

By the Policy and Steering Committee on Ways and Means; the Committees on General Government Appropriations; and Governmental Oversight and Accountability; and Senator Ring

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1 A bill to be entitled
2 An act relating to state financial matters; amending
3 s. 121.4501, F.S.; defining the term "electronic
4 means" and redefining the term "optional retirement
5 program"; providing for excess account balances in the
6 Public Employee Optional Retirement Program when an
7 employee transfers to the defined benefit program and
8 for the use of such excess balance; requiring the
9 State Board of Administration to develop procedures to
10 resolve complaints; providing for the use of records
11 in resolving such complaints; clarifying the state
12 board's rule authority with respect to the program;
13 requiring that the investment products and approved
14 providers selected for the Public Employee Optional
15 Retirement Program conform with the Public Employee
16 Optional Retirement Program Investment Policy
17 Statement that is developed by the executive director
18 of the state board and approved by the Investment
19 Advisory Council and Trustees of the State Board of
20 Administration; amending s. 121.4502, F.S.;
21 establishing a forfeiture account in the Public
22 Employee Retirement Program Trust Fund and providing
23 for the use of funds in the account; amending s.
24 121.591, F.S.; permitting an application for benefits
25 under the optional retirement program to be submitted
26 by electronic means; amending s. 121.78, F.S.;
27 exempting the Division of Retirement, the state board,
28 and the third-party administrator from liability for
29 market losses due to acts of God; amending s. 215.44,

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30 F.S.; authorizing the State Board of Administration to
31 invest the funds of any state university or college or
32 a direct-support organization of any state agency,
33 university or college, or local government; requiring
34 that the board establish and maintain the salaries of
35 its officers and employees in a manner consistent with
36 its fiduciary duties; requiring that the council
37 initiate an investigation at specified intervals for
38 specified purposes; requiring that the council present
39 the results of such study to the board; authorizing
40 the board to delegate certain authority and duties to
41 the executive director; requiring that the board
42 create an audit committee for specified purposes;
43 providing for membership on the committee and term
44 limits of committee members; providing purposes and
45 duties of the committee; requiring that the board
46 produce certain financial statements on an annual
47 basis and report the information contained in such
48 statements to the Legislature; requiring that such
49 statements be audited by an independent third-party
50 firm working under the direction of the audit
51 committee; requiring that the board meet at specified
52 intervals and receive reports containing certain
53 information from specified entities; amending s.
54 215.441, F.S.; requiring that the board appoint an
55 executive director; providing duties of the executive
56 director; providing requirements for appointment as
57 executive director; removing a requirement that the
58 Governor vote in favor of the selection of the

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59 executive director; providing for the determination of
60 the executive director's compensation; providing for
61 the creation, operation, and membership of a search
62 committee for the purpose of selecting the executive
63 director; amending s. 215.442, F.S.; requiring that
64 the executive director present certain information
65 quarterly to the Investment Advisory Council; amending
66 s. 215.444, F.S.; requiring that the council meet with
67 the board's staff at specified intervals and provide a
68 quarterly report to the board's trustees; clarifying
69 the function of council members; expanding
70 prerequisites for membership on the council to include
71 knowledge of and experience with institutional
72 investments and fiduciary responsibilities; providing
73 that a council member is an officer, employee, or
74 agent of the state for specified purposes; requiring
75 that appointees to the council undergo specified
76 training; requiring that council members make
77 recommendations consistent with fiduciary
78 responsibilities applicable to the board; specifying
79 duties of the council; authorizing the council to
80 create subcommittees and direct the executive director
81 to enter into certain contracts; amending s. 215.47,
82 F.S.; specifying the bonds, notes, and obligations
83 into which the trust funds of the state may be
84 invested and in what amounts; prohibiting the Board of
85 Administration from investing more than a specified
86 percentage of any trust fund in corporate obligations
87 and securities of any kind of a foreign corporation or

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88 a foreign commercial entity having its principal
89 office located in any country other than the United
90 States; amending s. 215.475, F.S.; conforming
91 provisions to changes made by the act; creating s.
92 215.4754, F.S.; providing intent; requiring that the
93 contract for an investment adviser or manager include
94 a standard of conduct; providing for termination of
95 the contract of an adviser or manager who violates the
96 standard of conduct; prohibiting a member of the
97 Investment Advisory Council from contracting with or
98 providing services for the investment of certain funds
99 during his or her service on the board and for a
100 specified period thereafter; creating s. 215.4755,
101 F.S.; requiring that an investment adviser or manager
102 annually certify to the board certain activities
103 regarding investment decisions and standards of
104 behavior; requiring that certain disclosures be made
105 at the request of the board regarding pecuniary
106 interests of an investment adviser or manager;
107 amending s. 215.52, F.S.; authorizing the board to
108 implement certain policies, restrictions, or
109 guidelines; amending s. 218.409, F.S.; providing for
110 extending a moratorium on contributions to the Local
111 Government Surplus Funds Trust Fund under certain
112 circumstances; authorizing the state board to develop
113 work products that are subject to trademark,
114 copyright, or patent; providing an effective date.

115
116 Be It Enacted by the Legislature of the State of Florida:

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118 Section 1. Subsection (2), paragraph (e) of subsection (4),
119 subsection (6), paragraphs (a) and (g) of subsection (8), and
120 subsection (14) of section 121.4501, Florida Statutes, are
121 amended to read:

122 121.4501 Public Employee Optional Retirement Program.—

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

124 (a) "Approved provider" or "provider" means a private
125 sector company that is selected and approved by the state board
126 to offer one or more investment products or services to the
127 ~~Public Employee~~ optional retirement program. The term includes a
128 bundled provider that offers participants a range of
129 individually allocated or unallocated investment products and
130 may offer a range of administrative and customer services, which
131 may include accounting and administration of individual
132 participant benefits and contributions; individual participant
133 recordkeeping; asset purchase, control, and safekeeping; direct
134 execution of the participant's instructions as to asset and
135 contribution allocation; calculation of daily net asset values;
136 direct access to participant account information; periodic
137 reporting to participants, at least quarterly, on account
138 balances and transactions; guidance, advice, and allocation
139 services directly relating to the provider's ~~its~~ own investment
140 options or products, but only if the bundled provider complies
141 with the standard of care of s. 404(a)(1)(A-B) of the Employee
142 Retirement Income Security Act of 1974 (ERISA) and if providing
143 such guidance, advice, or allocation services does not
144 constitute a prohibited transaction under s. 4975(c)(1) of the
145 Internal Revenue Code or s. 406 of ERISA, notwithstanding that

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146 such prohibited transaction provisions do not apply to the
147 optional retirement program; a broad array of distribution
148 options; asset allocation; and retirement counseling and
149 education. Private sector companies include investment
150 management companies, insurance companies, depositories, and
151 mutual fund companies.

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

154 (c) "Covered employment" means employment in a regularly
155 established position as defined in s. 121.021~~(52)~~.

156 (d) "Defined benefit program" means the defined benefit
157 program of the Florida Retirement System administered under part
158 I of this chapter ~~"Department" means the Department of~~
159 ~~Management Services.~~

160 ~~(e)-(e)~~ "Division" means the Division of Retirement within
161 the department ~~of Management Services.~~

162 (f) "Electronic means" means by telephone, if the required
163 information is received on a recorded line, or through Internet
164 access, if the required information is captured online.

165 ~~(g)-(f)~~ "Eligible employee" means an officer or employee, as
166 defined in s. 121.021, who:

167 1. Is a member of, or is eligible for membership in, the
168 Florida Retirement System, including any renewed member of the
169 Florida Retirement System initially enrolled before July 1,
170 2010; or

171 2. Participates in, or is eligible to participate in, the
172 Senior Management Service Optional Annuity Program as
173 established under s. 121.055(6), the State Community College
174 System Optional Retirement Program as established under s.

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175 121.051(2)(c), or the State University System Optional
176 Retirement Program established under s. 121.35.

177

178 The term does not include any member participating in the
179 Deferred Retirement Option Program established under s.
180 121.091(13), a retiree of a state-administered retirement system
181 initially reemployed on or after July 1, 2010, or a mandatory
182 participant of the State University System Optional Retirement
183 Program established under s. 121.35.

184 (h)~~(g)~~ "Employer" means an employer, as defined in s.
185 121.021~~(10)~~, of an eligible employee.

186 (i) "Optional retirement program" or "optional program"
187 means the Public Employee Optional Retirement Program
188 established under this part.

189 (j)~~(h)~~ "Participant" means an eligible employee who ~~elects~~
190 ~~to participate in the Public Employee Optional Retirement~~
191 ~~Program and enrolls in the such~~ optional program as provided in
192 subsection (4) or a terminated Deferred Retirement Option
193 Program participant as described in subsection (21).

194 ~~(i) "Public Employee Optional Retirement Program,"~~
195 ~~"optional program," or "optional retirement program" means the~~
196 ~~alternative defined contribution retirement program established~~
197 ~~under this section.~~

198 (k)~~(j)~~ "Retiree" means a former participant of the ~~Florida~~
199 ~~Retirement System Public Employee~~ optional retirement program
200 who has terminated employment and has taken a distribution as
201 provided in s. 121.591, except for a mandatory distribution of a
202 de minimis account authorized by the state board.

203 ~~(k) "State board" or "board" means the State Board of~~

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204 ~~Administration.~~

205 ~~(1) "Trustees" means Trustees of the State Board of~~
 206 ~~Administration.~~

207 ~~(1)(m)~~ "Vested" or "vesting" means the guarantee that a
 208 participant is eligible to receive a retirement benefit upon
 209 completion of the required years of service under the ~~Public~~
 210 ~~Employee~~ optional retirement program.

211 (4) PARTICIPATION; ENROLLMENT.—

212 (e) After the period during which an eligible employee had
 213 the choice to elect the defined benefit program or the ~~Public~~
 214 ~~Employee~~ optional retirement program, or the month following the
 215 receipt of the eligible employee's plan election, if sooner, the
 216 employee shall have one opportunity, at the employee's
 217 discretion, to choose to move from the defined benefit program
 218 to the ~~Public Employee~~ optional retirement program or from the
 219 ~~Public Employee~~ optional retirement program to the defined
 220 benefit program. Eligible employees may elect to move between
 221 Florida Retirement System programs only if they are earning
 222 service credit in an employer-employee relationship consistent
 223 with ~~the requirements under~~ s. 121.021(17)(b), excluding leaves
 224 of absence without pay. Effective July 1, 2005, such elections
 225 are ~~shall be~~ effective on the first day of the month following
 226 the receipt of the election by the third-party administrator and
 227 are not subject to the requirements regarding an employer-
 228 employee relationship or receipt of contributions for the
 229 eligible employee in the effective month, except ~~that the~~
 230 ~~employee must meet the conditions of the previous sentence~~ when
 231 the election is received by the third-party administrator. This
 232 paragraph is ~~shall be~~ contingent upon approval from the Internal

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233 Revenue Service for including the choice described herein within
234 the programs offered by the Florida Retirement System.

235 1. If the employee chooses to move to the ~~Public Employee~~
236 optional retirement program, the applicable provisions of this
237 section shall govern the transfer.

238 2. If the employee chooses to move to the defined benefit
239 program, the employee must transfer from his or her ~~Public~~
240 ~~Employee~~ optional retirement program account, and from other
241 employee moneys as necessary, a sum representing the present
242 value of that employee's accumulated benefit obligation
243 immediately following the time of such movement, determined
244 assuming that attained service equals the sum of service in the
245 defined benefit program and service in the ~~Public Employee~~
246 optional retirement program. Benefit commencement occurs on the
247 first date the employee is ~~would become~~ eligible for unreduced
248 benefits, using the discount rate and other relevant actuarial
249 assumptions that were used to value the ~~Florida Retirement~~
250 ~~System~~ defined benefit plan liabilities in the most recent
251 actuarial valuation. For any employee who, at the time of the
252 second election, already maintains an accrued benefit amount in
253 the defined benefit program plan, the then-present value of the
254 ~~such~~ accrued benefit shall be deemed part of the required
255 transfer amount ~~described in this subparagraph~~. The division
256 shall ensure that the transfer sum is prepared using a formula
257 and methodology certified by an enrolled actuary.

258 3. Notwithstanding subparagraph 2., an employee who chooses
259 to move to the defined benefit program and who became eligible
260 to participate in the ~~Public Employee~~ optional retirement
261 program by reason of employment in a regularly established

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262 position with a state employer after June 1, 2002; a district
263 school board employer after September 1, 2002; or a local
264 employer after December 1, 2002, must transfer from his or her
265 ~~Public Employee~~ optional retirement program account and, from
266 other employee moneys as necessary, a sum representing the ~~that~~
267 employee's actuarial accrued liability.

268 4. An employee's ~~Employees'~~ ability to transfer from the
269 ~~Florida Retirement System~~ defined benefit program to the ~~Public~~
270 ~~Employee~~ optional retirement program pursuant to paragraphs (a)-
271 (d), and the ability of a ~~for~~ current employee ~~employees~~ to have
272 an option to later transfer back into the defined benefit
273 program under subparagraph 2., shall be deemed a significant
274 system amendment. Pursuant to s. 121.031(4), any ~~such~~ resulting
275 unfunded liability arising from actual original transfers from
276 the defined benefit program to the optional program must ~~shall~~
277 be amortized within 30 plan years as a separate unfunded
278 actuarial base independent of the reserve stabilization
279 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
280 ~~no~~ direct amortization payment may not ~~shall~~ be calculated for
281 this base. During this 25-year period, the ~~such~~ separate base
282 shall be used to offset the impact of employees exercising their
283 second program election under this paragraph. It is the
284 ~~legislative~~ intent of the Legislature that the actuarial funded
285 status of the ~~Florida Retirement System~~ defined benefit program
286 not be affected ~~plan is neither beneficially nor adversely~~
287 ~~impacted~~ by such second program elections in any significant
288 manner, after due recognition of the separate unfunded actuarial
289 base. Following the ~~this~~ initial 25-year period, any remaining
290 balance of the original separate base shall be amortized over

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291 the remaining 5 years of the required 30-year amortization
292 period.

293 5. If the employee chooses to transfer from the optional
294 retirement program to the defined benefit program, and retains
295 an excess account balance in the optional program after
296 satisfying the buy-in requirements under this paragraph, the
297 excess may not be distributed until the member retires from the
298 defined benefit program. The excess account balance may be
299 rolled over to the defined benefit program and used to purchase
300 service credit or upgrade creditable service in that program.

301 (6) VESTING REQUIREMENTS.—

302 (a)1. With respect to employer contributions paid on behalf
303 of the participant to the ~~Public-Employee~~ optional retirement
304 program, plus interest and earnings thereon and less investment
305 fees and administrative charges, a participant ~~is shall be~~
306 vested after completing 1 work year, ~~as defined in s.~~
307 ~~121.021(54)~~, with an employer, including any service while the
308 participant was a member of the defined benefit ~~retirement~~
309 program or an optional retirement program authorized under s.
310 121.051(2)(c) or s. 121.055(6).

311 2. If the participant terminates employment before ~~prior to~~
312 satisfying the vesting requirements, the nonvested accumulation
313 must ~~shall~~ be transferred from the participant's accounts to the
314 state board for deposit and investment by the state board in the
315 suspense account created within ~~of~~ the Public Employee Optional
316 Retirement Program Trust Fund ~~of the board~~. If the terminated
317 participant is reemployed as an eligible employee within 5
318 years, the state board shall transfer to the participant's
319 account any amount ~~of the moneys~~ previously transferred from the

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320 participant's accounts to the suspense account ~~of the Public~~
321 ~~Employee Optional Retirement Program Trust Fund~~, plus the actual
322 earnings on such amount while in the suspense account.

323 (b)1. With respect to amounts transferred from the defined
324 benefit program to the investment program, plus interest and
325 earnings, and less investment fees and administrative charges, a
326 participant shall be vested in the amount transferred ~~from the~~
327 ~~defined benefit program, plus interest and earnings thereon and~~
328 ~~less administrative charges and investment fees,~~ upon meeting
329 the service requirements for the participant's membership class
330 as set forth in s. 121.021(29). The third-party administrator
331 shall account for such amounts for each participant. The
332 division shall notify the participant and the third-party
333 administrator when the participant has satisfied the vesting
334 period for Florida Retirement System purposes.

335 2. If the participant terminates employment before ~~prior to~~
336 satisfying the vesting requirements, the nonvested accumulation
337 must ~~shall~~ be transferred from the participant's accounts to the
338 state board for deposit and investment by the board in the
339 suspense account created within ~~of~~ the Public Employee Optional
340 Retirement Program Trust Fund ~~of the board~~. If the terminated
341 participant is reemployed as an eligible employee within 5
342 years, the state board shall transfer to the participant's
343 account any amount ~~of the moneys~~ previously transferred from the
344 participant's accounts to the suspense account ~~of the Public~~
345 ~~Employee Optional Retirement Program Trust Fund~~, plus the actual
346 earnings on such amount while in the suspense account.

347 (c) Any nonvested accumulations transferred from a
348 participant's account to the suspense account shall be forfeited

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349 by the participant if the participant is not reemployed as an
350 eligible employee within 5 years after termination.

351 (8) ADMINISTRATION OF PROGRAM.—

352 (a) The ~~Public Employee~~ optional retirement program shall
353 be administered by the state board and affected employers. The
354 board may ~~is authorized to~~ require oaths, by affidavit or
355 otherwise, and acknowledgments from persons in connection with
356 the administration of its statutory duties and responsibilities
357 for this program under this chapter. ~~An~~ ~~No~~ oath, by affidavit or
358 otherwise, may not ~~shall~~ be required of an employee participant
359 at the time of enrollment ~~election~~. Acknowledgment of an
360 employee's election to participate in the program shall be no
361 greater than necessary to confirm the employee's election. The
362 state board shall adopt rules to carry out its statutory duties
363 with respect to administering the optional retirement program,
364 including, but not limited to, establishing the roles ~~role~~ and
365 responsibilities of affected state, local government, and
366 education-related employers, the state board, the department,
367 and third-party contractors ~~in administering the Public Employee~~
368 ~~optional retirement program~~. The department shall adopt rules
369 necessary to administer ~~implement~~ the optional program in
370 coordination with the defined benefit ~~retirement~~ program and the
371 disability benefits available under the optional program.

372 (g) The state board shall develop procedures to receive and
373 resolve participant complaints against the program, the third-
374 party administrator, or any program vendor or provider and shall
375 resolve any conflict between the third-party administrator and
376 an approved provider if ~~when~~ such conflict threatens the
377 implementation or administration of the program or the quality

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378 of services to employees, and may resolve any other conflicts.
379 The third-party administrator shall retain all participant
380 records for at least 5 years for use in resolving any
381 participant conflicts. The state board, the third-party
382 administrator, or a provider is not required to produce
383 documentation or an audio recording to justify action taken with
384 regard to a participant if the action occurred 5 or more years
385 before the complaint is submitted to the board. It is presumed
386 that all action taken 5 or more years before the complaint is
387 submitted was taken at the request of the participant and with
388 the participant's full knowledge and consent. To overcome this
389 presumption, the participant must present documentary evidence
390 or an audio recording demonstrating otherwise.

391 (14) INVESTMENT POLICY STATEMENT.—

392 (a) Investment products and approved providers selected for
393 the Public Employee Optional Retirement Program shall conform
394 with the Public Employee Optional Retirement Program Investment
395 Policy Statement, herein referred to as the "statement," as
396 developed by the executive director of the state board and
397 approved by the Investment Advisory Council and Trustees of the
398 State Board of Administration. The statement must include, among
399 other items, the investment objectives of the Public Employee
400 Optional Retirement Program, manager selection and monitoring
401 guidelines, and performance measurement criteria. As required
402 from time to time, the executive director of the state board may
403 present recommended changes in the statement to the board for
404 approval.

405 (b) Before ~~Prior to~~ presenting the statement, or any
406 recommended changes thereto, to the state board, the executive

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407 director of the board shall present such statement or changes to
408 the Investment Advisory Council for review and approval. The
409 council shall present the results of its review to the board
410 prior to the board's final approval of the statement or changes
411 in the statement.

412 Section 2. Subsection (3) is added to section 121.4502,
413 Florida Statutes, to read:

414 121.4502 Public Employee Optional Retirement Program Trust
415 Fund.—

416 (3) A forfeiture account shall be created within the Public
417 Employee Optional Retirement Program Trust Fund to hold the
418 assets derived from the forfeiture of benefits by participants.
419 Pursuant to a private letter ruling from the Internal Revenue
420 Service, the forfeiture account may be used only for paying
421 expenses of the Public Employee Optional Retirement Program and
422 reducing future employer contributions to the program.
423 Consistent with Rulings 80-155 and 74-340 of the Internal
424 Revenue Service, unallocated reserves within the forfeiture
425 account must be used as quickly and as prudently as possible
426 considering the state board's fiduciary duty. Expected
427 withdrawals from the account must endeavor to reduce the account
428 to zero each fiscal year.

429 Section 3. Paragraph (b) of subsection (1) of section
430 121.591, Florida Statutes, is amended to read:

431 121.591 Benefits payable under the Public Employee Optional
432 Retirement Program of the Florida Retirement System.—Benefits
433 may not be paid under this section unless the member has
434 terminated employment as provided in s. 121.021(39)(a) or is
435 deceased and a proper application has been filed in the manner

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436 prescribed by the state board or the department. The state board
437 or department, as appropriate, may cancel an application for
438 retirement benefits when the member or beneficiary fails to
439 timely provide the information and documents required by this
440 chapter and the rules of the state board and department. In
441 accordance with their respective responsibilities as provided
442 herein, the State Board of Administration and the Department of
443 Management Services shall adopt rules establishing procedures
444 for application for retirement benefits and for the cancellation
445 of such application when the required information or documents
446 are not received. The State Board of Administration and the
447 Department of Management Services, as appropriate, are
448 authorized to cash out a de minimis account of a participant who
449 has been terminated from Florida Retirement System covered
450 employment for a minimum of 6 calendar months. A de minimis
451 account is an account containing employer contributions and
452 accumulated earnings of not more than \$5,000 made under the
453 provisions of this chapter. Such cash-out must either be a
454 complete lump-sum liquidation of the account balance, subject to
455 the provisions of the Internal Revenue Code, or a lump-sum
456 direct rollover distribution paid directly to the custodian of
457 an eligible retirement plan, as defined by the Internal Revenue
458 Code, on behalf of the participant. If any financial instrument
459 issued for the payment of retirement benefits under this section
460 is not presented for payment within 180 days after the last day
461 of the month in which it was originally issued, the third-party
462 administrator or other duly authorized agent of the State Board
463 of Administration shall cancel the instrument and credit the
464 amount of the instrument to the suspense account of the Public

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465 Employee Optional Retirement Program Trust Fund authorized under
466 s. 121.4501(6). Any such amounts transferred to the suspense
467 account are payable upon a proper application, not to include
468 earnings thereon, as provided in this section, within 10 years
469 after the last day of the month in which the instrument was
470 originally issued, after which time such amounts and any
471 earnings thereon shall be forfeited. Any such forfeited amounts
472 are assets of the Public Employee Optional Retirement Program
473 Trust Fund and are not subject to the provisions of chapter 717.

474 (1) NORMAL BENEFITS.—Under the Public Employee Optional
475 Retirement Program:

476 (b) If a participant elects to receive his or her benefits
477 upon termination of employment as defined in s. 121.021, the
478 participant must submit a written application or an application
479 by electronic means ~~an equivalent form~~ to the third-party
480 administrator indicating his or her preferred distribution date
481 and selecting an authorized method of distribution as provided
482 in paragraph (c). The participant may defer receipt of benefits
483 until he or she chooses to make such application, subject to
484 federal requirements.

485 Section 4. Subsection (3) of section 121.78, Florida
486 Statutes, is amended to read:

487 121.78 Payment and distribution of contributions.—

488 (3) (a) Employer contributions and accompanying payroll data
489 received after the 5th working day of the month are ~~shall be~~
490 considered late. The employer shall be assessed by the Division
491 of Retirement a penalty of 1 percent of the contributions due
492 for each calendar month or part thereof that the contributions
493 or accompanying payroll data are late. Proceeds from the 1-

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494 percent assessment against contributions made on behalf of
495 participants of the defined benefit program shall be deposited
496 in the Florida Retirement System Trust Fund, and proceeds from
497 the 1-percent assessment against contributions made on behalf of
498 participants of the optional retirement program shall be
499 transferred to the third-party administrator for deposit into
500 participant accounts, as provided in paragraph (b).

501 (b) If contributions made by an employer on behalf of
502 participants of the optional retirement program or accompanying
503 payroll data are not received within the calendar month they are
504 due, including, but not limited to, contribution adjustments as
505 a result of employer errors or corrections, and if that
506 delinquency results in market losses to participants, the
507 employer shall reimburse each participant's account for market
508 losses resulting from the late contributions. If a participant
509 has terminated employment and taken a distribution, the
510 participant is responsible for returning any excess
511 contributions erroneously provided by employers, adjusted for
512 any investment gain or loss incurred during the period such
513 excess contributions were in the participant's ~~Public Employee~~
514 ~~Optional Retirement Program~~ account. The state board of
515 ~~Administration~~ or its designated agent shall communicate to
516 terminated participants any obligation to repay such excess
517 contribution amounts. However, the state board of
518 ~~Administration~~, its designated agents, the Public Employee
519 Optional Retirement Program Trust Fund, the department of
520 ~~Management Services~~, or the Florida Retirement System Trust Fund
521 may shall not incur any loss or gain as a result of an
522 employer's correction of such excess contributions. The third-

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523 party administrator, hired by the state board pursuant to s.
524 121.4501(8), shall calculate the market losses for each affected
525 participant. ~~If~~ When contributions made on behalf of
526 participants of the optional retirement program or accompanying
527 payroll data are not received within the calendar month due, the
528 employer shall also pay the cost of the third-party
529 administrator's calculation and reconciliation adjustments
530 resulting from the late contributions. The third-party
531 administrator shall notify the employer of the results of the
532 calculations and the total amount due from the employer for such
533 losses and the costs of calculation and reconciliation. The
534 employer shall remit to the Division of Retirement the amount
535 due within 30 ~~40~~ working days after the date of the penalty
536 notice sent by the division. The division shall transfer that
537 ~~said~~ amount to the third-party administrator, which ~~who~~ shall
538 deposit proceeds from the 1-percent assessment and from
539 individual market losses into participant accounts, as
540 appropriate. The state board may ~~is authorized to~~ adopt rules to
541 administer ~~implement~~ the provisions regarding late
542 contributions, late submission of payroll data, the process for
543 reimbursing participant accounts for resultant market losses,
544 and the penalties charged to the employers.

545 (c) Delinquency fees may be waived by the Division of
546 Retirement, with regard to defined benefit program
547 contributions, and by the state board ~~of Administration~~, with
548 regard to optional retirement program contributions, only if
549 ~~when~~, in the opinion of the division or the board, as
550 appropriate, exceptional circumstances beyond the employer's
551 control prevented remittance by the prescribed due date

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552 notwithstanding the employer's good faith efforts to effect
553 delivery. Such a waiver of delinquency may be granted an
554 employer only once ~~one time~~ each state fiscal year.

555 (d) If contributions made by an employer on behalf of
556 participants in the optional retirement program are delayed in
557 posting to participant accounts due to acts of God beyond the
558 control of the Division of Retirement, the state board, or the
559 third-party administrator, as applicable, market losses
560 resulting from the late contributions are not payable to the
561 participants.

562 Section 5. Subsections (1) and (2) of section 215.44,
563 Florida Statutes, are amended to read:

564 215.44 Board of Administration; powers and duties in
565 relation to investment of trust funds.—

566 (1) Except as when otherwise specifically provided by the
567 State Constitution and subject to any limitations of the trust
568 agreement relating to a trust fund, the Board of Administration,
569 hereinafter sometimes referred to as "trustees" or "board,"
570 composed of the Governor as chair, the Chief Financial Officer,
571 and the Attorney General, shall invest all the funds in the
572 System Trust Fund, as defined in s. 121.021 ~~s. 121.021(36)~~, and
573 all other funds specifically required by law to be invested by
574 the board pursuant to ss. 215.44-215.53 to the fullest extent
575 that is consistent with the cash requirements, trust agreement,
576 and investment objectives of the fund.

577 (a) Notwithstanding any other law to the contrary, the
578 State Board of Administration may invest any funds of any state
579 agency, any state university or college, ~~or~~ any unit of local
580 government, or any direct-support organization thereof pursuant

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581 to the terms of a trust agreement with the head or governing
582 body of the respective entity ~~state agency or the governing body~~
583 ~~of the unit of local government,~~ or pursuant to the enrollment
584 requirements stated in s. 218.407, including investing such
585 funds in the Local Government Surplus Funds Trust Fund
586 established by s. 218.405. ~~which trust agreement shall govern~~
587 ~~the investment of such funds, provided that~~

588 (b) The board shall approve the undertaking of investments
589 subject to a trust agreement ~~such investment~~ before execution of
590 the trust agreement by the State Board of Administration. The
591 funds and the earnings therefrom are exempt from the service
592 charge imposed by s. 215.20.

593 (c) As used in this subsection, the term "state agency" has
594 the same meaning as ~~that~~ provided in s. 216.011(1) ~~s. 216.001,~~
595 and the terms "governing body" and "unit of local government"
596 have the same meaning as that provided in s. 218.403.

597 (2) (a) The board shall have the power to make purchases,
598 sales, exchanges, investments, and reinvestments for and on
599 behalf of the funds referred to in subsection (1), and it shall
600 be the duty of the board to see that moneys invested under the
601 provisions of ss. 215.44-215.53 are at all times handled in the
602 best interests of the state.

603 (b) Pursuant to s. 110.205, the State Board of
604 Administration shall establish and maintain the salaries and
605 benefits of its officers and employees in a manner consistent
606 with the board's fiduciary responsibility to recruit and retain
607 highly qualified and effective key personnel. Not less than
608 every 5 years, the Investment Advisory Council shall cause a
609 total compensation study to be conducted by a private consulting

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610 firm having expertise in institutional investments salary and
611 benefit administration. The study shall be designed to determine
612 competitive salary ranges, other compensation, and benefits for
613 positions within the board based on comparable public-sector
614 peer investment entities. The Investment Advisory Council shall
615 present the total compensation study along with its
616 recommendations to the board, and such recommendations are
617 subject to review and ratification or reversal by the board. The
618 board may delegate to the executive director the authority and
619 duty to set staff salaries within the ranges approved by the
620 board.

621 (c) ~~(b)~~ In exercising investment authority pursuant to s.
622 215.47, the board may retain investment advisers or managers, or
623 both, external to in-house staff, to assist the board in
624 carrying out the power specified in paragraph (a).

625 (d) The board shall create an audit committee to assist the
626 board in fulfilling its oversight responsibilities. The
627 committee shall consist of three members appointed by the board.
628 Members shall be appointed for 4-year terms. A vacancy shall be
629 filled for the remainder of the unexpired term. The committee
630 shall annually elect a chair and vice chair from its membership.
631 A member may not be elected to consecutive terms as chair or
632 vice chair. Persons appointed to the audit committee must have
633 relevant knowledge and expertise as determined by the board. The
634 audit committee shall serve as an independent and objective
635 party to monitor processes for financial reporting, internal
636 controls and risk assessment, audit processes, and compliance
637 with laws, rules, and regulations. The audit committee shall
638 direct the efforts of the board's independent external auditors

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639 and the board's internal audit staff. The committee shall
640 periodically, but not less than quarterly, report to the
641 executive director of the state board and the board. The board
642 shall produce a set of financial statements for the Florida
643 Retirement System programs on an annual basis, which shall be
644 reported to the Legislature and audited by a commercial
645 independent third-party audit firm under the direction of the
646 audit committee.

647 (e) The board shall meet at least quarterly and shall
648 receive reports from the audit committee, investment advisory
649 committee, inspector general, general counsel, executive
650 director, and such other persons or entities as the board may
651 require about the financial status, operations, and investment
652 activities of the board.

653 Section 6. Section 215.441, Florida Statutes, is amended to
654 read:

655 215.441 Board of Administration; appointment of executive
656 director.—

657 (1) The board shall appoint an executive director to manage
658 and invest funds as directed by the board. The executive
659 director shall, at a minimum, possess substantial experience,
660 proven knowledge, and expertise in the oversight of
661 institutional investment portfolios and must meet any other
662 requirements determined by the board to be necessary to the
663 overall management and investment of funds.

664 (2) The appointment of the executive director of the State
665 Board of Administration shall be subject to the approval by a
666 majority vote of the Board of Trustees of the State Board of
667 Administration, and the Governor must vote on the prevailing

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668 ~~side~~. Such appointment must be reaffirmed in the same manner by
669 the board of trustees on an annual basis.

670 (3) The compensation for the executive director shall be
671 determined by the board, consistent with the requirements of s.
672 215.44(2)(b).

673 (4) Before the appointment of the executive director, the
674 board shall appoint a search committee to develop minimum
675 position requirements, review applications, and make
676 recommendations to the board with regard to qualified applicants
677 for the position. At a minimum, the search committee shall
678 consist of at least three members of the Investment Advisory
679 Council.

680 Section 7. Subsection (1) of section 215.442, Florida
681 Statutes, is amended to read:

682 215.442 Executive director; reporting requirements; public
683 meeting.—

684 (1) Beginning October 2007 and quarterly thereafter, the
685 executive director shall present to the Board of Trustees and
686 the Investment Advisory Council of the State Board of
687 Administration a quarterly report to include the following:

688 (a) The name of each equity in which the State Board of
689 Administration has invested for the quarter.

690 (b) The industry category of each equity.

691 Section 8. Section 215.444, Florida Statutes, is amended to
692 read:

693 215.444 Investment Advisory Council.—

694 (1) There is created a six-member Investment Advisory
695 Council to review the investments made by the staff of the Board
696 of Administration and to make recommendations to the board

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697 regarding investment policy, strategy, and procedures. The
698 council shall meet with staff of the board no less than
699 quarterly and shall provide a quarterly report directly to the
700 trustees at a meeting of the board.

701 (2) The members of the council shall be appointed by the
702 board as a resource to the trustees and shall be subject to
703 confirmation by the Senate. These individuals shall possess
704 special knowledge, experience, and familiarity with ~~financial~~
705 ~~investments and portfolio management,~~ institutional investments,
706 and fiduciary responsibilities. Individuals may have extensive
707 experience in managing or overseeing investment portfolios or
708 providing research to any two or more of the following areas:
709 domestic equities, international equities, fixed-income
710 securities, cash management, marketable and nonmarketable
711 alternative investments, or real estate. Members shall be
712 appointed for 4-year terms. A vacancy shall be filled for the
713 remainder of the unexpired term. The council shall annually
714 elect a chair and a vice chair from its membership. A member may
715 not be elected to consecutive terms as chair or vice chair.

716 (3) In carrying out the provisions of this section, a
717 member of the council is an officer, employee, or agent of the
718 state for purposes of the state's waiver of sovereign immunity
719 contained in s. 768.28. This section does not make appointees to
720 the council fiduciaries; however, appointees to the council must
721 undergo regular fiduciary training as required by the board, and
722 must complete an annual conflict disclosure statement. In
723 carrying out their duties, council members must make
724 recommendations consistent with the fiduciary standards
725 applicable to the board.

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726 (4) In addition to the duties in subsection (1), the duties
727 of the council shall include approving the investment policy
728 statements of the board, participating in the selection process
729 regarding an executive director, obtaining periodic compensation
730 studies and providing recommendations thereon, meeting quarterly
731 to review the investment performance of funds, and performing
732 any other duties as determined by the board. The council may
733 create subcommittees as necessary to carry out its duties and
734 responsibilities and may direct the executive director to enter
735 into contracts with independent compensation consultants.

736 Section 9. Paragraphs (b) and (c) of subsection (1),
737 paragraph (a) of subsection (2), and subsection (5) of section
738 215.47, Florida Statutes, are amended, paragraph (o) is added to
739 subsection (1) of that section, and subsection (20) is added to
740 that section, to read:

741 215.47 Investments; authorized securities; loan of
742 securities.—Subject to the limitations and conditions of the
743 State Constitution or of the trust agreement relating to a trust
744 fund, moneys available for investments under ss. 215.44-215.53
745 may be invested as follows:

746 (1) Without limitation in:

747 (b) State Bonds, notes, or obligations of any state,
748 organized territory of the United States, or the District of
749 Columbia which pledge ~~pledging~~ the full faith and credit of the
750 state, territory, or district; and revenue bonds, notes, or
751 obligations of any state, organized territory of the United
752 States, or the District of Columbia additionally secured by the
753 full faith and credit of the state, territory, or district.

754 (c) Bonds, notes, or obligations of the several counties or

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755 districts in any the state, organized territory of the United
756 States, or the District of Columbia containing a pledge of the
757 full faith and credit of the county or district involved.

758 (o) Bonds, notes, or obligations described in 26 U.S.C. s.
759 149(g) (3) (B), if investment in such bonds, notes, or obligations
760 is necessary in order to comply with covenants in documents or
761 proceedings relating to bonds issued pursuant to s. 215.555(6).
762 Investments made pursuant to this paragraph may be purchased
763 only from the proceeds of bonds issued pursuant to s. 215.555(6)
764 and must be authorized under documents or proceedings relating
765 to such bonds.

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

767 (a) Bonds, notes, or obligations of any state or organized
768 territory of the United States or the District of Columbia; of
769 any municipality or political subdivision, or any agency,
770 district, or authority thereof; or of any agency or authority of
771 this state, if the obligations are rated investment grade by at
772 least one nationally recognized statistical rating organization.

773 (5) With no more than 25 percent of any fund in corporate
774 obligations and securities of any kind of a foreign corporation
775 or a foreign commercial entity having its principal office
776 located in any country other than the United States ~~of America~~
777 or its possessions or territories, not including United States
778 dollar-denominated securities listed and traded on a United
779 States exchange which are a part of the ordinary investment
780 strategy of the board.

781 (20) Notwithstanding the provisions in subsection (5)
782 limiting such investments to 25 percent of any fund, the board
783 may invest no more than 35 percent of any fund in corporate

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784 obligations and securities of any kind of a foreign corporation
785 or a foreign commercial entity having its principal office
786 located in any country other than the United States or its
787 possessions or territories, not including United States dollar-
788 denominated securities listed and traded on a United States
789 exchange which are a part of the ordinary investment strategy of
790 the board.

791 Section 10. Subsection (1) of section 215.475, Florida
792 Statutes, is amended to read:

793 215.475 Investment policy statement.—

794 (1) In making investments for the System Trust Fund
795 pursuant to ss. 215.44-215.53, the board shall make no
796 investment which is not in conformance with the Florida
797 Retirement System Defined Benefit Plan Investment Policy
798 Statement, hereinafter referred to as "the IPS," as developed by
799 the executive director and approved by the Investment Advisory
800 Council and the board. The IPS must include, among other items,
801 the investment objectives of the System Trust Fund; permitted
802 types of securities in which the board may invest; and
803 evaluation criteria necessary to measure the investment
804 performance of the fund. As required from time to time, the
805 executive director of the board may present recommended changes
806 in the IPS to the Investment Advisory Council and the board for
807 approval.

808 Section 11. Section 215.4754, Florida Statutes, is created
809 to read:

810 215.4754 Ethics requirements for investment advisers and
811 managers and members of the Investment Advisory Council.—The
812 intent of this section is to promote independence and the

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813 avoidance of conflicts and improper influence by certain
814 investment advisers and managers without creating unnecessary
815 barriers to the board performing its investment duties
816 consistent with its fiduciary standards, investment performance,
817 and business relationships.

818 (1) A contract under which an investment adviser or manager
819 has been retained to exercise investment authority on behalf of
820 the board for direct holdings, as defined in s. 215.473(1)(e),
821 shall require that the investment adviser or manager abide by a
822 standard of conduct pursuant to s. 215.4755, and any such
823 contract may be terminated by the board if the investment
824 adviser or manager violates such standard of conduct.

825 (2) An Investment Advisory Council member or any business
826 organization or any affiliate thereof which is owned by or
827 employs such member may not directly or indirectly contract with
828 or provide any services for the investment of trust funds
829 invested by the board during the time of such member's service
830 on the council or for 2 years thereafter.

831 Section 12. Section 215.4755, Florida Statutes, is created
832 to read:

833 215.4755 Certification and disclosure requirements for
834 investment advisers and managers.—

835 (1) An investment adviser or manager who has discretionary
836 investment authority for direct holdings, as defined in s.
837 215.473(1)(e), and who is retained as provided in s.
838 215.44(2)(c) shall agree pursuant to contract to annually
839 certify in writing to the board that:

840 (a) All investment decisions made on behalf of the trust
841 funds and the board are made in the best interests of the trust

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842 funds and the board, and not made in a manner to the advantage
843 of such investment adviser or manager, other persons, or clients
844 to the detriment of the trust funds and the board.

845 (b) Appropriate policies, procedures, or other safeguards
846 have been adopted and implemented to ensure that relationships
847 with any affiliated persons or entities do not adversely
848 influence the investment decisions made on behalf of the trust
849 funds and the board.

850 (c) A written code of ethics, conduct, or other set of
851 standards, which governs the professional behavior and
852 expectations of owners, general partners, directors or managers,
853 officers, and employees of the investment adviser or manager,
854 has been adopted and implemented and is effectively monitored
855 and enforced. The investment advisers' and managers' code of
856 ethics shall require that:

857 1. Officers and employees involved in the investment
858 process shall refrain from personal business activity that could
859 conflict with the proper execution and management of the
860 investment program over which the investment adviser or manager
861 has discretionary investment authority or that could impair
862 their ability to make impartial decisions with respect to such
863 investment program; and

864 2. Officers and employees shall refrain from undertaking
865 personal investment transactions with the same individual with
866 whom business is conducted on behalf of the board.

867 (d) The investment adviser or manager has proactively and
868 promptly disclosed to the board, notwithstanding subsection (2),
869 any known circumstances or situations that a prudent person
870 could expect to create an actual, potential, or perceived

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871 conflict of interest, including specifically:

872 1. Any material interests in or with financial institutions
873 with which officers and employees conduct business on behalf of
874 the trust funds and the board; and

875 2. Any personal financial or investment positions of the
876 investment advisor or manager which could be related to the
877 performance of an investment program over which the investment
878 adviser or manager has discretionary investment authority on
879 behalf of the board.

880 (2) At the board's request, an investment adviser or
881 manager who has discretionary investment authority over direct
882 holdings, as defined in s. 215.473(1)(e), and who is retained as
883 provided in s. 215.44(2)(c) shall disclose in writing to the
884 board:

885 (a) Any nonconfidential, nonproprietary information or
886 reports to substantiate the certifications required under
887 subsection (1).

888 (b) All direct or indirect pecuniary interests that the
889 investment adviser or manager has in or with any party to a
890 transaction with the board, if the transaction is related to any
891 discretionary investment authority that the investment adviser
892 or manager exercises on behalf of the board.

893 (3) An investment adviser or manager certification required
894 under subsection (1) shall be provided annually, no later than
895 January 31, for the reporting period of the previous calendar
896 year on a form prescribed by the board.

897 Section 13. Section 215.52, Florida Statutes, is amended to
898 read:

899 215.52 Rules and regulations.—The board shall have the

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900 power and authority to make reasonable rules, policies, and
901 regulations necessary or appropriate to carry out the provisions
902 of ss. 215.44-215.53. The rules shall provide for full
903 transparency and accountability in fulfillment of its fiduciary
904 duties in the areas of compliance, ethics, training, and audit
905 procedures.

906 Section 14. Paragraph (a) of subsection (8) of section
907 218.409, Florida Statutes, is amended to read:

908 218.409 Administration of the trust fund; creation of
909 advisory council.-

910 (8) (a) The principal, and any part thereof, of each ~~and~~
911 ~~every~~ account constituting the trust fund is ~~shall be~~ subject to
912 payment at any time from the moneys in the trust fund. However,
913 the executive director may, in good faith, on the occurrence of
914 an event that has a material impact on liquidity or operations
915 of the trust fund, for 48 hours limit contributions to or
916 withdrawals from the trust fund to ensure that the board can
917 invest moneys entrusted to it in exercising its fiduciary
918 responsibility. Such action must ~~shall~~ be immediately disclosed
919 to all participants, the trustees, the Joint Legislative
920 Auditing Committee, the Investment Advisory Council, and the
921 Participant Local Government Advisory Council. The trustees
922 shall convene an emergency meeting as soon as practicable from
923 the time the executive director has instituted such measures and
924 review the necessity of those measures. If the trustees are
925 unable to convene an emergency meeting before the expiration of
926 the 48-hour moratorium on contributions and withdrawals, the
927 moratorium may be extended by the executive director until the
928 trustees can meet to review the necessity for the moratorium. If

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929 the trustees agree with such measures, the trustees shall vote
930 to continue the measures for up to an additional 15 days. The
931 trustees must convene and vote to continue any such measures
932 before ~~prior to~~ the expiration of the time limit set, but in no
933 case may the time limit set by the trustees exceed 15 days.

934 Section 15. Trademarks, copyrights, or patents.—The State
935 Board of Administration, on behalf of the Florida Retirement
936 System or any other trust fund under its jurisdiction, may
937 develop work products that are subject to trademark, copyright,
938 or patent statutes. The board may, in its own name or through
939 the growth initiative program created pursuant to s. 215.47(7),
940 Florida Statutes, or any other program developed with or for the
941 board:

942 (1) Perform all things necessary to secure letters of
943 patent, copyrights, or trademarks on any work products and
944 enforce its rights therein.

945 (2) License, lease, assign, or otherwise give written
946 consent to any person for the manufacture or use of its work
947 products on a royalty basis or for such other consideration as
948 the board deems proper.

949 (3) Take any action necessary, including legal action, to
950 protect its work products against improper or unlawful use of
951 infringement.

952 (4) Enforce the collection of any sums due to the board for
953 the manufacture or use of its work products by any other party.

954 (5) Sell any of its work products and execute all
955 instruments necessary to consummate any such sale.

956 (6) Do all other acts necessary and proper for the
957 execution of powers and duties provided under this section.

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Section 16. This act shall take effect July 1, 2010.