his or her
 561 application for disability benefits, provided that the
 562 cancellation request is received by the division before a
 563 disability retirement warrant has been deposited, cashed, or
 564 received by direct deposit. Upon such cancellation:

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

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

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

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

575 (k) Recovery from disability.--

576 1. The division may require periodic reexaminations at the
 577 expense of the disability program account of the Florida

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578 Retirement System Trust Fund. Except as otherwise provided in
 579 subparagraph 2., the requirements, procedures, and restrictions
 580 relating to the conduct and review of such reexaminations,
 581 discontinuation or termination of benefits, reentry into
 582 employment, disability retirement after reentry into covered
 583 employment, and all other matters relating to recovery from
 584 disability shall be the same as are set forth under s.
 585 121.091(4)(h).

586 2. Upon recovery from disability, any recipient of
 587 disability retirement benefits under this subsection shall be a
 588 compulsory member of the Public Employee Optional Retirement
 589 Program of the Florida Retirement System. The net difference
 590 between the recipient's original account balance transferred to
 591 the Florida Retirement System Trust Fund, including earnings,
 592 under paragraph (a) and total disability benefits paid to such
 593 recipient, if any, shall be determined as provided in sub-
 594 subparagraph a.

595 a. An amount equal to the total benefits paid shall be
 596 subtracted from that portion of the transferred account balance
 597 consisting of vested accumulations as described under s.
 598 121.4501(6), if any, and an amount equal to the remainder of
 599 benefit amounts paid, if any, shall then be subtracted from any
 600 remaining portion consisting of nonvested accumulations as
 601 described under s. 121.4501(6).

602 b. Amounts subtracted under sub-subparagraph a. shall be
 603 retained within the disability account of the Florida Retirement
 604 System Trust Fund. Any remaining account balance shall be
 605 transferred to the third-party administrator for disposition as

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606 provided under sub-subparagraph c. or sub-subparagraph d., as
607 appropriate.

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

613 d. If the recipient fails to return to covered employment
614 upon recovery from disability:

615 (I) Any remaining vested amount shall be deposited in
616 individual accounts under the Public Employee Optional
617 Retirement Program, as directed by the participant, and shall be
618 payable as provided in subsection (1).

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

622 3. If present value was reassigned from the defined
623 benefit program to the disability program of the Florida
624 Retirement System as provided under subparagraph (a)2., the full
625 present value amount shall be returned to the defined benefit
626 account within the Florida Retirement System Trust Fund and the
627 affected individual's associated retirement credit under the
628 defined benefit program shall be reinstated in full. Any benefit
629 based upon such credit shall be calculated as provided in s.
630 121.091(4)(h)1.

631 (1) Nonadmissible causes of disability.--A participant
632 shall not be entitled to receive a disability retirement benefit

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633 | if the disability results from any injury or disease sustained
634 | or inflicted as described in s. 121.091(4)(i).

635 | (m) Disability retirement of justice or judge by order of
636 | Supreme Court.--

637 | 1. If a participant is a justice of the Supreme Court,
638 | judge of a district court of appeal, circuit judge, or judge of
639 | a county court who has served for 6 years or more as an elected
640 | constitutional judicial officer, including service as a judicial
641 | officer in any court abolished pursuant to Art. V of the State
642 | Constitution, and who is retired for disability by order of the
643 | Supreme Court upon recommendation of the Judicial Qualifications
644 | Commission pursuant to the provisions of Art. V of the State
645 | Constitution, the participant's Option 1 monthly disability
646 | benefit amount as provided in s. 121.091(6)(a)1. shall be two-
647 | thirds of his or her monthly compensation as of the
648 | participant's disability retirement date. Such a participant
649 | may alternatively elect to receive an actuarially adjusted
650 | disability retirement benefit under any other option as provided
651 | in s. 121.091(6)(a), or to receive the normal benefit payable
652 | under the Public Employee Optional Retirement Program as set
653 | forth in subsection (1).

654 | 2. If any justice or judge who is a participant of the
655 | Public Employee Optional Retirement Program of the Florida
656 | Retirement System is retired for disability by order of the
657 | Supreme Court upon recommendation of the Judicial Qualifications
658 | Commission pursuant to the provisions of Art. V of the State
659 | Constitution and elects to receive a monthly disability benefit
660 | under the provisions of this paragraph:

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

666 b. The monthly benefits payable under this paragraph for
667 any affected justice or judge retired from the Florida
668 Retirement System pursuant to Art. V of the State Constitution
669 shall be paid from the disability account of the Florida
670 Retirement System Trust Fund.

671 (n) Death of retiree or beneficiary.--Upon the death of a
672 disabled retiree or beneficiary thereof who is receiving monthly
673 benefits under this subsection, the monthly benefits shall be
674 paid through the last day of the month of death and shall
675 terminate, or be adjusted, if applicable, as of that date in
676 accordance with the optional form of benefit selected at the
677 time of retirement. The Department of Management Services may
678 adopt rules necessary to administer this paragraph.

679 (3) DEATH BENEFITS.--Under the Public Employee Optional
680 Retirement Program:

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

683 1. To the extent vested, benefits shall be payable only to
684 a participant's beneficiary or beneficiaries as designated by
685 the participant as provided in s. 121.4501(20). ~~If a participant~~
686 ~~designates a primary beneficiary other than the participant's~~
687 ~~spouse, the participant's spouse shall be notified of the~~
688 ~~designation. This requirement shall not apply to the designation~~

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689 ~~of one or more contingent beneficiaries to receive any benefits~~
 690 ~~remaining upon the death of the primary beneficiary or~~
 691 ~~beneficiaries.~~

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

695 3. To receive benefits under this subsection, the
 696 participant must be deceased.

697 (b) In the event of a participant's death, all vested
 698 accumulations as described in s. 121.4501(6), less withholding
 699 taxes remitted to the Internal Revenue Service, shall be
 700 distributed, as provided in paragraph (c) or as described in s.
 701 121.4501(20), ~~to the participant's designated beneficiary or~~
 702 ~~beneficiaries, or to the participant's estate~~, as if the
 703 participant retired on the date of death. No other death
 704 benefits shall be available for survivors of participants under
 705 the Public Employee Optional Retirement Program, except for such
 706 benefits, or coverage for such benefits, as are otherwise
 707 provided by law or are separately afforded by the employer, at
 708 the employer's discretion.

709 (c) Upon receipt by the third-party administrator of a
 710 properly executed application for distribution of benefits, the
 711 total accumulated benefit shall be payable by the third-party
 712 administrator to the participant's surviving beneficiary or
 713 beneficiaries, as:

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

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

722 3. A partial lump-sum payment whereby a portion of the
723 accrued benefit is paid to the deceased participant's surviving
724 spouse or other designated beneficiaries, less withholding taxes
725 remitted to the Internal Revenue Service, and the remaining
726 amount is transferred directly to the custodian of an eligible
727 retirement plan, as described in s. 402(c)(8)(B) of the Internal
728 Revenue Code, on behalf of the surviving spouse. The proportions
729 must be specified by the participant or the surviving
730 beneficiary.

731
732 This paragraph does not abrogate other applicable provisions of
733 state or federal law providing for payment of death benefits.

734 (4) LIMITATION ON LEGAL PROCESS.--The benefits payable to
735 any person under the Public Employee Optional Retirement
736 Program, and any contributions accumulated under such program,
737 are not subject to assignment, execution, attachment, or any
738 legal process, except for qualified domestic relations orders by
739 a court of competent jurisdiction, income deduction orders as
740 provided in s. 61.1301, and federal income tax levies.

741 Section 6. Paragraph (k) is added to subsection (2) of
742 section 215.47, Florida Statutes, to read:

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743 215.47 Investments; authorized securities; loan of
744 securities.--Subject to the limitations and conditions of the
745 State Constitution or of the trust agreement relating to a trust
746 fund, moneys available for investments under ss. 215.44-215.53
747 may be invested as follows:

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

749 (k) Asset-backed securities not otherwise authorized by
750 this section.

751 Section 7. This act shall take effect July 1, 2005.