

By Senator Deutch

30-00746A-09

20092488\_\_

1                                   A bill to be entitled  
 2           An act relating to investment products for public  
 3           employees; amending ss. 112.215, 121.055, 121.35,  
 4           121.4501, 175.071, 185.06, 218.415, and 1012.875,  
 5           F.S.; requiring public employee deferred compensation  
 6           plans, the state employee Senior Management Service  
 7           Optional Annuity Program, the State University  
 8           Optional Retirement Program, the Public Employee  
 9           Optional Retirement Program, firefighters' pension  
 10          plans, police officers retirement trust funds, local  
 11          government investment plans, and the State Community  
 12          College System Optional Retirement Program to identify  
 13          and divest of any scrutinized companies by a certain  
 14          date; providing an effective date.

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

18           Section 1. Paragraph (f) is added to subsection (4) of  
 19           section 112.215, Florida Statutes, to read:

20           112.215 Government employees; deferred compensation  
 21           program.—

22           (4)

23           (f) As provided in s. 215.473, the governing body of each  
 24           investment provider participating in an approved deferred  
 25           compensation plan shall identify and publicly report any direct  
 26           or indirect holdings it may have in any scrutinized company, as  
 27           defined in that section, and proceed to sell, redeem, divest, or  
 28           withdraw all publicly traded securities it may have in such  
 29           company beginning January 1, 2010. The divestiture of any such

30-00746A-09

20092488

30 security must be completed by March 1, 2010. The governing body  
31 and its named officers or investment advisors may not be deemed  
32 to have breached their fiduciary duty in any action taken to  
33 dispose of any such security, and the investment provider shall  
34 have satisfactorily discharged the fiduciary duties of loyalty,  
35 prudence, and sole and exclusive benefit to employees and their  
36 beneficiaries if the actions it takes are consistent with the  
37 duties imposed by s. 215.473, and the manner of the disposition,  
38 if any, is reasonable as to the means chosen. For the purposes  
39 of effecting compliance with that section, the Chief Financial  
40 Officer shall designate terror-free plans that allocate their  
41 funds among securities not subject to divestiture. No person may  
42 bring any civil, criminal, or administrative action against an  
43 investment provider or any employee, officer, director, or  
44 trustee of such provider based upon the divestiture of any  
45 security pursuant to this paragraph.

46 Section 2. Paragraph (f) of subsection (6) of section  
47 121.055, Florida Statutes, is amended to read:

48 121.055 Senior Management Service Class.—There is hereby  
49 established a separate class of membership within the Florida  
50 Retirement System to be known as the "Senior Management Service  
51 Class," which shall become effective February 1, 1987.

52 (6)

53 (f) *Administration.*—

54 1. The Senior Management Service Optional Annuity Program  
55 ~~authorized by this section~~ shall be administered by the  
56 department. The department shall designate one or more provider  
57 companies from which annuity contracts may be purchased under  
58 the program and shall approve the form and content of the

30-00746A-09

20092488\_\_

59 contracts. The department shall sign a contract with each of the  
60 provider companies and shall evaluate the performance of the  
61 provider companies on a continuing basis. The department may  
62 terminate the services of a provider company for reasons stated  
63 in the contract. The department shall adopt rules establishing  
64 its responsibilities and the responsibilities of employers in  
65 administering the optional annuity program.

66 2. Effective July 1, 1997, the State Board of  
67 Administration shall review and make recommendations to the  
68 department on the acceptability of all investment products  
69 proposed by provider companies of the optional annuity program  
70 before such products are offered through annuity contracts to  
71 the participants and may advise the department of any changes  
72 deemed necessary to ensure that the optional annuity program  
73 offers an acceptable mix of investment products. The department  
74 shall make the final determination as to whether an investment  
75 product will be approved for the program.

76 3. The provisions of each contract ~~applicable to a~~  
77 ~~participant in the Senior Management Service Optional Annuity~~  
78 ~~Program~~ shall be contained in a written program description  
79 which includes ~~shall include~~ a report of pertinent financial and  
80 actuarial information on the solvency and actuarial soundness of  
81 the program and the benefits applicable to the participant. Such  
82 description shall be furnished by the company or companies to  
83 each participant in the program and to the department upon  
84 commencement of participation in the program and annually  
85 thereafter.

86 4. The department shall ensure that each participant in the  
87 ~~Senior Management Service Optional Annuity~~ program is provided

30-00746A-09

20092488\_\_

88 an accounting of the total contribution and the annual  
89 contribution made by and on behalf of such participants.

90 5. As provided in s. 215.473, the governing body of each  
91 provider company shall identify and publicly report any direct  
92 or indirect holdings it may have in any scrutinized company, as  
93 defined in that section, and proceed to sell, redeem, divest, or  
94 withdraw all publicly traded securities it may have in such  
95 company beginning January 1, 2010. The divestiture of any such  
96 security must be completed by March 1, 2010. The governing body  
97 and its named officers or investment advisors may not be deemed  
98 to have breached their fiduciary duty in any action taken to  
99 dispose of any such security, and the approved provider shall  
100 have satisfactorily discharged the fiduciary duties of loyalty,  
101 prudence, and sole and exclusive benefit to participating  
102 employees and their beneficiaries if the actions it takes are  
103 consistent with the duties imposed by s. 215.473, and the manner  
104 of the disposition, if any, is reasonable as to the means  
105 chosen. For the purposes of effecting compliance with that  
106 section, the department shall designate terror-free plans that  
107 allocate their funds among securities not subject to  
108 divestiture. No person may bring any civil, criminal, or  
109 administrative action against a provider company or any  
110 employee, officer, director, or trustee of such provider based  
111 upon the divestiture of any security pursuant to this paragraph.

112 Section 3. Paragraph (f) is added to subsection (6) of  
113 section 121.35, Florida Statutes, to read:

114 121.35 Optional retirement program for the State University  
115 System.—

116 (6) ADMINISTRATION OF PROGRAM.—

30-00746A-09

20092488

117 (f) As provided in s. 215.473, the governing body of each  
118 provider company shall identify and publicly report any direct  
119 or indirect holdings it may have in any scrutinized company, as  
120 defined in that section, and proceed to sell, redeem, divest, or  
121 withdraw all publicly traded securities it may have in such  
122 company beginning January 1, 2010. The divestiture of any such  
123 security must be completed by March 1, 2010. The governing body  
124 and its named officers or investment advisors may not be deemed  
125 to have breached their fiduciary duty in any action taken to  
126 dispose of any such security, and the approved provider shall  
127 have satisfactorily discharged the fiduciary duties of loyalty,  
128 prudence, and sole and exclusive benefit to program participants  
129 and their beneficiaries if the actions it takes are consistent  
130 with the duties imposed by s. 215.473, and the manner of the  
131 disposition, if any, is reasonable as to the means chosen. For  
132 the purposes of effecting compliance with that section, the  
133 department shall designate terror-free plans that allocate their  
134 funds among securities not subject to divestiture. No person may  
135 bring any civil, criminal, or administrative action against a  
136 provider company or any employee, officer, director, or trustee  
137 of such provider based upon the divestiture of any security  
138 pursuant to this paragraph.

139 Section 4. Present paragraphs (d), (e), and (f) of  
140 subsection (9) of section 121.4501, Florida Statutes, are  
141 redesignated as paragraphs (e), (f), and (g), respectively, and  
142 a new paragraph (d) is added to that subsection, to read:

143 121.4501 Public Employee Optional Retirement Program.—

144 (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE REVIEW.—

145 (d) As provided in s. 215.473, the governing body of each

30-00746A-09

20092488

146 approved provider shall identify and publicly report any direct  
147 or indirect holdings it may have in any scrutinized company, as  
148 defined in that section, and proceed to sell, redeem, divest, or  
149 withdraw all publicly traded securities it may have in such  
150 company beginning January 1, 2010. The divestiture of any such  
151 security must be completed by March 1, 2010. The governing body  
152 and its named officers or investment advisors may not be deemed  
153 to have breached their fiduciary duty in any action taken to  
154 dispose of any such security, and the approved provider shall  
155 have satisfactorily discharged the fiduciary duties of loyalty,  
156 prudence, and sole and exclusive benefit to program participants  
157 and their beneficiaries if the actions it takes are consistent  
158 with the duties imposed by s. 215.473, and the manner of the  
159 disposition, if any, is reasonable as to the means chosen. For  
160 the purposes of effecting compliance with that section, the  
161 state board shall designate terror-free plans that allocate  
162 their funds among securities not subject to divestiture. No  
163 person may bring any civil, criminal, or administrative action  
164 against an approved provider or any employee, officer, director,  
165 or trustee of such provider based upon the divestiture of any  
166 security pursuant to this paragraph.

167 Section 5. Paragraph (f) is added to subsection (1) of  
168 section 175.071, Florida Statutes, to read:

169 175.071 General powers and duties of board of trustees.—For  
170 any municipality, special fire control district, chapter plan,  
171 local law municipality, local law special fire control district,  
172 or local law plan under this chapter:

173 (1) The board of trustees may:

174 (f) Notwithstanding paragraph (b) and as provided in s.

30-00746A-09

20092488

175 215.473, identify and publicly report any direct or indirect  
176 holdings it may have in any scrutinized company, as defined in  
177 that section, and proceed to sell, redeem, divest, or withdraw  
178 all publicly traded securities it may have in such company  
179 beginning January 1, 2010. The divestiture of any such security  
180 must be completed by March 1, 2010. The board and its named  
181 officers or investment advisors may not be deemed to have  
182 breached their fiduciary duty in any action taken to dispose of  
183 any such security, and the board shall have satisfactorily  
184 discharged the fiduciary duties of loyalty, prudence, and sole  
185 and exclusive benefit to the participants of the pension fund  
186 and their beneficiaries if the actions it takes are consistent  
187 with the duties imposed by s. 215.473, and the manner of the  
188 disposition, if any, is reasonable as to the means chosen. For  
189 the purposes of effecting compliance with that section, the  
190 pension fund shall designate terror-free plans that allocate  
191 their funds among securities not subject to divestiture. No  
192 person may bring any civil, criminal, or administrative action  
193 against the board of trustees or any employee, officer,  
194 director, or advisor of such pension fund based upon the  
195 divestiture of any security pursuant to this paragraph.

196 Section 6. Paragraph (g) is added to subsection (1) of  
197 section 185.06, Florida Statutes, to read:

198 185.06 General powers and duties of board of trustees.—For  
199 any municipality, chapter plan, local law municipality, or local  
200 law plan under this chapter:

201 (1) The board of trustees may:

202 (g) Notwithstanding paragraph (b) and as provided in s.  
203 215.473, identify and publicly report any direct or indirect

30-00746A-09

20092488

204 holdings it may have in any scrutinized company, as defined in  
205 that section, and proceed to sell, redeem, divest, or withdraw  
206 all publicly traded securities it may have in such company  
207 beginning January 1, 2010. The divestiture of any such security  
208 must be completed by March 1, 2010. The board and its named  
209 officers or investment advisors may not be deemed to have  
210 breached their fiduciary duty in any action taken to dispose of  
211 any such security, and the board shall have satisfactorily  
212 discharged the fiduciary duties of loyalty, prudence, and sole  
213 and exclusive benefit to the participants of the pension fund  
214 and their beneficiaries if the actions it takes are consistent  
215 with the duties imposed by s. 215.473, and the manner of the  
216 disposition, if any, is reasonable as to the means chosen. For  
217 the purposes of effecting compliance with that section, the  
218 pension fund shall designate terror-free plans that allocate  
219 their funds among securities not subject to divestiture. No  
220 person may bring any civil, criminal, or administrative action  
221 against the board of trustees or any employee, officer,  
222 director, or advisor of such pension fund based upon the  
223 divestiture of any security pursuant to this paragraph.

224 Section 7. Subsection (19) of section 218.415, Florida  
225 Statutes, is amended to read:

226 218.415 Local government investment policies.—Investment  
227 activity by a unit of local government must be consistent with a  
228 written investment plan adopted by the governing body, or in the  
229 absence of the existence of a governing body, the respective  
230 principal officer of the unit of local government and maintained  
231 by the unit of local government or, in the alternative, such  
232 activity must be conducted in accordance with subsection (17).



30-00746A-09

20092488

233 Any such unit of local government shall have an investment  
234 policy for any public funds in excess of the amounts needed to  
235 meet current expenses as provided in subsections (1)-(16), or  
236 shall meet the alternative investment guidelines contained in  
237 subsection (17). Such policies shall be structured to place the  
238 highest priority on the safety of principal and liquidity of  
239 funds. The optimization of investment returns shall be secondary  
240 to the requirements for safety and liquidity. Each unit of local  
241 government shall adopt policies that are commensurate with the  
242 nature and size of the public funds within its custody.

243 (19) SALE OF SECURITIES.—

244 (a) When the invested funds are needed in whole or in part  
245 for the purposes originally intended or for more optimal  
246 investments, the unit of local government's governing body may  
247 sell such investments at the then-prevailing market price and  
248 place the proceeds into the proper account or fund of the unit  
249 of local government.

250 (b) Notwithstanding subsections (16) and (17) and as  
251 provided in s. 215.473, the local government shall identify and  
252 publicly report any direct or indirect holdings it may have in  
253 any scrutinized company, as defined in that section, and proceed  
254 to sell, redeem, divest, or withdraw all publicly traded  
255 securities it may have in such company beginning January 1,  
256 2010. The divestiture of any such security must be completed by  
257 March 1, 2010. The governing body and its named officers or  
258 investment advisors may not be deemed to have breached their  
259 fiduciary duty in any action taken to dispose of any such  
260 security, and the local government shall have satisfactorily  
261 discharged the fiduciary duties of loyalty, prudence, and sole

30-00746A-09

20092488

262 and exclusive benefit to the local government and the public if  
263 the actions it takes are consistent with the duties imposed by  
264 s. 215.473, and the manner of the disposition, if any, is  
265 reasonable as to the means chosen. For the purposes of effecting  
266 compliance with that section, the local government shall  
267 designate terror-free plans that allocate their funds among  
268 securities not subject to divestiture. No person may bring any  
269 civil, criminal, or administrative action against a local  
270 government or any employee, officer, director, or advisor of  
271 such government based upon the divestiture of any security  
272 pursuant to this paragraph.

273 Section 8. Paragraph (f) is added to subsection (6) of  
274 section 1012.875, Florida Statutes, to read:

275 1012.875 State Community College System Optional Retirement  
276 Program.—Each community college may implement an optional  
277 retirement program, if such program is established therefor  
278 pursuant to s. 1001.64(20), under which annuity or other  
279 contracts providing retirement and death benefits may be  
280 purchased by, and on behalf of, eligible employees who  
281 participate in the program, in accordance with s. 403(b) of the  
282 Internal Revenue Code. Except as otherwise provided herein, this  
283 retirement program, which shall be known as the State Community  
284 College System Optional Retirement Program, may be implemented  
285 and administered only by an individual community college or by a  
286 consortium of community colleges.

287 (6)

288 (f) As provided in s. 215.473, the governing body of each  
289 provider company shall identify and publicly report any direct  
290 or indirect holdings it may have in any scrutinized company, as

30-00746A-09

20092488\_\_

291 defined in that section, and proceed to sell, redeem, divest, or  
292 withdraw all publicly traded securities it may have in such  
293 company beginning January 1, 2010. The divestiture of any such  
294 security must be completed by March 1, 2010. The governing body  
295 and its named officers or investment advisors may not be deemed  
296 to have breached their fiduciary duty in any action taken to  
297 dispose of any such security, and the approved provider shall  
298 have satisfactorily discharged the fiduciary duties of loyalty,  
299 prudence, and sole and exclusive benefit to program participants  
300 and their beneficiaries if the actions it takes are consistent  
301 with the duties imposed by s. 215.473, and the manner of the  
302 disposition, if any, is reasonable as to the means chosen. For  
303 the purposes of effecting compliance with that section, the  
304 program administrator shall designate terror-free plans that  
305 allocate their funds among securities not subject to  
306 divestiture. No person may bring any civil, criminal, or  
307 administrative action against a provider company or any  
308 employee, officer, director, or trustee of such provider based  
309 upon the divestiture of any security pursuant to this paragraph.

310 Section 9. This act shall take effect July 1, 2009.