

By Senator Fasano

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1 A bill to be entitled
2 An act relating to the defined contribution retirement
3 program; amending s. 121.4501, F.S.; changing the name
4 of the Public Employee Optional Retirement Program to
5 the Public Employee Retirement Investment Program;
6 limiting the option of enrolling in the State
7 Retirement System's defined benefit program or defined
8 contribution program to public employees employed
9 before January 1, 2010; requiring public employees
10 employed on or after January 1, 2010, to enroll in the
11 defined contribution program; deleting obsolete
12 provisions relating to the 2002 optional transfer of
13 public employees from the defined benefit program to
14 the defined contribution program; deleting
15 requirements for an educational program that compares
16 retirement programs; amending s. 121.4502, F.S.;
17 changing the name of the Public Employee Optional
18 Retirement Program Trust Fund to the Public Employee
19 Retirement Investment Program Trust Fund; amending ss.
20 110.123, 112.0801, 112.363, 112.65, 121.021, 121.051,
21 121.35, 121.71, 121.72, 121.73, 121.74, 121.77, and
22 121.78, F.S.; conforming cross-references;
23 substituting references to the defined contribution
24 program for references to the Public Employee Optional
25 Retirement Program; amending ss. 121.091, 121.4503,
26 121.571, 121.591, and 121.5911, F.S.; conforming
27 cross-references; substituting the name of the Public
28 Employee Retirement Investment Program and the Public
29 Employee Retirement Investment Program Trust Fund;

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30 amending s. 121.055, F.S.; conforming changes relating
 31 to the name of the Florida Employee Retirement
 32 Investment Program and deleting obsolete provisions;
 33 amending s. 121.70, F.S.; changing the name of the
 34 Public Employee Optional Retirement Program to the
 35 defined contribution program; deleting provisions
 36 relating to having a choice in retirement plans;
 37 providing a directive to the Division of Statutory
 38 Revision; providing an effective date.

39
 40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. Section 121.4501, Florida Statutes, is amended
 43 to read:

44 121.4501 Public Employee ~~Optional~~ Retirement Investment
 45 Program.—

46 (1) The Trustees of the State Board of Administration shall
 47 establish a ~~an optional~~ defined contribution ~~retirement~~ program
 48 called the Public Employee Retirement Investment Program for
 49 members of the Florida Retirement System under which retirement
 50 benefits will be provided for eligible employees employed before
 51 January 1, 2010, who elect to participate in the program, and
 52 for all eligible employees employed on or after January 1, 2010.
 53 The retirement benefits ~~to be provided for or on behalf of~~
 54 ~~participants in such optional retirement program~~ shall be
 55 provided through employee-directed investments, in accordance
 56 with s. 401(a) of the Internal Revenue Code and ~~its~~ related
 57 regulations. The employer ~~employers~~ shall make contributions
 58 ~~contribute~~, as provided in this section and ~~7~~ ss. 121.571~~7~~ and

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59 121.71, to the Public Employee ~~Optional~~ Retirement Investment
60 Program Trust Fund toward the funding of ~~such optional~~ benefits.

61 (2) DEFINITIONS.—As used in this part, the term:

62 (a) "Approved provider" or "provider" means a private
63 sector company that is selected and approved by the state board
64 to offer one or more investment products or services to the
65 investment ~~Public Employee Optional Retirement~~ program. The term
66 includes a bundled provider that offers participants a range of
67 individually allocated or unallocated investment products and
68 may offer a range of administrative and customer services, which
69 may include accounting and administration of individual
70 participant benefits and contributions; individual participant
71 recordkeeping; asset purchase, control, and safekeeping; direct
72 execution of the participant's instructions as to asset and
73 contribution allocation; calculation of daily net asset values;
74 direct access to participant account information; periodic
75 reporting to participants, at least quarterly, on account
76 balances and transactions; guidance, advice, and allocation
77 services directly relating to the provider's ~~its own~~ investment
78 options or products, but only if the bundled provider complies
79 with the standard of care of s. 404(a)(1)(A-B) of the Employee
80 Retirement Income Security Act of 1974 (ERISA), and if providing
81 such guidance, advice, or allocation services does not
82 constitute a prohibited transaction under s. 4975(c)(1) of the
83 Internal Revenue Code or s. 406 of ERISA, notwithstanding that
84 such prohibited transaction provisions do not apply to the
85 ~~optional~~ retirement program; a broad array of distribution
86 options; asset allocation; and retirement counseling and
87 education. Private sector companies include investment

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88 management companies, insurance companies, depositories, and
89 mutual fund companies.

90 (b) "Average monthly compensation" means one-twelfth of
91 average final compensation as defined in s. 121.021(24).

92 (c) "Covered employment" means employment in a regularly
93 established position as defined in s. 121.021(52).

94 (d) "Defined benefit program" means the defined benefit
95 program of the Florida Retirement System as administered under
96 part I of this chapter ~~"Department" means the Department of~~
97 ~~Management Services.~~

98 (e) "District school board employer" means a district
99 school board that participates in the Florida Retirement System
100 for the benefit of certain employees, or a charter school or
101 charter technical career center that participates in the Florida
102 Retirement System as provided under s. 121.051(2)(d).

103 (f) ~~(e)~~ "Division" means the Division of Retirement within
104 the department ~~of Management Services.~~

105 (g) ~~(f)~~ "Eligible employee" means an officer or employee, as
106 defined in s. 121.021(11), who:

107 1. Is a member of, or is eligible for membership in, the
108 Florida Retirement System, including any renewed member of the
109 Florida Retirement System; or

110 2. Participates in, or is eligible to participate in, the
111 Senior Management Service Optional Annuity Program as
112 established under s. 121.055(6), the State Community College
113 System Optional Retirement Program as established under s.
114 121.051(2)(c), or the State University System Optional
115 Retirement Program established under s. 121.35.

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117 The term does not include any member participating in the
118 Deferred Retirement Option Program established under s.
119 121.091(13) or a mandatory participant of the State University
120 System Optional Retirement Program established under s. 121.35.

121 (h)~~(g)~~ "Employer" means an employer, as defined in s.
122 121.021(10), of an eligible employee.

123 (i) "Investment program" means the Public Employee
124 Retirement Investment Program established under this part.

125 (j) "Local employer" means an employer that is not a state
126 employer or a district school board employer.

127 (k)~~(h)~~ "Participant" means an eligible employee who is
128 enrolled ~~elects to participate in the investment program, Public~~
129 ~~Employee Optional Retirement program and enrolls in such~~
130 ~~optional program as provided in subsection (4)~~ or a terminated
131 Deferred Retirement Option Program participant as described in
132 subsection (22) ~~(21)~~.

133 ~~(i) "Public Employee Optional Retirement Program,"~~
134 ~~"optional program," or "optional retirement program" means the~~
135 ~~alternative defined contribution retirement program established~~
136 ~~under this section.~~

137 (l)~~(j)~~ "Retiree" means a former participant of the
138 investment Florida Retirement System Public Employee Optional
139 Retirement program who has terminated employment and ~~has~~ taken a
140 distribution as provided in s. 121.591, except for a mandatory
141 distribution of a de minimis account authorized by the state
142 board.

143 (m)~~(k)~~ "State board" ~~or "board"~~ means the State Board of
144 Administration.

145 ~~(l) "Trustees" means Trustees of the State Board of~~

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146 ~~Administration.~~

147 (n) "State employer" means an agency, board, branch,
148 commission, community college, department, institution,
149 institution of higher education, or water management district
150 that participates in the Florida Retirement System for the
151 benefit of certain employees.

152 (o) ~~(m)~~ "Vested" or "vesting" means the guarantee that a
153 participant is eligible to receive a retirement benefit upon
154 completion of the required years of service under the Public
155 Employee Optional Retirement Program.

156 (3) ~~ELIGIBILITY; RETIREMENT SERVICE CREDIT; TRANSFER OF~~
157 BENEFITS.—

158 ~~(a) Participation in the Public Employee Optional~~
159 ~~Retirement Program is limited to eligible employees.~~
160 ~~Participation in the optional retirement program is in lieu of~~
161 ~~participation in the defined benefit program of the Florida~~
162 ~~Retirement System.~~

163 (a) ~~(b)~~ An eligible employee who is employed in a regularly
164 established position by a state employer on June 1, 2002; by a
165 district school board employer on September 1, 2002; or by a
166 local employer on December 1, 2002, and who is a member of the
167 defined benefit ~~retirement~~ program of the Florida Retirement
168 ~~System~~ at the time of his or her election to participate in the
169 investment ~~Public Employee Optional Retirement~~ program shall
170 retain all retirement service credit earned under the defined
171 benefit retirement program of the Florida Retirement System as
172 credited under the system and is ~~shall be~~ entitled to a deferred
173 benefit upon termination, ~~if eligible under the system.~~ However,
174 election to participate in the investment ~~Public Employee~~

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175 ~~Optional Retirement~~ program terminates the active membership of
176 the employee in the defined benefit program ~~of the Florida~~
177 ~~Retirement System~~, and the service of a participant in the
178 investment Public Employee Optional Retirement program ~~is shall~~
179 not ~~be~~ creditable under the defined benefit ~~retirement~~ program
180 ~~of the Florida Retirement System~~ for purposes of benefit accrual
181 but is creditable ~~shall be credited~~ for purposes of vesting.

182 (b)(e)1. Notwithstanding paragraph (a), ~~an (b)~~, each
183 eligible employee who elects to participate in the investment
184 ~~Public Employee Optional Retirement~~ program and establishes one
185 or more individual participant accounts ~~under the optional~~
186 ~~program~~ may elect to transfer to the investment ~~optional~~ program
187 a sum representing the present value of the employee's
188 accumulated benefit obligation under the defined benefit
189 ~~retirement program of the Florida Retirement System~~. Upon ~~such~~
190 transfer, all service credit ~~previously~~ earned under the defined
191 benefit program is ~~of the Florida Retirement System shall be~~
192 nullified for purposes of entitlement to a future benefit under
193 the defined benefit program ~~of the Florida Retirement System~~. A
194 participant may not transfer ~~is precluded from transferring~~ the
195 accumulated benefit obligation balance from the defined benefit
196 program after the time upon the expiration of the period for
197 enrolling ~~afforded to enroll~~ in the investment ~~optional~~ program.

198 1.2. For purposes of this subsection, the present value of
199 the member's accumulated benefit obligation is based upon the
200 member's estimated creditable service and estimated average
201 final compensation under the defined benefit program, subject to
202 recomputation under subparagraph 2. 3. For state employees
203 ~~enrolling under subparagraph (4)(a)1.~~, initial estimates shall

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204 ~~will~~ be based upon creditable service and average final
205 compensation as of midnight on June 30, 2002; for district
206 school board employees ~~enrolling under subparagraph (4)(b)1.~~,
207 initial estimates shall ~~will~~ be based upon creditable service
208 and average final compensation as of midnight on September 30,
209 2002; and for local government employees ~~enrolling under~~
210 ~~subparagraph (4)(c)1.~~, initial estimates shall ~~will~~ be based
211 upon creditable service and average final compensation as of
212 midnight on December 31, 2002. The dates ~~respectively~~ specified
213 are above ~~shall be construed as~~ the "estimate date" for these
214 employees. The actuarial present value of the employee's
215 accumulated benefit obligation shall be based on the following:

216 a. The discount rate and other relevant actuarial
217 assumptions used to value the Florida Retirement System Trust
218 Fund at the time the amount to be transferred is determined,
219 consistent with the factors provided in sub-subparagraphs b. and
220 c.

221 b. A benefit commencement age, based on the member's
222 estimated creditable service as of the estimate date. The
223 benefit commencement age is ~~shall be~~ the younger of the
224 following, but may ~~shall~~ not be younger than the member's age as
225 of the estimate date:

226 (I) Age 62; or

227 (II) The age the member would attain if the member
228 completed 30 years of service with an employer, assuming the
229 member worked continuously from the estimate date, and
230 disregarding any vesting requirement that would otherwise apply
231 under the defined benefit program ~~of the Florida Retirement~~
232 ~~System.~~

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233 c. For members of the Special Risk Class, and for members
 234 of the Special Risk Administrative Support Class entitled to
 235 retain the special risk normal retirement date, the benefit
 236 commencement age is ~~shall be~~ the younger of the following, but
 237 may ~~shall~~ not be younger than the member's age as of the
 238 estimate date:

239 (I) Age 55; or

240 (II) The age the member would attain if the member
 241 completed 25 years of service with an employer, assuming the
 242 member worked continuously from the estimate date, and
 243 disregarding any vesting requirement that would otherwise apply
 244 under the defined benefit program ~~of the Florida Retirement~~
 245 ~~System.~~

246 d. The calculation must ~~shall~~ disregard vesting
 247 requirements and early retirement reduction factors that would
 248 otherwise apply under the defined benefit ~~retirement~~ program.

249 ~~2.3.~~ For each participant who elects to transfer moneys
 250 from the defined benefit program to his or her account in the
 251 investment optional ~~optional~~ program, the division shall recompute the
 252 amount transferred under subparagraph 1. within 2. ~~not later~~
 253 ~~than~~ 60 days after the actual transfer of funds based upon the
 254 participant's actual creditable service and actual final average
 255 compensation as of the initial date of participation in the
 256 investment optional ~~optional~~ program. If the recomputed amount differs
 257 from the amount transferred ~~under subparagraph 2.~~ by \$10 or
 258 more, the division shall:

259 a. Transfer, or cause to be transferred, from the Florida
 260 Retirement System Trust Fund to the participant's account ~~in the~~
 261 ~~optional program~~ the excess, if any, of the recomputed amount

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262 over the previously transferred amount together with interest
263 from the initial date of transfer to the date of transfer under
264 this subparagraph, based upon the effective annual interest
265 equal to the assumed return on the actuarial investment which
266 was used in the most recent actuarial valuation of the system,
267 compounded annually.

268 b. Transfer, or cause to be transferred, from the
269 participant's account to the Florida Retirement System Trust
270 Fund the excess, if any, of the previously transferred amount
271 over the recomputed amount, together with interest from the
272 initial date of transfer to the date of transfer under this
273 subparagraph, based upon 6 percent effective annual interest,
274 compounded annually, pro rata based on the participant's
275 allocation plan.

276 3.4. As directed by the participant, the state board shall
277 transfer or cause to be transferred the appropriate amounts to
278 the designated accounts within. ~~The board shall establish~~
279 ~~transfer procedures by rule, but the actual transfer shall not~~
280 ~~be later than~~ 30 days after the effective date of the member's
281 participation in the investment ~~optional~~ program unless the
282 major financial markets for securities available for a transfer
283 are seriously disrupted by an unforeseen event that ~~which also~~
284 causes the suspension of trading on any national securities
285 exchange in the country where the securities are ~~were~~ issued. In
286 that event, the ~~such~~ 30-day period ~~of time~~ may be extended by a
287 resolution of the state board ~~trustees~~. The state board shall
288 establish transfer procedures by rule. Transfers are not
289 commissionable or subject to other fees and may be in the form
290 of securities or cash, as determined by the state board. Such

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291 securities are ~~shall be~~ valued as of the date of receipt in the
292 participant's account.

293 4.5. If the state board or the division receives
294 notification from the United States Internal Revenue Service
295 that this paragraph or any portion of this paragraph will cause
296 the retirement system, or a portion thereof, to be disqualified
297 for tax purposes under the Internal Revenue Code, ~~then~~ the
298 portion that will cause the disqualification does not apply.
299 Upon such notice, the state board and the division shall notify
300 the presiding officers of the Legislature.

301 (4) OPTIONAL PARTICIPATION; ENROLLMENT.—

302 (a) ~~1.~~ With respect to an eligible employee who is employed
303 in a regularly established position by a state employer after ~~on~~
304 June 1, 2002; by a district school board employer after
305 September 1, 2002; or by a local employer after December 1,
306 2002, but before January 1, 2010, the, ~~by a state employer:~~

307 a. Any such employee ~~may elect to participate in the Public~~
308 ~~Employee Optional Retirement Program in lieu of retaining his or~~
309 ~~her membership in the defined benefit program of the Florida~~
310 ~~Retirement System. The election must be made in writing or by~~
311 ~~electronic means and must be filed with the third-party~~
312 ~~administrator by August 31, 2002, or, in the case of an active~~
313 ~~employee who is on a leave of absence on April 1, 2002, by the~~
314 ~~last business day of the 5th month following the month the leave~~
315 ~~of absence concludes. This election is irrevocable, except as~~
316 ~~provided in paragraph (c). Upon making such election, the~~
317 ~~employee shall be enrolled as a participant of the Public~~
318 ~~Employee Optional Retirement Program, the employee's membership~~
319 ~~in the Florida Retirement System shall be governed by the~~

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320 ~~provisions of this part, and the employee's membership in the~~
321 ~~defined benefit program of the Florida Retirement System shall~~
322 ~~terminate. The employee's enrollment in the Public Employee~~
323 ~~Optional Retirement Program shall be effective the first day of~~
324 ~~the month for which a full month's employer contribution is made~~
325 ~~to the optional program.~~

326 ~~b. Any such employee who fails to elect to participate in~~
327 ~~the Public Employee Optional Retirement Program within the~~
328 ~~prescribed time period is deemed to have elected to retain~~
329 ~~membership in the defined benefit program of the Florida~~
330 ~~Retirement System, and the employee's option to elect to~~
331 ~~participate in the optional program is forfeited.~~

332 ~~2. With respect to employees who become eligible to~~
333 ~~participate in the Public Employee Optional Retirement Program~~
334 ~~by reason of employment in a regularly established position with~~
335 ~~a state employer commencing after April 1, 2002:~~

336 ~~a. Any such employee shall, by default, be enrolled in the~~
337 ~~defined benefit retirement program of the Florida Retirement~~
338 ~~System at the commencement of employment, and may, by the last~~
339 ~~business day of the 5th month following the employee's month of~~
340 ~~hire, elect to participate in the investment ~~Public Employee~~~~
341 ~~Optional Retirement program. The employee's election must be~~
342 ~~made in writing or by electronic means and must be filed with~~
343 ~~the third-party administrator. The election to participate in~~
344 ~~the investment ~~optional~~ program is irrevocable, except as~~
345 ~~provided in paragraph (c) ~~(e)~~.~~

346 ~~1.b.~~ If the employee files such election within the
347 prescribed time period, enrollment in the investment ~~optional~~
348 program is ~~shall be~~ effective on the first day of employment.

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349 The employer retirement contributions paid through the month of
350 the employee plan change shall be transferred to the investment
351 ~~optional~~ program, and, effective the first day of the next
352 month, the employer must ~~shall~~ pay the applicable contributions
353 based on the employee membership class in the ~~optional~~ program.

354 ~~2.e. An Any such~~ employee who fails to elect to participate
355 in the investment ~~Public Employee Optional Retirement~~ program
356 within the prescribed time period is deemed to have elected to
357 retain membership in the defined benefit program ~~of the Florida~~
358 ~~Retirement System~~, and the employee's option to elect to
359 participate in the investment ~~optional~~ program is forfeited.

360 3. With respect to employees who become eligible to
361 participate in the Public Employee ~~Optional~~ Retirement
362 Investment Program pursuant to s. 121.051(2)(c)3. or s.
363 121.35(3)(i), ~~the any such~~ employee may elect to participate in
364 the investment ~~Public Employee Optional Retirement~~ program in
365 lieu of retaining his or her participation in the State
366 Community College System Optional Retirement Program or the
367 State University System Optional Retirement Program. The
368 election must be made in writing or by electronic means and must
369 be filed with the third-party administrator. This election is
370 irrevocable, except as provided in paragraph (c) ~~(e)~~. Upon
371 making such election, the employee shall be enrolled as a
372 participant in ~~of~~ the investment ~~Public Employee Optional~~
373 ~~Retirement~~ program, the employee's membership in the Florida
374 Retirement System shall be governed by the provisions of this
375 part, and the employee's participation in the State Community
376 College System Optional Retirement Program or the State
377 University System Optional Retirement Program shall terminate.

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378 The employee's enrollment in the investment ~~Public Employee~~
379 ~~Optional Retirement~~ program is ~~shall be~~ effective on the first
380 day of the month for which a full month's employer contribution
381 is made to the investment ~~optional~~ program.

382 4. ~~For purposes of this paragraph, "state employer" means~~
383 ~~any agency, board, branch, commission, community college,~~
384 ~~department, institution, institution of higher education, or~~
385 ~~water management district of the state, which participates in~~
386 ~~the Florida Retirement System for the benefit of certain~~
387 ~~employees.~~

388 (b)1. ~~With respect to an eligible employee who is employed~~
389 ~~in a regularly established position on September 1, 2002, by a~~
390 ~~district school board employer:~~

391 a. ~~Any such employee may elect to participate in the Public~~
392 ~~Employee Optional Retirement Program in lieu of retaining his or~~
393 ~~her membership in the defined benefit program of the Florida~~
394 ~~Retirement System. The election must be made in writing or by~~
395 ~~electronic means and must be filed with the third party~~
396 ~~administrator by November 30, or, in the case of an active~~
397 ~~employee who is on a leave of absence on July 1, 2002, by the~~
398 ~~last business day of the 5th month following the month the leave~~
399 ~~of absence concludes. This election is irrevocable, except as~~
400 ~~provided in paragraph (c). Upon making such election, the~~
401 ~~employee shall be enrolled as a participant of the Public~~
402 ~~Employee Optional Retirement Program, the employee's membership~~
403 ~~in the Florida Retirement System shall be governed by the~~
404 ~~provisions of this part, and the employee's membership in the~~
405 ~~defined benefit program of the Florida Retirement System shall~~
406 ~~terminate. The employee's enrollment in the Public Employee~~

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407 ~~Optional Retirement Program shall be effective the first day of~~
408 ~~the month for which a full month's employer contribution is made~~
409 ~~to the optional program.~~

410 ~~b. Any such employee who fails to elect to participate in~~
411 ~~the Public Employee Optional Retirement Program within the~~
412 ~~prescribed time period is deemed to have elected to retain~~
413 ~~membership in the defined benefit program of the Florida~~
414 ~~Retirement System, and the employee's option to elect to~~
415 ~~participate in the optional program is forfeited.~~

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

420 ~~a. Any such employee shall, by default, be enrolled in the~~
421 ~~defined benefit retirement program of the Florida Retirement~~
422 ~~System at the commencement of employment, and may, by the last~~
423 ~~business day of the 5th month following the employee's month of~~
424 ~~hire, elect to participate in the Public Employee Optional~~
425 ~~Retirement Program. The employee's election must be made in~~
426 ~~writing or by electronic means and must be filed with the third-~~
427 ~~party administrator. The election to participate in the optional~~
428 ~~program is irrevocable, except as provided in paragraph (c).~~

429 ~~b. If the employee files such election within the~~
430 ~~prescribed time period, enrollment in the optional program shall~~
431 ~~be effective on the first day of employment. The employer~~
432 ~~retirement contributions paid through the month of the employee~~
433 ~~plan change shall be transferred to the optional program, and,~~
434 ~~effective the first day of the next month, the employer shall~~
435 ~~pay the applicable contributions based on the employee~~

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436 ~~membership class in the optional program.~~

437 ~~e. Any such employee who fails to elect to participate in~~
438 ~~the Public Employee Optional Retirement Program within the~~
439 ~~prescribed time period is deemed to have elected to retain~~
440 ~~membership in the defined benefit program of the Florida~~
441 ~~Retirement System, and the employee's option to elect to~~
442 ~~participate in the optional program is forfeited.~~

443 ~~3. For purposes of this paragraph, "district school board~~
444 ~~employer" means any district school board that participates in~~
445 ~~the Florida Retirement System for the benefit of certain~~
446 ~~employees, or a charter school or charter technical career~~
447 ~~center that participates in the Florida Retirement System as~~
448 ~~provided in s. 121.051(2) (d).~~

449 ~~(c)1. With respect to an eligible employee who is employed~~
450 ~~in a regularly established position on December 1, 2002, by a~~
451 ~~local employer:~~

452 ~~a. Any such employee may elect to participate in the Public~~
453 ~~Employee Optional Retirement Program in lieu of retaining his or~~
454 ~~her membership in the defined benefit program of the Florida~~
455 ~~Retirement System. The election must be made in writing or by~~
456 ~~electronic means and must be filed with the third-party~~
457 ~~administrator by February 28, 2003, or, in the case of an active~~
458 ~~employee who is on a leave of absence on October 1, 2002, by the~~
459 ~~last business day of the 5th month following the month the leave~~
460 ~~of absence concludes. This election is irrevocable, except as~~
461 ~~provided in paragraph (e). Upon making such election, the~~
462 ~~employee shall be enrolled as a participant of the Public~~
463 ~~Employee Optional Retirement Program, the employee's membership~~
464 ~~in the Florida Retirement System shall be governed by the~~

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465 ~~provisions of this part, and the employee's membership in the~~
466 ~~defined benefit program of the Florida Retirement System shall~~
467 ~~terminate. The employee's enrollment in the Public Employee~~
468 ~~Optional Retirement Program shall be effective the first day of~~
469 ~~the month for which a full month's employer contribution is made~~
470 ~~to the optional program.~~

471 ~~b. Any such employee who fails to elect to participate in~~
472 ~~the Public Employee Optional Retirement Program within the~~
473 ~~prescribed time period is deemed to have elected to retain~~
474 ~~membership in the defined benefit program of the Florida~~
475 ~~Retirement System, and the employee's option to elect to~~
476 ~~participate in the optional program is forfeited.~~

477 ~~2. With respect to employees who become eligible to~~
478 ~~participate in the Public Employee Optional Retirement Program~~
479 ~~by reason of employment in a regularly established position with~~
480 ~~a local employer commencing after October 1, 2002:~~

481 ~~a. Any such employee shall, by default, be enrolled in the~~
482 ~~defined benefit retirement program of the Florida Retirement~~
483 ~~System at the commencement of employment, and may, by the last~~
484 ~~business day of the 5th month following the employee's month of~~
485 ~~hire, elect to participate in the Public Employee Optional~~
486 ~~Retirement Program. The employee's election must be made in~~
487 ~~writing or by electronic means and must be filed with the third-~~
488 ~~party administrator. The election to participate in the optional~~
489 ~~program is irrevocable, except as provided in paragraph (c).~~

490 ~~b. If the employee files such election within the~~
491 ~~prescribed time period, enrollment in the optional program shall~~
492 ~~be effective on the first day of employment. The employer~~
493 ~~retirement contributions paid through the month of the employee~~

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494 ~~plan change shall be transferred to the optional program, and,~~
495 ~~effective the first day of the next month, the employer shall~~
496 ~~pay the applicable contributions based on the employee~~
497 ~~membership class in the optional program.~~

498 ~~e. Any such employee who fails to elect to participate in~~
499 ~~the Public Employee Optional Retirement Program within the~~
500 ~~prescribed time period is deemed to have elected to retain~~
501 ~~membership in the defined benefit program of the Florida~~
502 ~~Retirement System, and the employee's option to elect to~~
503 ~~participate in the optional program is forfeited.~~

504 ~~3. For purposes of this paragraph, "local employer" means~~
505 ~~any employer not included in paragraph (a) or paragraph (b).~~

506 ~~(b)(d)~~ Contributions available for self-direction by a
507 participant who has not selected one or more specific investment
508 products shall be allocated as prescribed by the state board.
509 The third-party administrator shall notify the ~~any such~~
510 participant at least quarterly that the participant should take
511 an affirmative action to make an asset allocation among the
512 ~~optional~~ program products.

513 ~~(c)(e)~~ After the period during which an eligible employee
514 had the choice to elect the defined benefit program or the
515 investment ~~Public Employee Optional Retirement~~ program, or the
516 month following the receipt of the eligible employee's plan
517 election, if sooner, the employee shall have one opportunity, at
518 the employee's discretion, to choose to move from the defined
519 benefit program to the investment ~~Public Employee Optional~~
520 ~~Retirement~~ program or from the investment ~~Public Employee~~
521 ~~Optional Retirement~~ program to the defined benefit program.
522 Eligible employees may elect to move between Florida Retirement

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523 System programs only if they are earning service credit in an
 524 employer-employee relationship consistent with the requirements
 525 under s. 121.021(17)(b), excluding leaves of absence without
 526 pay. Effective July 1, 2005, such elections are ~~shall be~~
 527 effective on the first day of the month following the receipt of
 528 the election by the third-party administrator and are not
 529 subject to the requirements regarding an employer-employee
 530 relationship or receipt of contributions for the eligible
 531 employee in the effective month, except ~~that the employee must~~
 532 ~~meet the conditions of the previous sentence~~ when the election
 533 is received by the third-party administrator. This paragraph is
 534 ~~shall be~~ contingent upon approval by ~~from~~ the Internal Revenue
 535 Service ~~for including the choice described herein within the~~
 536 ~~programs offered by the Florida Retirement System.~~

537 1. If the employee chooses to move to the investment ~~Public~~
 538 ~~Employee Optional Retirement~~ program, the applicable provisions
 539 of subsection (3) ~~this section~~ shall govern the transfer.

540 2. If the employee chooses to move to the defined benefit
 541 program, the employee must transfer from his or her investment
 542 ~~Public Employee Optional Retirement~~ program account, and from
 543 other employee moneys as necessary, a sum representing the
 544 present value of that employee's accumulated benefit obligation
 545 immediately following the time of such movement, determined
 546 assuming that attained service equals the sum of service in the
 547 defined benefit program and service in the investment ~~Public~~
 548 ~~Employee Optional Retirement~~ program. Benefit commencement
 549 occurs on the first date the employee is ~~would become~~ eligible
 550 for unreduced benefits, using the discount rate and other
 551 relevant actuarial assumptions that were used to value the

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552 ~~Florida Retirement System~~ defined benefit program plan
553 liabilities in the most recent actuarial valuation. For any
554 employee who, at the time of the second election, already
555 maintains an accrued benefit amount in the defined benefit
556 program plan, the then-present value of the ~~such~~ accrued benefit
557 shall be deemed part of the required transfer amount ~~described~~
558 ~~in this subparagraph~~. The division shall ensure that the
559 transfer sum is prepared using a formula and methodology
560 certified by an enrolled actuary.

561 3. Notwithstanding subparagraph 2., an employee who chooses
562 to move to the defined benefit program and ~~who became eligible~~
563 ~~to participate in the Public Employee Optional Retirement~~
564 ~~Program by reason of employment in a regularly established~~
565 ~~position with a state employer after June 1, 2002; a district~~
566 ~~school board employer after September 1, 2002; or a local~~
567 ~~employer after December 1, 2002,~~ must transfer from his or her
568 investment ~~Public Employee Optional Retirement~~ program account,
569 and, from other employee moneys as necessary, a sum representing
570 that employee's actuarial accrued liability.

571 4. An employee's ~~Employees'~~ ability to transfer from the
572 ~~Florida Retirement System~~ defined benefit program to the
573 investment ~~Public Employee Optional Retirement~~ program pursuant
574 to paragraphs (a) and (b) ~~(a)-(d)~~, and the ability of a ~~for~~
575 current employee ~~employees~~ to have an option to later transfer
576 back into the defined benefit program under subparagraph 2.,
577 shall be deemed a significant system amendment. Pursuant to s.
578 121.031(4), any ~~such~~ resulting unfunded liability arising from
579 actual original transfers from the defined benefit program to
580 the investment ~~optional~~ program must ~~shall~~ be amortized within

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581 30 plan years as a separate unfunded actuarial base independent
582 of the reserve stabilization mechanism defined in s.
583 121.031(3)(f). For the first 25 years, a ~~no~~ direct amortization
584 payment may not ~~shall~~ be calculated for this base. During this
585 25-year period, the ~~such~~ separate base shall be used to offset
586 the impact of employees exercising their second program election
587 under this paragraph. It is the ~~legislative~~ intent of the
588 Legislature that the actuarial funded status of the ~~Florida~~
589 ~~Retirement System~~ defined benefit program not be affected ~~plan~~
590 ~~is neither beneficially nor adversely impacted~~ by such second
591 program elections in any significant manner, after due
592 recognition of the separate unfunded actuarial base. Following
593 this initial 25-year period, any remaining balance of the
594 original separate base shall be amortized over the remaining 5
595 years of the required 30-year amortization period.

596 (6) ~~(5)~~ CONTRIBUTIONS.—

597 (a) Each employer shall contribute on behalf of each
598 participant in the investment ~~Public Employee Optional~~
599 ~~Retirement~~ program, as provided in part III of this chapter. The
600 state board, acting as plan fiduciary, shall ensure that all
601 plan assets are held in a trust, pursuant to s. 401 of the
602 Internal Revenue Code. The fiduciary shall ensure that ~~said~~
603 contributions are allocated as follows:

604 1. The portion earmarked for participant accounts shall be
605 used to purchase interests in the appropriate investment
606 vehicles ~~for the accounts of each participant~~ as specified by
607 the participant, or in accordance with paragraph (4)(b) ~~(4)(d)~~.

608 2. The portion earmarked for administrative and educational
609 expenses shall be transferred to the state board.

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610 3. The portion earmarked for disability benefits shall be
611 transferred to the department.

612 (b) Employers are responsible for notifying participants
613 regarding maximum contribution levels allowed ~~permitted~~ under
614 the Internal Revenue Code. If a participant contributes to any
615 other tax-deferred plan, the participant ~~he or she~~ is
616 responsible for ensuring that total contributions made to the
617 investment optional program and to any other such plan do not
618 exceed federally permitted maximums.

619 (c) The investment ~~Public Employee Optional Retirement~~
620 program may accept for deposit into participant accounts
621 contributions in the form of rollovers or direct trustee-to-
622 trustee transfers by or on behalf of participants, reasonably
623 determined by the state board to be eligible for rollover or
624 transfer to the investment optional retirement program pursuant
625 to the Internal Revenue Code, if such contributions are made in
626 accordance with rules ~~as may be~~ adopted by the board. Such
627 contributions must ~~shall~~ be accounted for in accordance with ~~any~~
628 applicable Internal Revenue Code requirements and rules of the
629 state board.

630 (7) ~~(6)~~ VESTING REQUIREMENTS.—

631 (a)1. With respect to employer contributions paid on behalf
632 of the participant to the investment ~~Public Employee Optional~~
633 ~~Retirement~~ program, plus interest and earnings thereon and less
634 investment fees and administrative charges, a participant is
635 ~~shall be~~ vested after completing 1 work year, ~~as defined in s.~~
636 ~~121.021(54)~~, with an employer, including any service while the
637 participant was a member of the defined benefit ~~retirement~~
638 program or an optional retirement program authorized under s.

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639 121.051(2)(c) or s. 121.055(6).

640 2. If the participant terminates employment before ~~prior to~~
641 satisfying the vesting requirements, the nonvested accumulation
642 must ~~shall~~ be transferred from the participant's accounts to the
643 state board for deposit and investment by the state board in its
644 ~~the~~ suspense account in ~~of~~ the Public Employee ~~Optional~~
645 Retirement Investment Program Trust Fund ~~of the board~~. If the
646 terminated participant is reemployed as an eligible employee
647 within 5 years, the state board shall transfer to the
648 participant's account any amount ~~of the moneys~~ previously
649 transferred from the participant's accounts to the suspense
650 account, ~~of the Public Employee Optional Retirement Program~~
651 ~~Trust Fund~~, plus ~~the~~ actual earnings on such amount while in the
652 suspense account.

653 (b)1. With respect to amounts transferred from the defined
654 benefit program to the investment program, plus interest and
655 earnings, and less investment fees and administrative charges, a
656 participant shall be vested in the amount transferred ~~from the~~
657 ~~defined benefit program, plus interest and earnings thereon and~~
658 ~~less administrative charges and investment fees,~~ upon meeting
659 the service requirements for the participant's membership class
660 as set forth in s. 121.021(29). The third-party administrator
661 shall account for such amounts for each participant. The
662 division shall notify the participant and the third-party
663 administrator when the participant has satisfied the vesting
664 period for Florida Retirement System purposes.

665 2. If the participant terminates employment before ~~prior to~~
666 satisfying the vesting requirements, the nonvested accumulation
667 must ~~shall~~ be transferred from the participant's accounts to the

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668 state board for deposit and investment by the board in the
 669 suspense account in ~~of~~ the Public Employee ~~Optional~~ Retirement
 670 Investment Program Trust Fund ~~of the board~~. If the terminated
 671 participant is reemployed as an eligible employee within 5
 672 years, the state board shall transfer to the participant's
 673 account any amount ~~of the moneys~~ previously transferred from the
 674 participant's accounts to the suspense account ~~of the Public~~
 675 ~~Employee Optional Retirement Program Trust Fund~~, plus the actual
 676 earnings on such amount while in the suspense account.

677 (c) Any nonvested accumulations transferred from a
 678 participant's account to the state board's suspense account
 679 shall be forfeited by the participant if the participant is not
 680 reemployed as an eligible employee within 5 years after
 681 termination.

682 (8) ~~(7)~~ BENEFITS.—Under the Public Employee ~~Optional~~
 683 Retirement Investment Program, benefits shall:

684 (a) ~~Benefits shall~~ Be provided in accordance with s. 401(a)
 685 of the Internal Revenue Code.

686 (b) ~~Benefits shall~~ Accrue in individual accounts that are
 687 participant-directed, portable, and funded by employer
 688 contributions and earnings thereon.

689 (c) ~~Benefits shall~~ Be payable in accordance with ~~the~~
 690 ~~provisions of~~ s. 121.591.

691 (9) ~~(8)~~ PROGRAM ADMINISTRATION OF PROGRAM.—

692 ~~(a)~~ The Public Employee ~~Optional~~ Retirement Investment
 693 Program shall be administered by the state board and affected
 694 employers. The state board is authorized to require oaths, by
 695 affidavit or otherwise, and acknowledgments from persons in
 696 connection with the administration of its duties and

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697 responsibilities under the program ~~this chapter~~. An ~~No~~ oath, by
698 affidavit or otherwise, may not ~~shall~~ be required of an employee
699 participant at the time of enrollment ~~election~~. Acknowledgment
700 ~~of an employee's election to participate in the program shall be~~
701 ~~no greater than necessary to confirm the employee's election.~~
702 The state board shall adopt rules establishing the roles ~~role~~
703 and responsibilities of affected state, local government, and
704 education-related employers, the state board, the department,
705 and third-party contractors in administering the investment
706 ~~Public Employee Optional Retirement~~ program. The department
707 shall adopt rules necessary to administer ~~implement~~ the
708 investment ~~optional~~ program in coordination with the defined
709 benefit ~~retirement~~ program and the disability benefits available
710 under the investment ~~optional~~ program.

711 (a)1. ~~(b)1.~~ The state board shall select and contract with a
712 ~~one~~ third-party administrator to provide administrative services
713 if those services cannot be competitively and contractually
714 provided by the division ~~of Retirement within the Department of~~
715 ~~Management Services~~. With the approval of the state board, the
716 third-party administrator may subcontract ~~with other~~
717 ~~organizations or individuals~~ to provide components of the
718 administrative services. As a cost of administration, the state
719 board may compensate any such contractor for its services, in
720 accordance with the terms of the contract, as is deemed
721 necessary or proper by the board. The third-party administrator
722 may not be an approved provider or be affiliated with an
723 approved provider.

724 2. These administrative services may include, but are not
725 limited to, enrollment of eligible employees, collection of

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726 employer contributions, disbursement of ~~such~~ contributions to
727 approved providers in accordance with the allocation directions
728 of participants; services relating to consolidated billing;
729 individual and collective recordkeeping and accounting; asset
730 purchase, control, and safekeeping; and direct disbursement of
731 funds to and from the third-party administrator, the division,
732 the state board, employers, participants, approved providers,
733 and beneficiaries. This section does not prevent or prohibit a
734 bundled provider from providing any administrative or customer
735 service, including accounting and administration of individual
736 participant benefits and contributions; individual participant
737 recordkeeping; asset purchase, control, and safekeeping; direct
738 execution of the participant's instructions as to asset and
739 contribution allocation; calculation of daily net asset values;
740 direct access to participant account information; or periodic
741 reporting to participants, at least quarterly, on account
742 balances and transactions, if these services are authorized by
743 the state board as part of the contract.

744 (b)1.3. The state board shall select and contract with one
745 or more organizations to provide educational services. With
746 approval of the state board, the organizations may subcontract
747 ~~with other organizations or individuals~~ to provide components of
748 the educational services. As a cost of administration, the state
749 board may compensate any such contractor for its services in
750 accordance with the terms of the contract, as is deemed
751 necessary or proper by the board. The education organization may
752 not be an approved provider or be affiliated with an approved
753 provider.

754 2.4. Educational services shall be designed by the state

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755 board and department to assist employers, eligible employees,
756 participants, and beneficiaries in order to maintain compliance
757 with United States Department of Labor regulations under s.
758 404(c) of the Employee Retirement Income Security Act of 1974
759 and to assist employees in understanding their ~~choice of defined~~
760 ~~benefit or defined contribution~~ retirement program alternatives.
761 Educational services include, but are not limited to,
762 disseminating educational materials; providing retirement
763 planning education; explaining the ~~differences between the~~
764 defined benefit ~~retirement plan~~ and the defined contribution
765 retirement programs ~~plan~~; and offering financial planning
766 guidance on matters such as investment diversification,
767 investment risks, investment costs, and asset allocation. An
768 approved provider may also provide educational information,
769 including retirement planning and investment allocation
770 information concerning its products and services.

771 (c)1. In evaluating and selecting a third-party
772 administrator, the state board shall establish criteria for
773 evaluating ~~under which it shall consider~~ the relative
774 capabilities and qualifications of each proposed administrator.
775 In developing such criteria, the state board shall consider:

776 a. The administrator's demonstrated experience in providing
777 administrative services to public or private sector retirement
778 systems.

779 b. The administrator's demonstrated experience in providing
780 daily valued recordkeeping to defined contribution programs
781 ~~plans~~.

782 c. The administrator's ability and willingness to
783 coordinate its activities with ~~the Florida Retirement System~~

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784 employers, the state board, and the division, and to supply to
785 such employers, the board, and the division the information and
786 data they require, including, but not limited to, monthly
787 management reports, quarterly participant reports, and ad hoc
788 reports requested by the department or state board.

789 d. The cost-effectiveness and levels of the administrative
790 services provided.

791 e. The administrator's ability to interact with the
792 participants, the employers, the state board, the division, and
793 the providers; the means by which participants may access
794 account information, direct investment of contributions, make
795 changes to their accounts, transfer moneys between available
796 investment vehicles, and transfer moneys between investment
797 products; and any fees that apply to such activities.

798 f. Any other factor deemed necessary by the ~~Trustees of the~~
799 state board ~~of Administration~~.

800 2. In evaluating and selecting an educational provider, the
801 state board shall establish criteria under which it shall
802 consider the relative capabilities and qualifications of each
803 proposed educational provider. In developing such criteria, the
804 board shall consider:

805 a. Demonstrated experience in providing educational
806 services to public or private sector retirement systems.

807 b. Ability and willingness to coordinate its activities
808 with the ~~Florida Retirement System~~ employers, the state board,
809 and the division, and to supply to such employers, the board,
810 and the division the information and data they require,
811 including, but not limited to, reports on educational contacts.

812 c. The cost-effectiveness and levels of the educational

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813 services provided.

814 d. Ability to provide educational services via different
815 media, including, but not limited to, the Internet, personal
816 contact, seminars, brochures, and newsletters.

817 e. Any other factor deemed necessary by the ~~Trustees of the~~
818 state board ~~of Administration~~.

819 3. The establishment of the criteria shall be solely within
820 the discretion of the state board.

821 (d) The state board shall develop the form and content of
822 any contracts to be offered under the investment ~~Public Employee~~
823 ~~Optional Retirement~~ program. In developing the ~~its~~ contracts,
824 the board shall ~~must~~ consider:

825 1. The nature and extent of the rights and benefits to be
826 afforded in relation to the ~~required~~ contributions required
827 under the program.

828 2. The suitability of the rights and benefits provided ~~to~~
829 ~~be afforded~~ and the interests of employers in the recruitment
830 and retention of eligible employees.

831 (e)1. The state board may contract ~~with any consultant~~ for
832 professional services, including legal, consulting, accounting,
833 and actuarial services, deemed necessary to implement and
834 administer the investment ~~optional~~ program ~~by the Trustees of~~
835 ~~the state board of Administration~~. The board may enter into a
836 contract with one or more vendors to provide low-cost investment
837 advice to participants, supplemental to education provided by
838 the third-party administrator. All fees under ~~any~~ such contract
839 shall be paid by those participants who choose to use the
840 services of the vendor.

841 2. The department may contract ~~with consultants~~ for

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842 professional services, including legal, consulting, accounting,
 843 and actuarial services, deemed necessary to implement and
 844 administer the investment ~~optional~~ program in coordination with
 845 the defined benefit program ~~of the Florida Retirement System~~.
 846 The department, in coordination with the state board, may enter
 847 into a contract with the third-party administrator in order to
 848 coordinate services common to the various programs within the
 849 Florida Retirement System.

850 (f) The third-party administrator may ~~shall~~ not receive
 851 direct or indirect compensation from an approved provider,
 852 except as specifically provided for in the contract with the
 853 state board.

854 (g) The state board shall resolve any conflict between the
 855 third-party administrator and an approved provider if ~~when~~ such
 856 conflict threatens the implementation or administration of the
 857 program or the quality of services to employees and may resolve
 858 any other conflicts.

859 ~~(10)-(9)~~ INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE
 860 REVIEW.—

861 (a) The state board shall develop policy and procedures for
 862 selecting, evaluating, and monitoring the performance of
 863 approved providers and investment products ~~to which employees~~
 864 ~~may direct retirement contributions~~ under the investment
 865 program. In accordance with such policy and procedures, the
 866 state board shall designate and contract for a number of
 867 investment products as determined by the board. The board shall
 868 also select one or more bundled providers, each of which ~~whom~~
 869 may offer multiple investment options and related services, if
 870 ~~when~~ such ~~an~~ approach is determined by the board to provide

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871 ~~afford~~ value to the participants otherwise not available through
872 individual investment products. Each approved bundled provider
873 may offer investment options that provide participants with the
874 opportunity to invest in each of the following asset classes, to
875 be composed of individual options that represent either a single
876 asset class or a combination thereof: money markets, United
877 States fixed income, United States equities, and foreign stock.
878 The state board shall review and manage all educational
879 materials, contract terms, fee schedules, and other aspects of
880 ~~the~~ approved provider relationships to ensure that no provider
881 is unduly favored or penalized by virtue of its status within
882 the investment program plan.

883 (b) The state board shall consider investment options or
884 products it considers appropriate to give participants the
885 opportunity to accumulate retirement benefits, subject to the
886 following:

887 1. The investment ~~Public Employee Optional Retirement~~
888 program must offer a diversified mix of low-cost investment
889 products that span the risk-return spectrum and may include a
890 guaranteed account as well as investment products, such as
891 individually allocated guaranteed and variable annuities, which
892 meet the requirements of this subsection and combine the ability
893 to accumulate investment returns with the option of receiving
894 lifetime income consistent with the long-term retirement
895 security of a pension plan and similar to the lifetime-income
896 benefit provided by the Florida Retirement System.

897 2. Investment options or products offered by ~~the group of~~
898 approved providers may include mutual funds, group annuity
899 contracts, individual retirement annuities, interests in trusts,

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900 collective trusts, separate accounts, and other such financial
901 instruments, and ~~may include~~ products that give participants the
902 option of committing their contributions for an extended time
903 period in an effort to obtain returns higher than those that
904 could be obtained from investment products offering full
905 liquidity.

906 3. The state board may ~~shall~~ not contract with a ~~any~~
907 provider that imposes a front-end, back-end, contingent, or
908 deferred sales charge, or any other fee that limits or restricts
909 the ability of participants to select any investment product
910 available in the investment ~~optional~~ program. This prohibition
911 does not apply to fees or charges that are imposed on
912 withdrawals from products that give participants the option of
913 committing ~~their~~ contributions for an extended time period in an
914 effort to obtain returns higher than those that could be
915 obtained from investment products offering full liquidity,
916 provided that the product ~~in question~~, net of all fees and
917 charges, produces material benefits relative to other comparable
918 products in the program offering full liquidity.

919 4. Fees or charges for insurance features, such as
920 mortality and expense-risk charges, must be reasonable relative
921 to the benefits provided.

922 (c) In evaluating and selecting approved providers and
923 products, the state board shall establish criteria for
924 evaluating ~~under which it shall consider~~ the relative
925 capabilities and qualifications of each proposed provider
926 company and product. In developing such criteria, the board
927 shall consider the following to the extent such factors may be
928 applied in connection with investment products, services, or

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929 providers:

930 1. Experience in the United States providing retirement
931 products and related financial services under a defined
932 contribution retirement program plans.

933 2. Financial strength and stability as ~~which shall be~~
934 evidenced by the highest ratings assigned by nationally
935 recognized rating services when comparing proposed providers
936 that are so rated.

937 3. Intrastate and interstate portability of the product
938 offered, including early withdrawal options.

939 4. Compliance with the Internal Revenue Code.

940 5. The cost-effectiveness of the product provided and the
941 levels of service supporting the product relative to its
942 benefits and its characteristics, including, ~~without limitation,~~
943 the level of risk borne by the provider.

944 6. The provider company's ability and willingness to
945 coordinate its activities with Florida Retirement System
946 employers, the department, and the state board, and to supply ~~to~~
947 the ~~such~~ employers, the department, and the board with the
948 information and data they require.

949 7. The methods available to participants to interact with
950 the provider company; the means by which participants may access
951 account information, direct investment of contributions, make
952 changes to their accounts, transfer moneys between available
953 investment vehicles, and transfer moneys between provider
954 companies; and any fees that apply to such activities.

955 8. The provider company's policies with respect to the
956 transfer of individual account balances, contributions, and
957 earnings thereon, both internally among investment products

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958 offered by the provider company and externally between approved
959 providers, as well as any fees, charges, reductions, or
960 penalties that may be applied.

961 9. An evaluation of specific investment products, taking
962 into account each product's experience in meeting its investment
963 return objectives net of all related fees, expenses, and
964 charges, including, but not limited to, investment management
965 fees, loads, distribution and marketing fees, custody fees,
966 recordkeeping fees, education fees, annuity expenses, and
967 consulting fees.

968 10. Organizational factors, including, but not limited to,
969 financial solvency, organizational depth, and experience in
970 providing institutional and retail investment services.

971 (d) As a condition of offering an ~~any~~ investment option or
972 product in the investment optional retirement program, the
973 approved provider must agree to make the investment product or
974 service available under the most beneficial terms offered to any
975 other customer, subject to approval by the ~~Trustees of the state~~
976 ~~board of Administration~~.

977 (e) The state board shall regularly review the performance
978 of each approved provider and product and related organizational
979 factors to ensure continued compliance with established
980 selection criteria and with board policy and procedures.
981 Providers and products may be terminated subject to contract
982 provisions. The state board shall adopt procedures to transfer
983 account balances from terminated products or providers to other
984 products or providers in the investment optional program.

985 (f)1. An approved provider shall comply with all applicable
986 federal and state securities and insurance laws and regulations

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987 ~~applicable to the provider,~~ as well as with the applicable rules
988 and guidelines of the National Association of Securities Dealers
989 which govern the ethical marketing of investment products. In
990 furtherance of this mandate, an approved provider must agree in
991 its contract with the state board to establish and maintain a
992 compliance education and monitoring system to supervise the
993 activities of all personnel who directly communicate with
994 individual participants and recommend investment products, which
995 system is consistent with rules of the National Association of
996 Securities Dealers.

997 2. Approved provider personnel who directly communicate
998 with individual participants and who recommend investment
999 products shall make an independent and unbiased determination as
1000 to whether an investment product is suitable for a particular
1001 participant.

1002 3. The state board shall develop procedures to receive and
1003 resolve participant complaints against a provider or approved
1004 provider personnel, and, if ~~when~~ appropriate, refer such
1005 complaints to the appropriate agency.

1006 4. Approved providers may not sell or in any way distribute
1007 any customer list or participant identification information
1008 generated through their offering of products or services through
1009 the investment ~~optional retirement~~ program.

1010 (11) ~~(10)~~ EDUCATION COMPONENT.—

1011 ~~(a)~~ The state board, in coordination with the department,
1012 shall provide for an education component for eligible employees
1013 ~~system members~~ in a manner consistent with the provisions of
1014 this section. ~~The education component must be available to~~
1015 ~~eligible employees at least 90 days prior to the beginning date~~

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1016 ~~of the election period for the employees of the respective types~~
1017 ~~of employers.~~

1018 ~~(b) The education component must provide system members~~
1019 ~~with impartial and balanced information about plan choices. The~~
1020 ~~education component must involve multimedia formats. Program~~
1021 ~~comparisons must, to the greatest extent possible, be based upon~~
1022 ~~the retirement income that different retirement programs may~~
1023 ~~provide to the participant. The board shall monitor the~~
1024 ~~performance of the contract to ensure that the program is~~
1025 ~~conducted in accordance with the contract, applicable law, and~~
1026 ~~the rules of the board.~~

1027 ~~(c) The board, in coordination with the department, shall~~
1028 ~~provide for an initial and ongoing transfer education component~~
1029 ~~to provide system members with information necessary to make~~
1030 ~~informed plan choice decisions. The transfer education component~~
1031 ~~must include, but is not limited to, information on:~~

1032 ~~1. The amount of money available to a member to transfer to~~
1033 ~~the defined contribution program.~~

1034 ~~2. The features of and differences between the defined~~
1035 ~~benefit program and the defined contribution program, both~~
1036 ~~generally and specifically, as those differences may affect the~~
1037 ~~member.~~

1038 ~~3. The expected benefit available if the member were to~~
1039 ~~retire under each of the retirement programs, based on~~
1040 ~~appropriate alternative sets of assumptions.~~

1041 ~~4. The rate of return from investments in the defined~~
1042 ~~contribution program and the period of time over which such rate~~
1043 ~~of return must be achieved to equal or exceed the expected~~
1044 ~~monthly benefit payable to the member under the defined benefit~~

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1045 ~~program.~~

1046 ~~5. The historical rates of return for the investment~~
 1047 ~~alternatives available in the defined contribution programs.~~

1048 ~~6. The benefits and historical rates of return on~~
 1049 ~~investments available in a typical deferred compensation plan or~~
 1050 ~~a typical plan under s. 403(b) of the Internal Revenue Code for~~
 1051 ~~which the employee may be eligible.~~

1052 ~~7. The program choices available to employees of the State~~
 1053 ~~University System and the comparative benefits of each available~~
 1054 ~~program, if applicable.~~

1055 ~~8. Payout options available in each of the retirement~~
 1056 ~~programs.~~

1057 ~~(a)(d)~~ An ongoing education and communication component
 1058 must provide eligible employees ~~system members~~ with information
 1059 necessary to make informed decisions about choices within their
 1060 retirement program ~~of membership~~ and in preparation for
 1061 retirement. The component must include, but is not limited to,
 1062 information concerning:

1063 1. Rights and conditions of membership.

1064 2. Benefit features within the program, options, and
 1065 effects of certain decisions.

1066 3. Coordination of contributions and benefits with a
 1067 deferred compensation plan under s. 457 or a plan under s.
 1068 403(b) of the Internal Revenue Code.

1069 4. Significant program changes.

1070 5. Contribution rates and program funding status.

1071 6. Planning for retirement.

1072 ~~(b)(e)~~ Descriptive materials must be prepared under the
 1073 assumption that the employee is an unsophisticated investor, and

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1074 all materials used in the education component must be approved
1075 by the state board before ~~prior to~~ dissemination.

1076 (c) ~~(f)~~ The state board and the department shall also
1077 establish a communication component to provide program
1078 information to participating employers and the employers'
1079 personnel and payroll officers and to explain their respective
1080 responsibilities in conjunction with the retirement programs.

1081 (d) ~~(g)~~ Funding for education of new employees may reflect
1082 administrative costs to the investment ~~optional~~ program and the
1083 defined benefit program.

1084 ~~(h) Pursuant to paragraph (8) (a), all Florida Retirement
1085 System employers have an obligation to regularly communicate the
1086 existence of the two Florida Retirement System plans and the
1087 plan choice in the natural course of administering their
1088 personnel functions, using the educational materials supplied by
1089 the state board and the Department of Management Services.~~

1090 (12) ~~(11)~~ PARTICIPANT INFORMATION REQUIREMENTS.—The state
1091 board shall ensure that each participant is provided a quarterly
1092 statement that accounts for ~~the~~ contributions made on behalf of
1093 the ~~such~~ participant; the interest and investment earnings
1094 thereon; and any fees, penalties, or other deductions that apply
1095 ~~thereto~~. At a minimum, such statements must:

1096 (a) Indicate the participant's investment options.

1097 (b) State the market value of the account at the close of
1098 the current quarter and previous quarter.

1099 (c) Show account gains and losses ~~for the period~~ and
1100 changes in account accumulation unit values for the quarter
1101 ~~period~~.

1102 (e) Indicate any account changes due to adjustment of

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1103 contribution levels, reallocation of contributions, balance
1104 transfers, or withdrawals.

1105 (f) Set forth any fees, charges, penalties, and deductions
1106 that apply to the account.

1107 (g) Indicate the amount of the account in which the
1108 participant is fully vested and the amount of the account in
1109 which the participant is not vested.

1110 (h) Indicate each investment product's performance relative
1111 to an appropriate market benchmark.

1112

1113 The third-party administrator shall provide quarterly and annual
1114 summary reports to the state board and any other reports
1115 requested by the department or the board. In any solicitation or
1116 offer of coverage under the defined contribution ~~an optional~~
1117 ~~retirement~~ program, a provider company shall be governed by the
1118 contract readability provisions of s. 627.4145, notwithstanding
1119 s. 627.4145(6)(c). In addition, all descriptive materials must
1120 be prepared under the assumption that the participant is an
1121 unsophisticated investor. Provider companies must maintain an
1122 internal system of quality assurance, have proven functional
1123 systems that are date-calculation compliant, and be subject to a
1124 due-diligence inquiry that proves their capacity and fitness to
1125 undertake service responsibilities.

1126 (13) ~~(12)~~ ADVISORY COUNCIL TO PROVIDE ADVICE AND
1127 ASSISTANCE.—The Investment Advisory Council, created pursuant to
1128 s. 215.444, shall assist the state board in implementing and
1129 administering the Public Employee ~~Optional~~ Retirement Investment
1130 Program. The ~~Investment Advisory~~ council, ~~created pursuant to s.~~
1131 ~~215.444~~, shall review the state board's initial recommendations

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1132 regarding the criteria to be used in selecting and evaluating
1133 approved providers and investment products. The council may
1134 provide comments on the recommendations to the board within 45
1135 days after receiving the initial recommendations. The state
1136 board shall make the final determination as to whether any
1137 investment provider or product, any contractor, or any and all
1138 contract provisions are ~~shall be~~ approved for the investment
1139 program.

1140 (14) ~~(13)~~ FEDERAL REQUIREMENTS.—

1141 (a) ~~Provisions of~~ This section shall be construed, and the
1142 investment ~~Public Employee Optional Retirement~~ program shall be
1143 administered, so as to comply with the Internal Revenue Code, 26
1144 U.S.C., and specifically with plan qualification requirements
1145 imposed on governmental plans under s. 401(a) of the Internal
1146 Revenue Code. The state board may ~~shall have the power and~~
1147 ~~authority to~~ adopt rules reasonably necessary to establish or
1148 maintain the qualified status of the investment ~~Optional~~
1149 ~~Retirement~~ program under the Internal Revenue Code and to
1150 implement and administer the ~~Optional Retirement~~ program in
1151 compliance with the Internal Revenue Code and as designated
1152 under this part; ~~provided however, that the board shall not have~~
1153 ~~the authority to adopt any rule which makes a substantive change~~
1154 ~~to the Optional Retirement Program as designed by this part.~~

1155 (b) Any section or provision of this chapter which is
1156 susceptible to more than one construction shall ~~must~~ be
1157 interpreted in favor of the construction most likely to satisfy
1158 requirements imposed by s. 401(a) of the Internal Revenue Code.

1159 (c) Contributions payable under this section for any
1160 limitation year may not exceed the maximum amount allowable for

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1161 qualified defined contribution pension plans under applicable
1162 provisions of the Internal Revenue Code. If an employee who is
1163 enrolled ~~who has elected to participate~~ in the Public Employee
1164 ~~Optional~~ Retirement Investment Program participates in any other
1165 plan that is maintained by the participating employer, benefits
1166 that accrue under the investment ~~Public Employee Optional~~
1167 ~~Retirement~~ program shall be considered primary for any aggregate
1168 limitation applicable under s. 415 of the Internal Revenue Code.

1169 (15) ~~(14)~~ INVESTMENT POLICY STATEMENT.—

1170 (a) Investment products and approved providers selected for
1171 the investment ~~Public Employee Optional Retirement~~ program must
1172 ~~shall~~ conform with the Public Employee ~~Optional~~ Retirement
1173 Investment Program Investment Policy Statement, herein referred
1174 to as the "statement," as developed and approved by the ~~Trustees~~
1175 ~~of the state board of Administration~~. The statement must
1176 include, among other items, the investment objectives of the
1177 investment ~~Public Employee Optional Retirement~~ program, manager
1178 selection and monitoring guidelines, and performance measurement
1179 criteria. As required from time to time, the executive director
1180 of the state board may present recommended changes in the
1181 statement to the board for approval.

1182 (b) Before ~~Prior to~~ presenting the statement, or any
1183 recommended changes ~~thereto~~, to the state board, the executive
1184 director of the board shall present such statement or changes to
1185 the Investment Advisory Council for review. The council shall
1186 present the results of its review to the board prior to the
1187 board's final approval of the statement or changes in the
1188 statement.

1189 (16) ~~(15)~~ STATEMENT OF FIDUCIARY STANDARDS AND

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1190 RESPONSIBILITIES.—

1191 (a) Investment of ~~optional~~ defined contribution program
1192 ~~retirement plan~~ assets shall be made for the sole interest and
1193 exclusive purpose of providing benefits to ~~plan~~ participants and
1194 beneficiaries and defraying reasonable expenses of administering
1195 the program plan. The program's assets are to be invested, on
1196 behalf of the program participants, with the care, skill, and
1197 diligence that a prudent person acting in a like manner would
1198 undertake. The performance of the investment duties set forth in
1199 this paragraph shall comply with the fiduciary standards set
1200 forth in the Employee Retirement Income Security Act of 1974 at
1201 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other
1202 provisions of law authorizing investments, the investment and
1203 fiduciary standards set forth in this subsection shall prevail.

1204 (b) If a participant or beneficiary of the defined
1205 contribution ~~Public Employee Optional Retirement~~ program
1206 exercises control over the assets in his or her account, as
1207 determined by reference to regulations of the United States
1208 Department of Labor under s. 404(c) of the Employee Retirement
1209 Income Security Act of 1974 and all applicable laws governing
1210 the operation of the program, a ~~no~~ program fiduciary is not
1211 ~~shall be~~ liable for any loss to a participant's or beneficiary's
1212 account which results from the ~~such~~ participant's or
1213 beneficiary's exercise of control.

1214 (c) Subparagraph (9)(b)2. ~~(8)(b)4.~~ and paragraph (16)(b)
1215 ~~(15)(b)~~ incorporate the federal law concept of participant
1216 control, established by regulations of the United States
1217 Department of Labor under s. 404(c) of the Employee Retirement
1218 Income Security Act of 1974 (ERISA). The purpose of this

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1219 paragraph is to assist employers and the state board of
1220 ~~Administration~~ in maintaining compliance with s. 404(c), while
1221 avoiding unnecessary costs and eroding participant benefits
1222 under the defined contribution ~~Public Employee Optional~~
1223 ~~Retirement~~ program. Pursuant to 29 C.F.R. s. 2550.404c-
1224 1(b)(2)(i)(B)(1)(viii), the state board of ~~Administration~~ or its
1225 designated agents shall deliver to participants of the Public
1226 Employee Optional Retirement Program a copy of the prospectus
1227 most recently provided to the plan, and, pursuant to 29 C.F.R.
1228 s. 2550.404c-1(b)(2)(i)(B)(2)(ii), shall provide such
1229 participants an opportunity to obtain this information, except
1230 that:

1231 1. The requirement to deliver a prospectus shall be ~~deemed~~
1232 ~~to be~~ satisfied by delivery of a fund profile that contains the
1233 information that would be included in a summary prospectus as
1234 described by Rule 498 under the Securities Act of 1933, 17
1235 C.F.R. s. 230.498. If ~~When~~ the transaction fees, expense
1236 information or other information provided by a mutual fund in
1237 the prospectus does not reflect terms negotiated by the state
1238 board of ~~Administration~~ or its designated agents, the
1239 ~~forementioned~~ requirement is ~~deemed to be~~ satisfied by delivery
1240 of a separate document described by Rule 498 substituting
1241 accurate information; and

1242 2. Delivery shall be ~~deemed to have been~~ effected if
1243 delivery is through electronic means and the following standards
1244 are satisfied:

1245 a. Electronically-delivered documents are prepared and
1246 provided consistent with style, format, and content requirements
1247 applicable to printed documents;

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1248 b. Each participant is provided timely and adequate notice
1249 of the documents that are to be delivered and their significance
1250 thereof, and of the participant's right to obtain a paper copy
1251 of such documents free of charge;

1252 c. ~~(I)~~ Participants have adequate access to the electronic
1253 documents, at locations such as their worksites or public
1254 facilities, and have the ability to convert the documents to
1255 paper free of charge by the state board ~~of Administration~~, and
1256 the board or its designated agents take appropriate and
1257 reasonable measures to ensure that the system for furnishing
1258 electronic documents results in actual receipt. ~~or~~

1259 ~~(II)~~ Participants have provided consent to receive
1260 information in electronic format, which consent may be revoked;
1261 and

1262 d. The state board ~~of Administration~~, or its designated
1263 agent, actually provides paper copies of the documents free of
1264 charge, upon request.

1265 (17) ~~(16)~~ DISABILITY BENEFITS.—For any participant of the
1266 investment optional retirement program who becomes totally and
1267 permanently disabled, benefits must ~~shall~~ be paid in accordance
1268 with the provisions of s. 121.591.

1269 (18) ~~(17)~~ SOCIAL SECURITY COVERAGE.—Social security coverage
1270 shall be provided for all officers and employees who become
1271 participants of the investment optional program. Any
1272 modification of the present agreement with the Social Security
1273 Administration, or referendum required under the Social Security
1274 Act, for the purpose of providing social security coverage for
1275 any member shall be requested by the state agency in compliance
1276 with the applicable provisions of the Social Security Act

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1277 governing such coverage. However, retroactive social security
1278 coverage for service before ~~prior to~~ December 1, 1970, with the
1279 employer may ~~shall~~ not be provided for any member who was not
1280 covered under the agreement as of November 30, 1970.

1281 (19) ~~(18)~~ RETIREE HEALTH INSURANCE SUBSIDY.—All officers and
1282 employees who are participants of the investment ~~optional~~
1283 program are ~~shall be~~ eligible to receive the retiree health
1284 insurance subsidy, subject to the provisions of s. 112.363.

1285 (20) ~~(19)~~ PARTICIPANT RECORDS.—Personal identifying
1286 information of a participant in the investment ~~Public Employee~~
1287 ~~Optional Retirement~~ program contained in Florida Retirement
1288 System records held by the state board ~~of Administration~~ or the
1289 department ~~of Management Services~~ is exempt from s. 119.07(1)
1290 and s. 24(a), Art. I of the State Constitution.

1291 (21) ~~(20)~~ DESIGNATION OF BENEFICIARIES.—

1292 (a) Each participant may, on a form provided for that
1293 purpose, signed and filed with the third-party administrator,
1294 designate a choice of one or more persons, named sequentially or
1295 jointly, as his or her beneficiary for receiving ~~who shall~~
1296 ~~receive~~ the benefits, if any, which may be payable pursuant to
1297 this chapter in the event of the participant's death. If no
1298 beneficiary is named in this manner, or if no beneficiary
1299 designated by the participant survives the participant, the
1300 beneficiary shall be the spouse of the deceased, if living. If
1301 the participant's spouse is not alive at the time of the
1302 beneficiary's ~~his or her~~ death, the beneficiary shall be the
1303 living children of the participant. If no children survive, the
1304 beneficiary shall be the participant's father or mother, if
1305 living; otherwise, the beneficiary shall be the participant's

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1306 estate. The beneficiary most recently designated by a
1307 participant ~~on a form or letter filed with the third party~~
1308 ~~administrator~~ shall be the beneficiary entitled to any benefits
1309 payable at the time of the participant's death. However
1310 ~~Notwithstanding any other provision in this subsection to the~~
1311 ~~contrary~~, for a participant who dies before ~~prior to~~ his or her
1312 effective date of retirement, the spouse at the time of death
1313 shall be the participant's beneficiary unless the ~~such~~
1314 participant designates a different beneficiary ~~as provided in~~
1315 ~~this subsection~~ subsequent to the participant's most recent
1316 marriage.

1317 (b) If a participant designates a primary beneficiary other
1318 than the participant's spouse, the participant's spouse must
1319 sign the beneficiary designation form to acknowledge the
1320 designation. This requirement does not apply to the designation
1321 of one or more contingent beneficiaries to receive benefits
1322 remaining upon the death of the primary beneficiary or
1323 beneficiaries.

1324 (c) Notwithstanding the participant's designation of
1325 benefits to be paid through a trust to a beneficiary that is a
1326 natural person, ~~and notwithstanding the provisions of the trust,~~
1327 benefits must ~~shall~~ be paid directly to the beneficiary if the
1328 person is no longer a minor or an incapacitated person as
1329 defined in s. 744.102.

1330 (22) ~~(21)~~ PARTICIPATION BY TERMINATED DEFERRED RETIREMENT
1331 OPTION PROGRAM PARTICIPANTS.—Notwithstanding any other provision
1332 of law ~~to the contrary~~, participants in the Deferred Retirement
1333 Option Program offered under part I may, after conclusion of
1334 their participation in the program, elect to roll over or

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1335 authorize a direct trustee-to-trustee transfer to an account
1336 under the Public Employee ~~Optional~~ Retirement Investment Program
1337 of their Deferred Retirement Option Program proceeds distributed
1338 as provided under s. 121.091(13)(c)5. The transaction must
1339 constitute an "eligible rollover distribution" within the
1340 meaning of s. 402(c)(4) of the Internal Revenue Code.

1341 (a) The investment ~~Public Employee Optional Retirement~~
1342 program may accept such amounts for deposit into participant
1343 accounts as provided in paragraph (6)(c) ~~(5)(e)~~.

1344 (b) The affected participant shall direct the investment of
1345 his or her investment account; however, unless he or she becomes
1346 a renewed member of the Florida Retirement System under s.
1347 121.122 and elects to participate in the investment ~~Public~~
1348 ~~Employee Optional Retirement~~ program, employer contributions may
1349 not be made to the participant's account as provided under
1350 paragraph (6)(a) ~~(5)(a)~~.

1351 (c) The state board or the department is not responsible
1352 for locating those persons who may be eligible to participate in
1353 the investment ~~Public Employee Optional Retirement~~ program under
1354 this subsection.

1355 (23) ~~(22)~~ CREDIT FOR MILITARY SERVICE.—Creditable service of
1356 any member of the Public Employee ~~Optional~~ Retirement Investment
1357 Program includes ~~shall include~~ military service in the Armed
1358 Forces of the United States as provided in ~~the conditions~~
1359 ~~outlined in~~ s. 121.111(1).

1360 Section 2. Section 121.4502, Florida Statutes, is amended
1361 to read:

1362 121.4502 Public Employee ~~Optional~~ Retirement Investment
1363 Program Trust Fund.—

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1364 (1) The Public Employee ~~Optional~~ Retirement Investment
 1365 Program Trust Fund is created to hold the assets of the Public
 1366 Employee ~~Optional~~ Retirement Investment Program in trust for the
 1367 exclusive benefit of program ~~such program's~~ participants and
 1368 beneficiaries, and for the payment of reasonable administrative
 1369 expenses of the program, in accordance with s. 401 of the
 1370 Internal Revenue Code, and shall be administered by the State
 1371 Board of Administration as trustee. Funds shall be credited to
 1372 the trust fund as provided in this part and, ~~to be~~ used for the
 1373 purposes of this part. The trust fund is exempt from the service
 1374 charges imposed by s. 215.20.

1375 (2) The Public Employee ~~Optional~~ Retirement Investment
 1376 Program Trust Fund is a ~~retirement~~ trust fund of the Florida
 1377 Retirement System that accounts for retirement plan assets held
 1378 by the state in a trustee capacity as a fiduciary for individual
 1379 participants in the Public Employee ~~Optional~~ Retirement
 1380 Investment Program and, pursuant to s. 19(f), Art. III of the
 1381 State Constitution, is not subject to termination.

1382 Section 3. Paragraph (g) of subsection (2) of section
 1383 110.123, Florida Statutes, is amended to read:

1384 110.123 State group insurance program.—

1385 (2) DEFINITIONS.—As used in this section, the term:

1386 (g) "Retired state officer or employee" or "retiree" means
 1387 any state or state university officer or employee who retires
 1388 under a state retirement system or a state optional annuity or
 1389 retirement program or is placed on disability retirement, and
 1390 who was insured under the state group insurance program at the
 1391 time of retirement, and who begins receiving retirement benefits
 1392 immediately after retirement from state or state university

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1393 office or employment. In addition ~~to these requirements,~~ the
1394 term includes any state officer or state employee who retires
1395 under the defined contribution ~~Public Employee Optional~~
1396 ~~Retirement~~ program established under part II of chapter 121
1397 shall ~~be considered a "retired state officer or employee" or~~
1398 ~~"retiree" as used in this section~~ if he or she:

1399 1. Meets the age and service requirements to qualify for
1400 normal retirement as set forth in s. 121.021(29); or

1401 2. Has attained the age specified by s. 72(t)(2)(A)(i) of
1402 the Internal Revenue Code and has 6 years of creditable service.

1403 Section 4. Section 112.0801, Florida Statutes, is amended
1404 to read:

1405 112.0801 Group insurance; participation by retired
1406 employees.—

1407 ~~(1)~~ Any state agency, county, municipality, special
1408 district, community college, or district school board that ~~which~~
1409 provides life, health, accident, hospitalization, or annuity
1410 insurance, or all of any kinds of such insurance, for its
1411 officers and employees and their dependents upon a group
1412 insurance plan or self-insurance plan shall allow all former
1413 personnel who ~~have~~ retired before ~~prior to~~ October 1, 1987, as
1414 well as those who retire on or after such date, and their
1415 eligible dependents, the option of continuing to participate in
1416 the ~~such~~ group insurance plan or self-insurance plan. Retirees
1417 and their eligible dependents shall be offered the same health
1418 and hospitalization insurance coverage as is offered to active
1419 employees at a premium cost of no more than the premium cost
1420 applicable to active employees. For ~~the~~ retired employees and
1421 their eligible dependents, the cost of ~~any such~~ continued

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1422 participation ~~in any type of plan or any of the cost thereof~~ may
 1423 be paid by the employer or by the retired employees. To
 1424 determine health and hospitalization plan costs, the employer
 1425 shall commingle the claims experience of the retiree group with
 1426 the claims experience of the active employees; and, for other
 1427 types of coverage, the employer may commingle the claims
 1428 experience of the retiree group with the claims experience of
 1429 active employees. Retirees covered under Medicare may be
 1430 experience-rated separately from the retirees not covered by
 1431 Medicare and from active employees if, ~~provided that~~ the total
 1432 premium does not exceed that of the active group and coverage is
 1433 basically the same as for the active group.

1434 ~~(2)~~ For purposes of this section, "retiree" has the same
 1435 meaning as in s. 110.123(2). ~~means any officer or employee who~~
 1436 ~~retires under a state retirement system or a state optional~~
 1437 ~~annuity or retirement program or is placed on disability~~
 1438 ~~retirement and who begins receiving retirement benefits~~
 1439 ~~immediately after retirement from employment. In addition to~~
 1440 ~~these requirements, any officer or employee who retires under~~
 1441 ~~the Public Employee Optional Retirement Program established~~
 1442 ~~under part II of chapter 121 shall be considered a "retired~~
 1443 ~~officer or employee" or "retiree" as used in this section if he~~
 1444 ~~or she:~~

1445 ~~(a) Meets the age and service requirements to qualify for~~
 1446 ~~normal retirement as set forth in s. 121.021(29); or~~

1447 ~~(b) Has attained the age specified by s. 72(t)(2)(A)(i) of~~
 1448 ~~the Internal Revenue Code and has 6 years of creditable service.~~

1449 Section 5. Paragraph (b) of subsection (2) and paragraph
 1450 (e) of subsection (3) of section 112.363, Florida Statutes, are

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1451 amended to read:

1452 112.363 Retiree health insurance subsidy.—

1453 (2) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—

1454 (b) For purposes of this section, a person is deemed
1455 retired from a state-administered retirement system if ~~when~~ he
1456 or she terminates employment with all employers participating in
1457 the Florida Retirement System as described in s. 121.021(39)
1458 and:

1459 1. For a participant of the defined contribution ~~Public~~
1460 ~~Employee Optional Retirement~~ program established under part II
1461 of chapter 121, the participant meets the age or service
1462 requirements to qualify for normal retirement as set forth in s.
1463 121.021(29).

1464 2. For a member of the ~~Florida Retirement System~~ defined
1465 benefit program, or any employee who maintains creditable
1466 service under ~~both~~ the defined benefit program and the defined
1467 contribution ~~Public Employee Optional Retirement~~ program, the
1468 member begins drawing retirement benefits from the defined
1469 benefit program ~~of the Florida Retirement System~~.

1470 (3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—

1471 (e)1. Beginning July 1, 2001, each eligible retiree of the
1472 defined benefit program of the Florida Retirement System, or, if
1473 the retiree is deceased, his or her beneficiary who is receiving
1474 a monthly benefit from such retiree's account and who is a
1475 spouse, or a person who meets the definition of joint annuitant
1476 in s. 121.021(28), shall receive a monthly retiree health
1477 insurance subsidy payment equal to the number of years of
1478 creditable service, as defined in s. 121.021(17), completed at
1479 the time of retirement multiplied by \$5; however, no eligible

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1480 retiree or beneficiary may receive a subsidy payment of more
1481 than \$150 or less than \$30. If there are multiple beneficiaries,
1482 the total payment may ~~must~~ not be greater than the payment to
1483 which the retiree was entitled. The health insurance subsidy
1484 amount payable to any person receiving the retiree health
1485 insurance subsidy payment on July 1, 2001, may ~~shall~~ not be
1486 reduced solely by operation of this subparagraph.

1487 2. Beginning July 1, 2002, each eligible participant of the
1488 defined contribution ~~Public Employee Optional Retirement~~ program
1489 of the Florida Retirement System who has met the requirements of
1490 this section, or, if the participant is deceased, his or her
1491 spouse who is the participant's designated beneficiary, shall
1492 receive a monthly retiree health insurance subsidy payment equal
1493 to the number of years of creditable service, as provided in
1494 this subparagraph, completed at the time of retirement,
1495 multiplied by \$5; however, no eligible retiree or beneficiary
1496 may receive a subsidy payment of more than \$150 or less than
1497 \$30. For purposes of determining a participant's creditable
1498 service used to calculate the health insurance subsidy, a
1499 participant's years of service credit or fraction thereof shall
1500 be based on the participant's work year as defined in s.
1501 121.021(54). Credit must ~~shall~~ be awarded for a full work year
1502 whenever health insurance subsidy contributions have been made
1503 ~~as required by law~~ for each month in the participant's work
1504 year. In addition, all years of creditable service retained
1505 under the Florida Retirement System defined benefit program must
1506 ~~shall~~ be included as creditable service for purposes of this
1507 section. Notwithstanding any other provision in this section ~~to~~
1508 ~~the contrary~~, the spouse at the time of death is ~~shall be~~ the

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1509 participant's beneficiary unless such participant has designated
1510 a different beneficiary subsequent to the participant's most
1511 recent marriage.

1512 Section 6. Subsection (1) of section 112.65, Florida
1513 Statutes, is amended to read:

1514 112.65 Limitation of benefits.—

1515 (1) ESTABLISHMENT OF PROGRAM.—The normal retirement benefit
1516 or pension payable to a retiree who becomes a member of any
1517 retirement system or plan and who has not previously
1518 participated in such plan, on or after January 1, 1980, may
1519 ~~shall~~ not exceed 100 percent of his or her average final
1520 compensation. However, ~~nothing contained in this section~~ does
1521 not shall apply to supplemental retirement benefits or to
1522 pension increases attributable to cost-of-living increases or
1523 adjustments. For the purposes of this section, benefits accruing
1524 in individual participant accounts established under the defined
1525 contribution ~~Public Employee Optional Retirement~~ program
1526 established in part II of chapter 121, are considered
1527 supplemental benefits. As used in this section, the term
1528 "average final compensation" means the average of the member's
1529 earnings over a period of time which the governmental entity has
1530 established by statute, charter, or ordinance.

1531 Section 7. Subsections (3) and (22) of section 121.021,
1532 Florida Statutes, are amended to read:

1533 121.021 Definitions.—The following words and phrases as
1534 used in this chapter have the respective meanings set forth
1535 unless a different meaning is plainly required by the context:

1536 (3) "System" means the general retirement system
1537 established by this chapter to be known and cited as the

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1538 "Florida Retirement System," including, but not limited to, the
1539 defined benefit ~~retirement~~ program administered under ~~the~~
1540 ~~provisions of part I of this part chapter~~ and the defined
1541 contribution retirement program ~~known as the Public Employee~~
1542 ~~Optional Retirement Program~~ and administered under ~~the~~
1543 ~~provisions of part II of this chapter.~~

1544 (22) "Compensation" means the monthly salary paid a member
1545 by his or her employer for work performed arising from that
1546 employment.

1547 (b) ~~Under no circumstances shall~~ Compensation for a member
1548 participating in the defined benefit ~~retirement~~ program or the
1549 Public Employee ~~Optional Retirement~~ Investment Program of the
1550 Florida Retirement System may not include:

1551 1. Fees paid professional persons for special or particular
1552 services or ~~include~~ salary payments made from a faculty practice
1553 plan authorized by the Board of Governors of the State
1554 University System for eligible clinical faculty at a college in
1555 a state university that has a faculty practice plan; or

1556 2. Any bonuses, as defined in subsection (47), or other
1557 payments prohibited from inclusion in the member's average final
1558 compensation ~~and defined in subsection (47).~~

1559 Section 8. Paragraph (c) of subsection (2) of section
1560 121.051, Florida Statutes, is amended to read:

1561 121.051 Participation in the system.—

1562 (2) OPTIONAL PARTICIPATION.—

1563 (c) Employees of public community colleges or charter
1564 technical career centers sponsored by public community colleges,
1565 as designated in s. 1000.21(3), who are members of the Regular
1566 Class of the Florida Retirement System and who comply with the

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1567 criteria set forth in this paragraph and in s. 1012.875 may
1568 elect, in lieu of participating in the Florida Retirement
1569 System, to withdraw from the Florida Retirement System
1570 altogether and participate in an optional retirement program
1571 provided by the employing agency under s. 1012.875, ~~to be~~ known
1572 as the State Community College System Optional Retirement
1573 Program. ~~Pursuant thereto:~~

1574 1. Through June 30, 2001, the cost to the employer for an
1575 ~~such~~ annuity under the optional retirement program shall equal
1576 the normal cost portion of the employer retirement contribution
1577 which would be required if the employee were a member of the
1578 Regular Class defined benefit program, plus the portion of the
1579 contribution rate required by s. 112.363(8) that would otherwise
1580 be assigned to the Retiree Health Insurance Subsidy Trust Fund.
1581 Effective July 1, 2001, each employer shall contribute on behalf
1582 of each participant in the optional program an amount equal to
1583 10.43 percent of the participant's gross monthly compensation.
1584 The employer shall deduct an amount to provide for the
1585 administration of the optional retirement program. The employer
1586 providing the optional program shall contribute an additional
1587 amount to the Florida Retirement System Trust Fund equal to the
1588 unfunded actuarial accrued liability portion of the Regular
1589 Class contribution rate.

1590 2. The decision to participate in the ~~such an~~ optional
1591 retirement program is ~~shall be~~ irrevocable for as long as the
1592 employee holds a position eligible for participation, except as
1593 provided in subparagraph 3. Any service creditable under the
1594 Florida Retirement System is ~~shall be~~ retained after the member
1595 withdraws from the Florida Retirement System; however,

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1596 additional service credit in the Florida Retirement System may
1597 ~~shall~~ not be earned while a member of the optional retirement
1598 program.

1599 3. An employee who has elected to participate in the
1600 optional retirement program shall have one opportunity, at the
1601 employee's discretion, ~~to choose~~ to transfer from the optional
1602 retirement program to the defined benefit program of the Florida
1603 Retirement System or to the defined contribution Public Employee
1604 ~~Optional Retirement~~ program established under part II of this
1605 chapter, subject to the terms of the applicable optional
1606 retirement program contracts.

1607 a. If the employee chooses to move to the defined
1608 contribution Public Employee Optional Retirement program, any
1609 contributions, interest, and earnings creditable to the employee
1610 under the State Community College System Optional Retirement
1611 Program shall be retained by the employee in the State Community
1612 College System Optional Retirement Program, and the applicable
1613 provisions of s. 121.4501(4) shall govern the election.

1614 b. If the employee chooses to move to the defined benefit
1615 program ~~of the Florida Retirement System~~, the employee shall
1616 receive service credit equal to his or her years of service
1617 under the State Community College System Optional Retirement
1618 Program.

1619 (I) The cost for such credit must ~~shall~~ be an amount
1620 representing the present value of that employee's accumulated
1621 benefit obligation for the affected period of service. The cost
1622 shall be calculated as if the benefit commencement occurs on the
1623 first date the employee would become eligible for unreduced
1624 benefits, using the discount rate and other relevant actuarial

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1625 assumptions that were used to value the ~~Florida Retirement~~
1626 ~~System~~ defined benefit program plan liabilities in the most
1627 recent actuarial valuation. The calculation must ~~shall~~ include
1628 any service already maintained under the defined benefit program
1629 ~~plan~~ in addition to the years under the State Community College
1630 System Optional Retirement Program. The present value of any
1631 service already maintained under the defined benefit program
1632 ~~plan~~ shall be applied as a credit to total cost resulting from
1633 the calculation. The division shall ensure that the transfer sum
1634 is prepared using a formula and methodology certified by an
1635 enrolled actuary.

1636 (II) The employee must transfer from his or her State
1637 Community College System Optional Retirement Program account and
1638 from other employee moneys as necessary, a sum representing the
1639 present value of that employee's accumulated benefit obligation
1640 immediately following the time of such movement, determined
1641 assuming that attained service equals the sum of service in the
1642 defined benefit program and service in the State Community
1643 College System Optional Retirement Program.

1644 4. Participation in the optional retirement program is
1645 ~~shall be~~ limited to those employees who satisfy the following
1646 eligibility criteria:

1647 a. The employee is ~~must be~~ otherwise eligible for
1648 membership or renewed membership in the Regular Class of the
1649 Florida Retirement System, as provided in s. 121.021(11) and
1650 (12) or s. 121.122.

1651 b. The employee is ~~must be~~ employed in a full-time position
1652 classified in the Accounting Manual for Florida's Public
1653 Community Colleges as:

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1654 (I) Instructional; or

1655 (II) Executive Management, Instructional Management, or
1656 Institutional Management, if a community college determines that
1657 recruiting to fill a vacancy in the position is to be conducted
1658 in the national or regional market, and the duties and
1659 responsibilities of the position include:

1660 (A) ~~The duties and responsibilities of the position include~~
1661 ~~either~~ The formulation, interpretation, or implementation of
1662 policies; or

1663 (B) ~~The duties and responsibilities of the position include~~
1664 The performance of functions that are unique or specialized
1665 within higher education and that frequently involve the support
1666 of the mission of the community college.

1667 c. The employee is ~~must be~~ employed in a position not
1668 included in the Senior Management Service Class of the Florida
1669 Retirement System, as described in s. 121.055.

1670 5. Participants in the program are subject to the same
1671 reemployment limitations, renewed membership provisions, and
1672 forfeiture provisions as are applicable to regular members of
1673 the Florida Retirement System under ss. 121.091(9), 121.122, and
1674 121.091(5), respectively.

1675 6. Eligible community college employees are ~~shall be~~
1676 compulsory members of the Florida Retirement System until,
1677 pursuant to the procedures set forth in s. 1012.875, a written
1678 election to withdraw from the Florida Retirement System and to
1679 participate in the State Community College System Optional
1680 Retirement Program is filed with the program administrator and
1681 received by the division.

1682 a. Any community college employee whose program eligibility

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1683 results from initial employment shall be enrolled in the State
1684 Community College System Optional Retirement Program retroactive
1685 to the first day of eligible employment. The employer retirement
1686 contributions paid through the month of the employee plan change
1687 must ~~shall~~ be transferred to the community college for the
1688 employee's optional program account, and, effective the first
1689 day of the next month, the employer shall pay the applicable
1690 contributions based upon subparagraph 1.

1691 b. Any community college employee whose program eligibility
1692 results from a change in status due to the subsequent
1693 designation of the employee's position as one of those specified
1694 in subparagraph 4. or due to the employee's appointment,
1695 promotion, transfer, or reclassification to a position specified
1696 in subparagraph 4. shall be enrolled in the program upon the
1697 first day of the first full calendar month that such change in
1698 status becomes effective. The employer retirement contributions
1699 paid from the effective date through the month of the employee
1700 plan change must ~~shall~~ be transferred to the community college
1701 for the employee's optional program account, and, effective the
1702 first day of the next month, the employer shall pay the
1703 applicable contributions based upon subparagraph 1.

1704 7. Effective July 1, 2003, through December 31, 2008, any
1705 participant of the State Community College System Optional
1706 Retirement Program who has service credit in the defined benefit
1707 plan of the Florida Retirement System for the period between his
1708 or her first eligibility to transfer from the defined benefit
1709 plan to the optional retirement program and the actual date of
1710 transfer may, during his or her employment, elect to transfer to
1711 the optional retirement program a sum representing the present

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1712 value of the accumulated benefit obligation under the defined
1713 benefit retirement program for such period of service credit.
1714 Upon such transfer, all ~~such~~ service credit ~~previously~~ earned
1715 under the defined benefit program ~~of the Florida Retirement~~
1716 ~~System~~ during this period is ~~shall be~~ nullified for purposes of
1717 entitlement to a future benefit under the defined benefit
1718 program ~~of the Florida Retirement System~~.

1719 Section 9. Paragraph (b) of subsection (1) of section
1720 121.055, Florida Statutes, is amended to read:

1721 121.055 Senior Management Service Class.—There is hereby
1722 established a separate class of membership within the Florida
1723 Retirement System to be known as the "Senior Management Service
1724 Class," which shall become effective February 1, 1987.

1725 (1)

1726 (b)1. Except as provided in subparagraph 2., effective
1727 January 1, 1990, participation in the Senior Management Service
1728 Class is ~~shall be~~ compulsory for the president of each community
1729 college, the manager of each participating city or county, and
1730 all appointed district school superintendents. Effective January
1731 1, 1994, additional positions may be designated for inclusion in
1732 the Senior Management Service Class of the Florida Retirement
1733 System, provided that:

1734 a. Positions to be included in the class shall be
1735 designated by the local agency employer. Notice of intent to
1736 designate positions for inclusion in the class must ~~shall~~ be
1737 published once a week for 2 consecutive weeks in a newspaper of
1738 general circulation published in the county or counties
1739 affected, as provided in chapter 50.

1740 b. Up to 10 nonelective full-time positions may be

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1741 designated for each local agency employer reporting to the
1742 department ~~of Management Services~~; for local agencies with 100
1743 or more regularly established positions, additional nonelective
1744 full-time positions may be designated, not to exceed 1 percent
1745 of the regularly established positions within the agency.

1746 c. Each position added to the class must be a managerial or
1747 policymaking position filled by an employee who is not subject
1748 to continuing contract and serves at the pleasure of the local
1749 agency employer without civil service protection, and who:

1750 (I) Heads an organizational unit; or

1751 (II) Has responsibility to effect or recommend personnel,
1752 budget, expenditure, or policy decisions in his or her areas of
1753 responsibility.

1754 2. In lieu of participation in the Senior Management
1755 Service Class, members of the Senior Management Service class,
1756 pursuant to the provisions of subparagraph 1., may withdraw from
1757 the Florida Retirement System altogether. The decision to
1758 withdraw from the Florida Retirement System is ~~shall be~~
1759 irrevocable ~~for~~ as long as the employee holds the ~~such a~~
1760 position. Any service creditable under the Senior Management
1761 Service Class shall be retained after the member withdraws from
1762 the Florida Retirement System; however, additional service
1763 credit in the Senior Management Service Class may ~~shall~~ not be
1764 earned after such withdrawal. Such members are ~~shall not be~~
1765 eligible to participate in the Senior Management Service
1766 Optional Annuity Program.

1767 ~~3. Effective January 1, 2006, through June 30, 2006, an~~
1768 ~~employee who has withdrawn from the Florida Retirement System~~
1769 ~~under subparagraph 2. has one opportunity to elect to~~

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1770 ~~participate in either the defined benefit program or the Public~~
1771 ~~Employee Optional Retirement Program of the Florida Retirement~~
1772 ~~System.~~

1773 ~~a. If the employee elects to participate in the Public~~
1774 ~~Employee Optional Retirement Program, membership shall be~~
1775 ~~prospective, and the applicable provisions of s. 121.4501(4)~~
1776 ~~shall govern the election.~~

1777 ~~b. If the employee elects to participate in the defined~~
1778 ~~benefit program of the Florida Retirement System, the employee~~
1779 ~~shall, upon payment to the system trust fund of the amount~~
1780 ~~calculated under sub-sub-subparagraph (I), receive service~~
1781 ~~credit for prior service based upon the time during which the~~
1782 ~~employee had withdrawn from the system.~~

1783 ~~(I) The cost for such credit shall be an amount~~
1784 ~~representing the actuarial accrued liability for the affected~~
1785 ~~period of service. The cost shall be calculated using the~~
1786 ~~discount rate and other relevant actuarial assumptions that were~~
1787 ~~used to value the Florida Retirement System defined benefit plan~~
1788 ~~liabilities in the most recent actuarial valuation. The~~
1789 ~~calculation shall include any service already maintained under~~
1790 ~~the defined benefit plan in addition to the period of~~
1791 ~~withdrawal. The actuarial accrued liability attributable to any~~
1792 ~~service already maintained under the defined benefit plan shall~~
1793 ~~be applied as a credit to the total cost resulting from the~~
1794 ~~calculation. The division shall ensure that the transfer sum is~~
1795 ~~prepared using a formula and methodology certified by an~~
1796 ~~actuary.~~

1797 ~~(II) The employee must transfer a sum representing the net~~
1798 ~~cost owed for the actuarial accrued liability in sub-sub-~~

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1799 ~~subparagraph (I) immediately following the time of such~~
 1800 ~~movement, determined assuming that attained service equals the~~
 1801 ~~sum of service in the defined benefit program and the period of~~
 1802 ~~withdrawal.~~

1803 Section 10. Paragraph (c) of subsection (9) of section
 1804 121.091, Florida Statutes, is amended to read:

1805 121.091 Benefits payable under the system.—Benefits may not
 1806 be paid under this section unless the member has terminated
 1807 employment as provided in s. 121.021(39) (a) or begun
 1808 participation in the Deferred Retirement Option Program as
 1809 provided in subsection (13), and filed a proper application ~~has~~
 1810 ~~been filed~~ in the manner prescribed by the department. The
 1811 department may cancel an application for retirement benefits if
 1812 ~~when~~ the member or beneficiary fails to timely provide the
 1813 information and documents required by this chapter and the
 1814 department's rules. The department shall adopt rules
 1815 establishing procedures for application for retirement benefits
 1816 and for the cancellation of such application if ~~when~~ the
 1817 required information or documents are not received.

1818 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

1819 (c) The provisions of this subsection apply to a retiree
 1820 ~~retirees~~, as defined in s. 121.4501(2) ~~s. 121.4501(2) (j)~~, of the
 1821 ~~Public Employee Optional Retirement Program created in part II,~~
 1822 subject to the following conditions:

1823 1. The retiree ~~Such retirees~~ may not be reemployed with an
 1824 employer participating in the Florida Retirement System as
 1825 provided in paragraph (b) until such person has been retired for
 1826 3 calendar months, unless the participant has reached the normal
 1827 retirement requirements of the defined benefit plan as provided

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1828 in s. 121.021(29).

1829 2. A ~~Such~~ retiree employed in violation of this subsection,
1830 and any employing agency that knowingly employs or appoints such
1831 person, is ~~shall be~~ jointly and severally liable for
1832 reimbursement of any benefits paid to the retirement trust fund
1833 from which the benefits were paid, including the Retirement
1834 System Trust Fund and the Public Employee ~~Optional~~ Retirement
1835 Investment Program Trust Fund, as appropriate. To avoid
1836 liability, the ~~such~~ employing agency must have a written
1837 statement from the retiree that he or she is not retired from a
1838 state-administered retirement system.

1839 Section 11. Paragraphs (g) and (i) of subsection (3) of
1840 section 121.35, Florida Statutes, are amended to read:

1841 121.35 Optional retirement program for the State University
1842 System.—

1843 (3) ELECTION OF OPTIONAL PROGRAM.—

1844 (g) An eligible employee who is a member of the Florida
1845 Retirement System at the time of election to participate in the
1846 optional retirement program shall retain all retirement service
1847 credit earned under the Florida Retirement System, at the rate
1848 earned. ~~No~~ Additional service credit in the Florida Retirement
1849 System may not ~~shall~~ be earned while the employee participates
1850 in the optional program, and ~~nor shall~~ the employee is not ~~be~~
1851 eligible for disability retirement under the Florida Retirement
1852 System. An eligible employee may transfer from the Florida
1853 Retirement System to his or her accounts under the State
1854 University System Optional Retirement Program a sum representing
1855 the present value of the employee's accumulated benefit
1856 obligation under the defined benefit program of the Florida

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1857 Retirement System for any service credit accrued from the
1858 employee's first eligible transfer date to the optional
1859 retirement program through the actual date of such transfer, if
1860 such service credit was earned in the period from July 1, 1984,
1861 through December 31, 1992. The present value of the employee's
1862 accumulated benefit obligation must ~~shall~~ be calculated as
1863 described in s. 121.4501(3) ~~s. 121.4501(3)(c)2.~~ Upon ~~such~~
1864 transfer, all ~~such~~ service credit ~~previously~~ earned under the
1865 defined benefit program ~~of the Florida Retirement System~~ during
1866 this period is ~~shall be~~ nullified for purposes of entitlement to
1867 a future benefit under the defined benefit program ~~of the~~
1868 ~~Florida Retirement System.~~

1869 (i) Effective January 1, 2008, through December 31, 2008,
1870 except for an employee who is a mandatory participant of the
1871 State University System Optional Retirement Program, an employee
1872 who has elected to participate in the State University System
1873 Optional Retirement Program shall have one opportunity, at the
1874 employee's discretion, to choose to transfer from this program
1875 to the defined benefit program of the Florida Retirement System
1876 or to the Public Employee Optional Retirement Program, subject
1877 to the terms of the applicable contracts of the State University
1878 System Optional Retirement Program.

1879 1. If the employee chooses to move to the defined
1880 contribution ~~Public Employee Optional Retirement~~ program, any
1881 contributions, interest, and earnings creditable to the employee
1882 under the State University System Optional Retirement Program
1883 must ~~shall~~ be retained by the employee in the State University
1884 System Optional Retirement Program, and the applicable
1885 provisions of s. 121.4501(4) shall govern the election.

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1886 2. If the employee chooses to move to the defined benefit
1887 program of the Florida Retirement System, the employee shall
1888 receive service credit equal to his or her years of service
1889 under the State University System Optional Retirement Program.

1890 a. The cost for such credit must be in ~~shall be~~ an amount
1891 representing the actuarial accrued liability for the affected
1892 period of service. The cost must ~~shall~~ be calculated using the
1893 discount rate and other relevant actuarial assumptions that were
1894 used to value the Florida Retirement System defined benefit plan
1895 liabilities in the most recent actuarial valuation. The
1896 calculation must ~~shall~~ include any service already maintained
1897 under the defined benefit program ~~plan~~ in addition to the years
1898 under the State University System Optional Retirement Program.
1899 The actuarial accrued liability of any service already
1900 maintained under the defined benefit program ~~must plan shall~~ be
1901 applied as a credit to total cost resulting from the
1902 calculation. The division shall ensure that the transfer sum is
1903 prepared using a formula and methodology certified by an
1904 enrolled actuary.

1905 b. The employee must transfer from his or her State
1906 University System Optional Retirement Program account, and from
1907 other employee moneys as necessary, a sum representing the
1908 actuarial accrued liability immediately following the time of
1909 such movement, determined assuming that attained service equals
1910 the sum of service in the defined benefit program and service in
1911 the State University System Optional Retirement Program.

1912 Section 12. Subsection (1) of Section 121.4503, Florida
1913 Statutes, is amended to read:

1914 121.4503 Florida Retirement System Contributions Clearing

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1915 Trust Fund.—

1916 (1) The Florida Retirement System Contributions Clearing
 1917 Trust Fund is created as a clearing fund for disbursing employer
 1918 contributions to the component plans of the Florida Retirement
 1919 System and shall be administered by the Department of Management
 1920 Services. Funds shall be credited to the trust fund as provided
 1921 in this chapter and shall be held in trust for the contributing
 1922 employers until such time as the assets are transferred by the
 1923 department to the Florida Retirement System Trust Fund, the
 1924 Public Employee ~~Optional~~ Retirement Investment Program Trust
 1925 Fund, or other trust funds as authorized by law, to be used for
 1926 the purposes of this chapter. The trust fund is exempt from the
 1927 service charges imposed by s. 215.20.

1928 Section 13. Section 121.571, Florida Statutes, is amended
 1929 to read:

1930 121.571 Contributions.—Contributions to the Public Employee
 1931 ~~Optional~~ Retirement Investment Program shall be made as follows:

1932 (1) NONCONTRIBUTORY PLAN.—Each employer shall make
 1933 ~~accomplish~~ the monthly contributions required under ~~by~~ s. 121.71
 1934 without reducing an ~~by a procedure in which no~~ employee's gross
 1935 salary ~~shall be reduced~~.

1936 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund the
 1937 retirement and disability benefits provided under this part must
 1938 ~~shall~~ be based on the uniform contribution rates established by
 1939 s. 121.71 and on the membership class or subclass of the
 1940 participant. Such contributions must ~~shall~~ be allocated as
 1941 provided in ss. 121.72 and 121.73.

1942 (3) CONTRIBUTIONS FOR SOCIAL SECURITY COVERAGE AND FOR
 1943 RETIREE HEALTH INSURANCE SUBSIDY.—Contributions required under

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1944 s. 121.71 are ~~this section shall be~~ in addition to employer and
1945 member contributions ~~required~~ for social security and the
1946 Retiree Health Insurance Subsidy Trust Fund as required under
1947 ~~provided in~~ ss. 112.363, 121.052, 121.055, and 121.071, as
1948 appropriate.

1949 Section 14. Section 121.591, Florida Statutes, is amended
1950 to read:

1951 121.591 Payment of benefits payable under the Public
1952 ~~Employee Optional Retirement Program of the Florida Retirement~~
1953 ~~System.~~—Benefits may not be paid under the Public Employee
1954 Retirement Investment Program ~~this section~~ unless the member has
1955 terminated employment as provided in s. 121.021(39)(a) or is
1956 deceased and a proper application has been filed as in the
1957 ~~manner~~ prescribed by the state board or the department. The
1958 state board or department, as appropriate, may cancel an
1959 application for retirement benefits if ~~when~~ the member or
1960 beneficiary fails to timely provide the information and
1961 documents required by this chapter and the rules of the state
1962 board and department. In accordance with their respective
1963 responsibilities ~~as provided herein~~, the state board ~~of~~
1964 ~~Administration~~ and the department ~~of Management Services~~ shall
1965 adopt rules establishing procedures for application for
1966 retirement benefits and for the cancellation of such application
1967 if ~~when~~ the required information or documents are not received.
1968 The state board ~~of Administration~~ and the department ~~of~~
1969 ~~Management Services~~, as appropriate, are authorized to cash out
1970 a de minimis account of not more than \$5,000 of a participant
1971 who has been terminated from Florida Retirement System covered
1972 employment for a minimum of 6 calendar months. ~~A de minimis~~

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1973 ~~account is an account containing employer contributions and~~
 1974 ~~accumulated earnings of not more than \$5,000 made under the~~
 1975 ~~provisions of this chapter.~~ Such cash-out must either be a
 1976 complete lump-sum liquidation of the account balance, subject to
 1977 the provisions of the Internal Revenue Code, or a lump-sum
 1978 direct rollover distribution paid directly to the custodian of
 1979 an eligible retirement plan, as defined by the Internal Revenue
 1980 Code, on behalf of the participant. If any financial instrument
 1981 issued for the payment of retirement benefits under this section
 1982 is not presented for payment within 180 days after the last day
 1983 of the month in which it was originally issued, the third-party
 1984 administrator or other duly authorized agent of the state board
 1985 ~~of Administration~~ shall cancel the instrument and credit the
 1986 amount of the instrument to the suspense account of the Public
 1987 Employee ~~Optional Retirement~~ Investment Program Trust Fund
 1988 authorized under s. 121.450(7) ~~s. 121.4501(6)~~. Any ~~such~~ amounts
 1989 transferred to the suspense account are payable upon a proper
 1990 application, not to include earnings thereon, as provided in
 1991 this section, within 10 years after the last day of the month in
 1992 which the instrument was originally issued, after which time
 1993 such amounts and any earnings are thereon ~~shall be~~ forfeited.
 1994 Any ~~such~~ forfeited amounts are assets of the ~~Public Employee~~
 1995 ~~Optional Retirement Program~~ trust fund and are not subject to
 1996 the provisions of chapter 717.

1997 (1) NORMAL BENEFITS.—Under the Public Employee ~~Optional~~
 1998 Retirement Investment Program:

1999 (a) Benefits in the form of vested accumulations as
 2000 described in s. 121.4501(7) ~~are s. 121.4501(6)~~ shall be payable
 2001 ~~under this subsection~~ in accordance with the following terms and

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2002 conditions:

2003 1. ~~To the extent vested,~~ Benefits shall be paid ~~payable~~
2004 only to a participant.

2005 2. Benefits shall be paid by the third-party administrator
2006 or designated approved providers in accordance with the law, the
2007 contracts, and any applicable board rule or policy.

2008 3. ~~To receive benefits under this subsection,~~ The
2009 participant must be terminated from all employment with all
2010 Florida Retirement System employers, as provided in s.
2011 121.021(39).

2012 4. Benefit payments may not be made until the participant
2013 has been terminated for 3 calendar months, except that the state
2014 board may authorize by rule for the distribution of up to 10
2015 percent of the participant's account after being terminated for
2016 1 calendar month if a participant has reached the normal
2017 retirement requirements of the defined benefit plan, as provided
2018 in s. 121.021(29).

2019 5. If a member or former member of the Florida Retirement
2020 System receives an invalid distribution ~~from the Public Employee~~
2021 ~~Optional Retirement Program Trust Fund,~~ such person must ~~shall~~
2022 repay the full amount ~~invalid distribution to the trust fund~~
2023 within 90 days after receipt of final notification by the state
2024 board ~~of Administration~~ or the third-party administrator that
2025 the distribution was invalid. If such person fails to repay the
2026 full invalid distribution within 90 days after receipt of final
2027 notification, the person may be deemed retired from the
2028 investment Public Employee Optional Retirement program by the
2029 state board, ~~as provided pursuant to s. 121.4501(2)(j),~~ and
2030 shall be subject to the provisions of s. 121.122. If such person

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2031 is deemed retired ~~by the state board~~, any joint and several
 2032 liability set out in s. 121.091(9)(c)2. is ~~becomes~~ null and
 2033 void, and the state board, the department ~~of Management~~
 2034 ~~Services~~, or the employing agency is not liable for gains on
 2035 payroll contributions that have not been deposited to the
 2036 person's account in the investment ~~Public Employee Optional~~
 2037 ~~Retirement~~ program, pending resolution of the invalid
 2038 distribution. The member or former member who has been deemed
 2039 retired or who has been determined by the board to have taken an
 2040 invalid distribution may appeal the agency decision through the
 2041 complaint process as provided under s. 121.4501(10)(f)3. ~~s.~~
 2042 ~~121.4501(9)(f)3.~~ As used in this subparagraph, the term "invalid
 2043 distribution" means any distribution from an account in the
 2044 investment ~~Public Employee Optional Retirement~~ program which is
 2045 taken in violation of the provisions of this section, s.
 2046 121.091(9), or s. 121.4501.

2047 (b) If a participant elects to receive his or her benefits
 2048 upon termination of employment, the participant must submit a
 2049 written application or an equivalent form to the third-party
 2050 administrator indicating his or her preferred distribution date
 2051 and selecting an authorized method of distribution as provided
 2052 in paragraph (c). The participant may defer receipt of benefits
 2053 until he or she chooses to make such application, subject to
 2054 federal requirements.

2055 (c) Upon receipt by the third-party administrator of a
 2056 properly executed application for distribution of benefits, the
 2057 total accumulated benefit shall be payable to the participant,
 2058 as:

2059 1. A lump-sum distribution to the participant;

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2060 2. A lump-sum direct rollover distribution whereby all
 2061 accrued benefits, plus interest and investment earnings, are
 2062 paid from the participant's account directly to the custodian of
 2063 an eligible retirement plan, as defined in s. 402(c)(8)(B) of
 2064 the Internal Revenue Code, on behalf of the participant; or

2065 3. Periodic distributions, as authorized by the state
 2066 board.

2067 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under
 2068 this subsection are payable in lieu of the benefits ~~that~~ which
 2069 would otherwise be payable under the provisions of subsection
 2070 (1). Such benefits must ~~shall~~ be funded entirely from employer
 2071 contributions ~~made under s. 121.571~~, transferred participant
 2072 funds accumulated pursuant to paragraph (a), and interest and
 2073 earnings thereon. ~~Pursuant thereto:~~

2074 (a) Transfer of funds.—To qualify for ~~to receive~~ monthly
 2075 disability benefits under this subsection:

2076 1. All moneys accumulated in the participant's ~~Public~~
 2077 ~~Employee Optional Retirement Program~~ accounts, including vested
 2078 and nonvested accumulations as described in s. 121.4501(7) ~~s.~~
 2079 ~~121.4501(6)~~, must ~~shall~~ be transferred from such individual
 2080 accounts to the division ~~of Retirement~~ for deposit in the
 2081 disability account of the Florida Retirement System Trust Fund.
 2082 Such moneys must ~~shall~~ be ~~separately~~ accounted for separately.
 2083 Earnings must ~~shall~~ be credited on an annual basis for amounts
 2084 held in the disability accounts ~~of the Florida Retirement System~~
 2085 ~~Trust Fund~~ based on actual earnings of the ~~Florida Retirement~~
 2086 ~~System~~ trust fund.

2087 2. If the participant has retained retirement credit ~~he or~~
 2088 ~~she had~~ earned under the defined benefit program ~~of the Florida~~

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2089 Retirement System as provided in s. 121.4501(3) ~~s.~~
 2090 ~~121.4501(3)(b)~~, a sum representing the actuarial present value
 2091 of such credit within the Florida Retirement System Trust Fund
 2092 shall be reassigned by the division ~~of Retirement~~ from the
 2093 defined benefit program to the disability program as implemented
 2094 under this subsection and shall be deposited in the disability
 2095 account of the ~~Florida Retirement System~~ trust fund. Such moneys
 2096 must ~~shall~~ be ~~separately~~ accounted for separately.

2097 (b) *Disability retirement; entitlement.*—

2098 1. A participant of the investment ~~Public Employee Optional~~
 2099 ~~Retirement~~ program who becomes totally and permanently disabled,
 2100 as defined in paragraph (d) ~~s. 121.091(4)(b)~~, after completing 8
 2101 years of creditable service, or a participant who becomes
 2102 totally and permanently disabled in the line of duty regardless
 2103 of ~~his or her~~ length of service, is ~~shall be~~ entitled to a
 2104 monthly disability benefit ~~as provided herein~~.

2105 2. In order for service to apply toward the 8 years of
 2106 creditable service required ~~to vest~~ for regular disability
 2107 benefits, or toward the creditable service used in calculating a
 2108 service-based benefit as provided ~~for~~ under paragraph (g), the
 2109 service must be creditable service as described below:

2110 a. The participant's period of service under the investment
 2111 ~~Public Employee Optional Retirement~~ program shall ~~will~~ be
 2112 considered creditable service, except as provided in
 2113 subparagraph d.

2114 b. If the participant has elected to retain credit for ~~his~~
 2115 ~~or her~~ service under the defined benefit program ~~of the Florida~~
 2116 ~~Retirement System~~ as provided under s. 121.4501(3) ~~s.~~
 2117 ~~121.4501(3)(b)~~, all such service shall ~~will~~ be considered

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2118 creditable service.

2119 c. If the participant elects ~~has elected~~ to transfer to his
2120 or her participant accounts a sum representing the present value
2121 of his or her retirement credit under the defined benefit
2122 program as provided under s. 121.4501(3) ~~s. 121.4501(3)(e)~~, the
2123 period of service under the defined benefit program represented
2124 in the present value amounts transferred shall ~~will~~ be
2125 considered creditable service ~~for purposes of vesting for~~
2126 ~~disability benefits~~, except as provided in subparagraph d.

2127 d. Whenever a participant has terminated employment and has
2128 taken distribution of his or her funds as provided in subsection
2129 (1), all creditable service represented by such distributed
2130 funds is forfeited for purposes of this subsection.

2131 (c) *Disability retirement effective date.*—The effective
2132 retirement date for a participant who applies and is approved
2133 for disability retirement shall be established as provided under
2134 s. 121.091(4)(a)2. and 3.

2135 (d) *Total and permanent disability.*—A participant shall be
2136 considered totally and permanently disabled if, in the opinion
2137 of the division, he or she is prevented, by reason of a
2138 medically determinable physical or mental impairment, from
2139 rendering useful and efficient service as an officer or
2140 employee.

2141 (e) *Proof of disability.*—~~The division,~~ Before approving
2142 payment of any disability retirement benefit, the division shall
2143 require proof that the participant is totally and permanently
2144 disabled ~~in the same manner as provided for members of the~~
2145 ~~defined benefit program of the Florida Retirement System~~ under
2146 s. 121.091(4)(c).

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2147 (f) *Disability retirement benefit.*—Upon the disability
2148 retirement of a participant under this subsection, the
2149 participant shall receive a monthly benefit that begins accruing
2150 ~~shall begin to accrue~~ on the first day of the month of
2151 disability retirement, as approved by the division, and is ~~shall~~
2152 ~~be~~ payable on the last day of that month and each month
2153 thereafter during his or her lifetime and continued disability.
2154 All disability benefits must ~~payable to such member shall~~ be
2155 paid out of the disability account of the Florida Retirement
2156 System Trust Fund established under this subsection.

2157 (g) *Computation of disability retirement benefit.*—The
2158 amount of each monthly payment must ~~shall~~ be calculated ~~in the~~
2159 ~~same manner~~ as provided ~~for members of the defined benefit~~
2160 ~~program of the Florida Retirement System~~ under s. 121.091(4)(f).
2161 ~~For such purpose,~~ Creditable service under both the defined
2162 benefit program and the investment ~~Public Employee Optional~~
2163 ~~Retirement program of the Florida Retirement System~~ shall be
2164 applicable as provided under paragraph (b).

2165 (h) *Reapplication.*—A participant whose initial application
2166 for disability retirement is ~~has been~~ denied may reapply for
2167 disability benefits ~~in the same manner, and under the same~~
2168 ~~conditions,~~ as provided ~~for members of the defined benefit~~
2169 ~~program of the Florida Retirement System~~ under s. 121.091(4)(g).

2170 (i) *Membership.*—Upon approval of a participant's ~~an~~
2171 application for disability benefits ~~under this subsection,~~ the
2172 applicant shall be transferred to the defined benefit program ~~of~~
2173 ~~the Florida Retirement System,~~ effective upon his or her
2174 disability retirement effective date.

2175 (j) *Option to cancel.*—A ~~Any~~ participant whose application

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2176 for disability benefits is approved may cancel the ~~his or her~~
2177 application if ~~for disability benefits,~~ provided that the
2178 cancellation request is received by the division before a
2179 disability retirement warrant has been deposited, cashed, or
2180 received by direct deposit. Upon ~~such~~ cancellation:

2181 1. The participant's transfer to the defined benefit
2182 program under paragraph (i) shall be nullified;

2183 2. The participant shall be retroactively reinstated in the
2184 investment ~~Public Employee Optional Retirement~~ program without
2185 hiatus;

2186 3. All funds transferred to the Florida Retirement System
2187 Trust Fund under paragraph (a) must ~~shall~~ be returned to the
2188 participant accounts from which the ~~such~~ funds were drawn; and

2189 4. The participant may elect to receive the benefit payable
2190 under ~~the provisions of~~ subsection (1) in lieu of disability
2191 benefits ~~as provided under this subsection.~~

2192 (k) *Recovery from disability.*—

2193 1. The division may require periodic reexaminations at the
2194 expense of the disability program account of the Florida
2195 Retirement System Trust Fund. Except as ~~otherwise~~ provided in
2196 subparagraph 2., ~~the requirements, procedures, and restrictions~~
2197 ~~relating to the conduct and review of such reexaminations,~~
2198 ~~discontinuation or termination of benefits, reentry into~~
2199 ~~employment, disability retirement after reentry into covered~~
2200 ~~employment,~~ and all ~~other~~ matters relating to recovery from
2201 disability shall be ~~the same~~ as provided ~~are set forth~~ under s.
2202 121.091(4)(h).

2203 2. Upon recovery from disability, the ~~any~~ recipient of
2204 disability retirement benefits under this subsection shall be

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2205 transferred back to the investment program ~~a compulsory member~~
2206 ~~of the Public Employee Optional Retirement Program of the~~
2207 ~~Florida Retirement System.~~ The net difference between the
2208 recipient's original account balance transferred to the Florida
2209 Retirement System Trust Fund, including earnings, ~~under~~
2210 ~~paragraph (a)~~ and total disability benefits paid to such
2211 recipient, if any, shall be determined as provided in sub-
2212 subparagraph a.

2213 a. An amount equal to the total benefits paid shall be
2214 subtracted from that portion of the transferred account balance
2215 consisting of vested accumulations as described under s.
2216 121.4501(7) ~~s. 121.4501(6)~~, if any, and an amount equal to the
2217 remainder of benefit amounts paid, if any, shall ~~then~~ be
2218 subtracted from any remaining ~~portion consisting of~~ nonvested
2219 accumulations ~~as described under s. 121.4501(6)~~.

2220 b. Amounts subtracted under sub-subparagraph a. must ~~shall~~
2221 be retained within the disability account of the Florida
2222 Retirement System Trust Fund. Any remaining account balance
2223 shall be transferred to the third-party administrator for
2224 disposition as provided under sub-subparagraph c. or sub-
2225 subparagraph d., as appropriate.

2226 c. If the recipient returns to covered employment,
2227 transferred amounts must ~~shall~~ be deposited in individual
2228 accounts under the investment ~~Public Employee Optional~~
2229 ~~Retirement~~ program, as directed by the participant. Vested and
2230 nonvested amounts shall be separately accounted for as provided
2231 in s. 121.4501(7) ~~s. 121.4501(6)~~.

2232 d. If the recipient fails to return to covered employment
2233 upon recovery from disability:

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2234 (I) Any remaining vested amount must ~~shall~~ be deposited in
 2235 individual accounts under the investment ~~Public Employee~~
 2236 ~~Optional Retirement~~ program, as directed by the participant, and
 2237 is ~~shall be~~ payable as provided in subsection (1).

2238 (II) Any remaining nonvested amount must ~~shall~~ be held in a
 2239 suspense account and is ~~shall be~~ forfeitable after 5 years as
 2240 provided in s. 121.4501(7) ~~s. 121.4501(6)~~.

2241 3. If present value was reassigned from the defined benefit
 2242 program to the disability program ~~of the Florida Retirement~~
 2243 ~~System~~ as provided under subparagraph (a)2., the full present
 2244 value amount must ~~shall~~ be returned to the defined benefit
 2245 account within the Florida Retirement System Trust Fund and the
 2246 recipient's affected individual's associated retirement credit
 2247 under the defined benefit program must ~~shall~~ be reinstated in
 2248 full. Any benefit based upon such credit must ~~shall~~ be
 2249 calculated as provided in s. 121.091(4)(h)1.

2250 (l) *Nonadmissible causes of disability.*—A participant is
 2251 ~~shall not be~~ entitled to ~~receive~~ a disability retirement benefit
 2252 if the disability results from any injury or disease ~~sustained~~
 2253 ~~or inflicted~~ as described in s. 121.091(4)(i).

2254 (m) *Disability retirement of justice or judge by order of*
 2255 *Supreme Court.*—

2256 1. If a participant is a justice of the Supreme Court,
 2257 judge of a district court of appeal, circuit judge, or judge of
 2258 a county court who has served for 6 years or more as an elected
 2259 constitutional judicial officer, including service as a judicial
 2260 officer in any court abolished pursuant to Art. V of the State
 2261 Constitution, and who is retired for disability ~~by order of the~~
 2262 ~~Supreme Court upon recommendation of the Judicial Qualifications~~

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2263 ~~Commission~~ pursuant to s. 12, ~~the provisions of~~ Art. V of the
2264 State Constitution, the participant's Option 1 monthly
2265 disability benefit amount as provided in s. 121.091(6)(a)1.
2266 shall be two-thirds of his or her monthly compensation as of the
2267 participant's disability retirement date. The ~~Such a~~ participant
2268 may alternatively elect to receive an actuarially adjusted
2269 disability retirement benefit under any other option as provided
2270 in s. 121.091(6)(a), or ~~to~~ receive the normal benefit payable
2271 under ~~the Public Employee Optional Retirement Program as set~~
2272 ~~forth in~~ subsection (1).

2273 2. If any justice or judge who is a participant of the
2274 investment ~~Public Employee Optional Retirement~~ program of the
2275 ~~Florida Retirement System~~ is retired for disability ~~by order of~~
2276 ~~the Supreme Court upon recommendation of the Judicial~~
2277 ~~Qualifications Commission~~ pursuant to s. 12, ~~the provisions of~~
2278 Art. V of the State Constitution and elects to receive a monthly
2279 disability benefit under the provisions of this paragraph:

2280 a. Any present value amount that was transferred to his or
2281 her program account and all employer contributions made to such
2282 account on his or her behalf, plus interest and earnings
2283 thereon, must ~~shall~~ be transferred to and deposited in the
2284 disability account of the Florida Retirement System Trust Fund;
2285 and

2286 b. The monthly disability benefits payable under this
2287 paragraph ~~for any affected justice or judge retired from the~~
2288 ~~Florida Retirement System pursuant to Art. V of the State~~
2289 ~~Constitution~~ shall be paid from the disability account of the
2290 Florida Retirement System Trust Fund.

2291 (n) *Death of retiree or beneficiary.*—Upon the death of a

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2292 disabled retiree or beneficiary of the retiree ~~thereof~~ who is
2293 receiving monthly disability benefits under this subsection, the
2294 monthly benefits shall be paid through the last day of the month
2295 of death and shall terminate, or be adjusted, if applicable, as
2296 of that date in accordance with the optional form of benefit
2297 selected at the time of retirement. The department ~~of Management~~
2298 ~~Services~~ may adopt rules necessary to administer this paragraph.

2299 (3) DEATH BENEFITS.—Under the Public Employee ~~Optional~~
2300 Retirement Investment Program:

2301 (a) Survivor benefits are ~~shall be~~ payable in accordance
2302 with the following terms and conditions:

2303 1. To the extent vested, benefits are ~~shall be~~ payable only
2304 to a participant's beneficiary or beneficiaries as designated by
2305 the participant as provided in s. 121.4501(21) ~~s. 121.4501(20)~~.

2306 2. Benefits must ~~shall~~ be paid by the third-party
2307 administrator or designated approved providers in accordance
2308 with the law, the contracts, and any applicable state board rule
2309 or policy.

2310 3. To receive benefits under this subsection, the
2311 participant must be deceased.

2312 (b) In the event of a participant's death, all vested
2313 accumulations as described in s. 121.4501(7) ~~s. 121.4501(6)~~,
2314 less withholding taxes remitted to the Internal Revenue Service,
2315 shall be distributed, as provided in paragraph (c) or as
2316 described in s. 121.4501(21) ~~s. 121.4501(20)~~, as if the
2317 participant retired on the date of death. No other death
2318 benefits are ~~shall be~~ available for survivors of participants
2319 ~~under the Public Employee Optional Retirement Program~~, except
2320 for ~~such~~ benefits, or coverage for ~~such~~ benefits, as are

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2321 otherwise provided by law or ~~are~~ separately provided ~~afforded~~ by
2322 the employer, at the employer's discretion.

2323 (c) Upon receipt by the third-party administrator of a
2324 properly executed application for distribution of benefits, the
2325 total accumulated benefit is ~~shall be~~ payable by the third-party
2326 administrator to the participant's surviving beneficiary or
2327 beneficiaries, as:

2328 1. A lump-sum distribution payable to the beneficiary or
2329 beneficiaries, or to the deceased participant's estate;

2330 2. An eligible rollover distribution on behalf of the
2331 surviving spouse of a deceased participant, whereby all accrued
2332 benefits, plus interest and investment earnings, are paid from
2333 the deceased participant's account directly to the custodian of
2334 an eligible retirement plan, as described in s. 402(c)(8)(B) of
2335 the Internal Revenue Code, on behalf of the surviving spouse; or

2336 3. A partial lump-sum payment whereby a portion of the
2337 accrued benefit is paid to the deceased participant's surviving
2338 spouse or other designated beneficiaries, less withholding taxes
2339 remitted to the Internal Revenue Service, and the remaining
2340 amount is transferred directly to the custodian of an eligible
2341 retirement plan, as described in s. 402(c)(8)(B) of the Internal
2342 Revenue Code, on behalf of the surviving spouse. The proportions
2343 must be specified by the participant or the surviving
2344 beneficiary.

2345
2346 This paragraph does not abrogate other applicable provisions of
2347 state or federal law providing for payment of death benefits.

2348 (4) LIMITATION ON LEGAL PROCESS.—The benefits payable to
2349 any person under the Public Employee ~~Optional~~ Retirement

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2350 Investment Program, and any contributions accumulated under such
2351 program, are not subject to assignment, execution, attachment,
2352 or any legal process, except for qualified domestic relations
2353 orders by a court of competent jurisdiction, income deduction
2354 orders as provided in s. 61.1301, and federal income tax levies.

2355 Section 15. Section 121.5911, Florida Statutes, is amended
2356 to read:

2357 121.5911 Disability retirement program; qualified status;
2358 rulemaking authority.—It is the intent of the Legislature that
2359 the disability retirement program for participants of the Public
2360 Employee ~~Optional~~ Retirement Investment Program ~~as created in~~
2361 ~~this act must~~ meet all applicable requirements of federal law
2362 for a qualified plan. The department ~~of Management Services~~
2363 shall seek a private letter ruling from the Internal Revenue
2364 Service on the disability retirement program ~~for participants of~~
2365 ~~the Public Employee Optional Retirement Program~~. Consistent with
2366 the private letter ruling, the department ~~of Management Services~~
2367 shall adopt ~~any necessary~~ rules necessary ~~required~~ to maintain
2368 the qualified status of the disability retirement program and
2369 the Florida Retirement System defined benefit plan.

2370 Section 16. Section 121.70, Florida Statutes, is amended to
2371 read:

2372 121.70 Legislative purpose and intent.—

2373 (1) This part provides for a uniform system for funding
2374 benefits provided under the Florida Retirement System defined
2375 benefit program established under part I of this chapter
2376 (referred to in this part as the defined benefit program) and
2377 under the Public Employee ~~Optional~~ Retirement Investment Program
2378 established under part II of this chapter (referred to in this

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2379 part as the defined contribution ~~optional retirement~~ program).

2380 The Legislature recognizes and declares that the Florida

2381 Retirement System is a single retirement system, consisting of

2382 two retirement plans and other nonintegrated programs. Employers

2383 participating in the Florida Retirement System collectively

2384 shall be responsible for making contributions to support the

2385 benefits provided ~~afforded~~ under both programs ~~plans~~. The As

2386 ~~provided in this part,~~ employers ~~participating in the Florida~~

2387 ~~Retirement System~~ shall make contributions based upon uniform

2388 contribution rates determined as a percentage of the total

2389 payroll for each class or subclass of Florida Retirement System

2390 membership, irrespective of which retirement program the plan

2391 individual employee is enrolled in ~~employees may elect~~. This

2392 shall be known as a uniform or blended contribution rate system.

2393 (2) In establishing a uniform contribution rate system, it

2394 is the intent of the Legislature to:

2395 (a) Provide greater stability and certainty in financial

2396 planning and budgeting for Florida Retirement System employers

2397 by eliminating the fiscal instability that would be caused by

2398 dual rates ~~coupled with employee-selected plan participation;~~

2399 and

2400 (b) Provide greater fiscal equity and uniformity for system

2401 employers by effectively distributing the financial burden and

2402 benefit of short-term system deficits and surpluses,

2403 respectively, in proportion to total system payroll. ~~and~~

2404 ~~(c) Allow employees to make their retirement plan selection~~

2405 ~~decisions free of circumstances that may cause employers to~~

2406 ~~favor one plan choice over another.~~

2407 Section 17. Subsection (1) of section 121.71, Florida

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2408 Statutes, is amended to read:

2409 121.71 Uniform rates; process; calculations; levy.—

2410 (1) In conducting the system actuarial study required under
2411 s. 121.031, the actuary shall follow all requirements specified
2412 ~~thereunder~~ to determine, by Florida Retirement System employee
2413 membership class, the dollar contribution amounts necessary for
2414 the next ~~forthcoming~~ fiscal year for the defined benefit
2415 program. In addition, the actuary shall determine, by Florida
2416 Retirement System membership class, based on an estimate for the
2417 forthcoming fiscal year of the gross compensation of employees
2418 participating in the defined contribution ~~optional retirement~~
2419 program, the dollar contribution amounts necessary to make the
2420 allocations required under ss. 121.72 and 121.73. For each
2421 employee membership class and subclass, the actuarial study must
2422 ~~shall~~ establish a uniform rate necessary to fund the benefit
2423 obligations under both Florida Retirement System retirement
2424 plans, by dividing the sum of total dollars required by the
2425 estimated gross compensation of members in both plans.

2426 Section 18. Section 121.72, Florida Statutes, is amended to
2427 read:

2428 121.72 Allocations to optional retirement program
2429 participant accounts; percentage amounts.—

2430 (1) The allocations established in subsection (4) shall
2431 fund retirement benefits under the defined contribution ~~optional~~
2432 ~~retirement~~ program and shall be transferred monthly by the
2433 Division of Retirement from the Florida Retirement System
2434 Contributions Clearing Trust Fund to the third-party
2435 administrator for deposit in each participating employee's
2436 individual account based on the membership class of the

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2437 participant.

2438 (2) The allocations are stated as a percentage of each
 2439 defined contribution ~~optional retirement~~ program participant's
 2440 gross compensation for the calendar month. A change in a
 2441 contribution percentage is effective the first day of the month
 2442 for which a full month's employer contribution may be made on or
 2443 after the beginning date of the change. Contribution percentages
 2444 may be modified by general law.

2445 (3) Employer and participant contributions to participant
 2446 accounts shall be accounted for separately. Participant
 2447 contributions may be made only if expressly authorized by law.
 2448 Interest and investment earnings on contributions shall accrue
 2449 on a tax-deferred basis until proceeds are distributed.

2450 (4) Effective July 1, 2002, allocations from the Florida
 2451 Retirement System Contributions Clearing Trust Fund to defined
 2452 contribution ~~optional retirement~~ program participant accounts
 2453 shall be as follows:

Membership Class	Percentage of Gross Compensation
------------------	----------------------------------

Regular Class	9.00%
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Special Risk Class	20.00%
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Special Risk Administrative Support Class	11.35%
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Elected Officers' Class - Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.40%
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2458

Elected Officers' Class -
 Justices, Judges 18.90%

2459

Elected Officers' Class -
 County Elected Officers 16.20%

2460

Senior Management Service Class 10.95%

2461

2462

2463 Section 19. Section 121.73, Florida Statutes, is amended to
 2464 read:

2465 121.73 Allocations for ~~optional retirement program~~
 2466 participant disability coverage; percentage amounts.-

2467 (1) The allocations established in subsection (3) shall be
 2468 used to provide disability coverage for participants in the
 2469 defined contribution ~~optional retirement~~ program and shall be
 2470 transferred monthly by the Division of Retirement from the
 2471 Florida Retirement System Contributions Clearing Trust Fund to
 2472 the disability account of the Florida Retirement System Trust
 2473 Fund.

2474 (2) The allocations are stated as a percentage of each
 2475 defined contribution ~~optional retirement~~ program participant's
 2476 gross compensation for the calendar month. A change in a
 2477 contribution percentage is effective the first day of the month
 2478 for which a full month's employer contribution may be made on or
 2479 after the beginning date of the change. Contribution percentages
 2480 may be modified by general law.

2481 (3) Effective July 1, 2002, allocations from the Florida

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2482 Retirement System ~~FRS~~ Contribution Clearing Fund to provide
 2483 disability coverage for participants in the defined contribution
 2484 ~~optional retirement~~ program, and to offset the costs of
 2485 administering said coverage, shall be as follows:

Membership Class	Percentage of Gross Compensation
2486 Regular Class	0.25%
2487 Special Risk Class	1.33%
2488 Special Risk Administrative Support Class	0.45%
2489 Elected Officers' Class - Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
2490 Elected Officers' Class - Justices, Judges	0.73%
2491 Elected Officers' Class - County Elected Officers	0.41%
2492 Senior Management Service Class	0.26%

2495 Section 20. Section 121.74, Florida Statutes, is amended to
 2496 read:

2497 121.74 Administrative and educational expenses.—In addition

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2498 to contributions required under s. 121.71, employers
2499 participating in the Florida Retirement System shall contribute
2500 an amount equal to 0.05 percent of the payroll reported for each
2501 class or subclass of Florida Retirement System membership, which
2502 amount shall be transferred by the Division of Retirement from
2503 the Florida Retirement System Contributions Clearing Trust Fund
2504 to the State Board of Administration's Administrative Trust Fund
2505 to offset the costs of administering the defined contribution
2506 ~~optional retirement~~ program and the costs of providing
2507 educational services to participants in the defined benefit
2508 program and the defined contribution ~~optional retirement~~
2509 program. Approval of the Trustees of the State Board of
2510 Administration is required prior to the expenditure of these
2511 funds. Payments for third-party administrative or educational
2512 expenses shall be made only pursuant to the terms of the
2513 approved contracts for such services.

2514 Section 21. Section 121.77, Florida Statutes, is amended to
2515 read:

2516 121.77 Deductions from participant accounts.—The State
2517 Board of Administration may authorize the third-party
2518 administrator to deduct reasonable fees and apply appropriate
2519 charges to defined contribution ~~optional retirement~~ program
2520 participant accounts. In no event may ~~shall~~ administrative and
2521 educational expenses exceed the portion of employer
2522 contributions earmarked for such expenses under this part,
2523 except for reasonable administrative charges assessed against
2524 participant accounts of persons for whom no employer
2525 contributions are made during the calendar quarter. Investment
2526 management fees shall be deducted from participant accounts,

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2527 pursuant to the terms of the contract between the provider and
2528 the board.

2529 Section 22. Subsection (3) of section 121.78, Florida
2530 Statutes, is amended to read:

2531 121.78 Payment and distribution of contributions.—

2532 (3) (a) Employer contributions and accompanying payroll data
2533 received after the 5th working day of the month shall be
2534 considered late. The employer shall be assessed by the Division
2535 of Retirement a penalty of 1 percent of the contributions due
2536 for each calendar month or part thereof that the contributions
2537 or accompanying payroll data are late. Proceeds from the 1-
2538 percent assessment against contributions made on behalf of
2539 participants of the defined benefit program must ~~shall~~ be
2540 deposited in the Florida Retirement System Trust Fund, and
2541 proceeds from the 1-percent assessment against contributions
2542 made on behalf of participants of the defined contribution
2543 ~~optional retirement~~ program shall be transferred to the third-
2544 party administrator for deposit into participant accounts, as
2545 provided in paragraph (b).

2546 (b) If contributions made by an employer on behalf of
2547 participants of the defined contribution ~~optional retirement~~
2548 program or accompanying payroll data are not received within the
2549 calendar month they are due, including, but not limited to,
2550 contribution adjustments as a result of employer errors or
2551 corrections, and if that delinquency results in market losses to
2552 participants, the employer shall reimburse each participant's
2553 account for market losses resulting from the late contributions.
2554 If a participant has terminated employment and taken a
2555 distribution, the participant is responsible for returning any

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2556 excess contributions erroneously provided by employers, adjusted
2557 for any investment gain or loss incurred during the period such
2558 excess contributions were in the participant's ~~Public Employee~~
2559 ~~Optional Retirement Program~~ account. The State Board of
2560 Administration or its designated agent shall communicate to
2561 terminated participants any obligation to repay such excess
2562 contribution amounts. However, the State Board of
2563 Administration, its designated agents, the Public Employee
2564 ~~Optional Retirement~~ Investment Program Trust Fund, the
2565 Department of Management Services, or the Florida Retirement
2566 System Trust Fund may ~~shall~~ not incur any loss or gain as a
2567 result of an employer's correction of such excess contributions.
2568 The third-party administrator, hired by the state board pursuant
2569 to s. 121.4501(9) ~~s. 121.4501(8)~~, shall calculate the market
2570 losses for each affected participant. If ~~When~~ contributions made
2571 on behalf of participants of the defined contribution ~~optional~~
2572 ~~retirement~~ program or accompanying payroll data are not received
2573 within the calendar month due, the employer shall also pay the
2574 cost of the third-party administrator's calculation and
2575 reconciliation adjustments resulting from the late
2576 contributions. The third-party administrator shall notify the
2577 employer of the results of the calculations and the total amount
2578 due from the employer for such losses and the costs of
2579 calculation and reconciliation. The employer shall remit to the
2580 division the amount due within 10 working days after the date of
2581 the penalty notice sent by the division. The Division of
2582 Retirement shall transfer said amount to the third-party
2583 administrator, which ~~who~~ shall deposit proceeds from the 1-
2584 percent assessment and from individual market losses into

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2585 participant accounts, as appropriate. The board is authorized to
2586 adopt rules to implement the provisions regarding late
2587 contributions, late submission of payroll data, the process for
2588 reimbursing participant accounts for resultant market losses,
2589 and the penalties charged to the employers.

2590 (c) Delinquency fees may be waived by the Division of
2591 Retirement, with regard to defined benefit program
2592 contributions, and by the State Board of Administration, with
2593 regard to defined contribution ~~optional retirement~~ program
2594 contributions, only if ~~when~~, in the opinion of the division or
2595 the board, as appropriate, exceptional circumstances beyond the
2596 employer's control prevented remittance by the prescribed due
2597 date, notwithstanding the employer's good faith efforts to
2598 effect delivery. Such a waiver of delinquency may be granted an
2599 employer only one time each state fiscal year.

2600 Section 23. The Division of Statutory Revision is directed
2601 to redesignate the title of part II of chapter 121, Florida
2602 Statutes, as "Public Employee Retirement Investment Program."

2603 Section 24. This act shall take effect July 1, 2009.