

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, 2011; requiring public employees  
10          employed on or after January 1, 2011, 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, 2011, who elect to participate in the program, and  
 52 for all eligible employees employed on or after January 1, 2011.  
 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 administered under part  
96 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, 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 initially enrolled before July 1,  
110 2010; or

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

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117  
 118 The term does not include any member participating in the  
 119 Deferred Retirement Option Program established under s.  
 120 121.091(13), a retiree of a state-administered retirement system  
 121 initially reemployed on or after July 1, 2010, or a mandatory  
 122 participant of the State University System Optional Retirement  
 123 Program established under s. 121.35.

124 (h)~~(g)~~ "Employer" means an employer, as defined in s.  
 125 121.021~~(10)~~, of an eligible employee.

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

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

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

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

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

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146 ~~(k) "State board" or "board" means the State Board of~~  
147 ~~Administration.~~

148 ~~(l) "Trustees" means Trustees of the State Board of~~  
149 ~~Administration.~~

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

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

159 (3) ~~ELIGIBILITY;~~ RETIREMENT SERVICE CREDIT; TRANSFER OF  
160 BENEFITS.—

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

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

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175 credited under the system and is ~~shall be~~ entitled to a deferred  
176 benefit upon termination, ~~if eligible under the system~~. However,  
177 election to participate in the investment ~~Public Employee~~  
178 ~~Optional Retirement~~ program terminates the active membership of  
179 the employee in the defined benefit program ~~of the Florida~~  
180 ~~Retirement System~~, and the service of a participant in the  
181 investment ~~Public Employee Optional Retirement~~ program is ~~shall~~  
182 not ~~be~~ creditable under the defined benefit ~~retirement~~ program  
183 ~~of the Florida Retirement System~~ for purposes of benefit accrual  
184 but is creditable ~~shall be credited~~ for purposes of vesting.

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

201 1.2. For purposes of this subsection, the present value of  
202 the member's accumulated benefit obligation is based upon the  
203 member's estimated creditable service and estimated average

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204 final compensation under the defined benefit program, subject to  
205 recomputation under subparagraph 2. ~~3.~~ For state employees  
206 ~~enrolling under subparagraph (4)(a)1.~~, initial estimates shall  
207 ~~will~~ be based upon creditable service and average final  
208 compensation as of midnight on June 30, 2002; for district  
209 school board employees ~~enrolling under subparagraph (4)(b)1.~~,  
210 initial estimates shall ~~will~~ be based upon creditable service  
211 and average final compensation as of midnight on September 30,  
212 2002; and for local government employees ~~enrolling under~~  
213 ~~subparagraph (4)(c)1.~~, initial estimates shall ~~will~~ be based  
214 upon creditable service and average final compensation as of  
215 midnight on December 31, 2002. The dates ~~respectively~~ specified  
216 are above ~~shall be construed as~~ the "estimate date" for these  
217 employees. The actuarial present value of the employee's  
218 accumulated benefit obligation shall be based on the following:

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

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

229 (I) Age 62; or  
230 (II) The age the member would attain if the member  
231 completed 30 years of service with an employer, assuming the  
232 member worked continuously from the estimate date, and



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233 disregarding any vesting requirement that would otherwise apply  
234 under the defined benefit program ~~of the Florida Retirement~~  
235 ~~System~~.

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

242 (I) Age 55; or

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

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

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

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262 a. Transfer, or cause to be transferred, from the Florida  
263 Retirement System Trust Fund to the participant's account ~~in the~~  
264 ~~optional program~~ the excess, if any, of the recomputed amount  
265 over the previously transferred amount together with interest  
266 from the initial date of transfer to the date of transfer under  
267 this subparagraph, based upon the effective annual interest  
268 equal to the assumed return on the actuarial investment which  
269 was used in the most recent actuarial valuation of the system,  
270 compounded annually.

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

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

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291 establish transfer procedures by rule. Transfers are not  
292 commissionable or subject to other fees and may be in the form  
293 of securities or cash, as determined by the state board. Such  
294 securities are ~~shall be~~ valued as of the date of receipt in the  
295 participant's account.

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

304 (4) OPTIONAL PARTICIPATION; ENROLLMENT.—

305 (a)~~1.~~ With respect to an eligible employee who is employed  
306 in a regularly established position by a state employer after on  
307 June 1, 2002; by a district school board employer after  
308 September 1, 2002; or by a local employer after December 1,  
309 2002, but before January 1, 2011, the, ~~by a state employer:~~

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

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

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

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

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

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349        ~~1.b.~~ If the employee files such election within the  
 350 prescribed time period, enrollment in the investment ~~optional~~  
 351 program is ~~shall be~~ effective on the first day of employment.  
 352 The employer retirement contributions paid through the month of  
 353 the employee plan change shall be transferred to the investment  
 354 ~~optional~~ program, and, effective the first day of the next  
 355 month, the employer must ~~shall~~ pay the applicable contributions  
 356 based on the employee membership class in the ~~optional~~ program.

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

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

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378 part, and the employee's participation in the State Community  
379 College System Optional Retirement Program or the State  
380 University System Optional Retirement Program shall terminate.  
381 The employee's enrollment in the investment ~~Public Employee~~  
382 ~~Optional Retirement~~ program is ~~shall be~~ effective on the first  
383 day of the month for which a full month's employer contribution  
384 is made to the investment ~~optional~~ program.

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

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

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

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407 ~~provisions of this part, and the employee's membership in the~~  
408 ~~defined benefit program of the Florida Retirement System shall~~  
409 ~~terminate. The employee's enrollment in the Public Employee~~  
410 ~~Optional Retirement Program shall be effective the first day of~~  
411 ~~the month for which a full month's employer contribution is made~~  
412 ~~to the optional program.~~

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

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

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

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

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436 ~~plan change shall be transferred to the optional program, and,~~  
437 ~~effective the first day of the next month, the employer shall~~  
438 ~~pay the applicable contributions based on the employee~~  
439 ~~membership class in the optional program.~~

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

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

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

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



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

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

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

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

493 ~~b. If the employee files such election within the~~

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494 ~~prescribed time period, enrollment in the optional program shall~~  
495 ~~be effective on the first day of employment. The employer~~  
496 ~~retirement contributions paid through the month of the employee~~  
497 ~~plan change shall be transferred to the optional program, and,~~  
498 ~~effective the first day of the next month, the employer shall~~  
499 ~~pay the applicable contributions based on the employee~~  
500 ~~membership class in the optional program.~~

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

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

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

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

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

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

543 2. If the employee chooses to move to the defined benefit  
544 program, the employee must transfer from his or her investment  
545 ~~Public Employee Optional Retirement~~ program account, and from  
546 other employee moneys as necessary, a sum representing the  
547 present value of that employee's accumulated benefit obligation  
548 immediately following the time of such movement, determined  
549 assuming that attained service equals the sum of service in the  
550 defined benefit program and service in the investment ~~Public~~  
551 ~~Employee Optional Retirement~~ program. Benefit commencement

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552 occurs on the first date the employee is ~~would become~~ eligible  
553 for unreduced benefits, using the discount rate and other  
554 relevant actuarial assumptions that were used to value the  
555 ~~Florida Retirement System~~ defined benefit program plan  
556 liabilities in the most recent actuarial valuation. For any  
557 employee who, at the time of the second election, already  
558 maintains an accrued benefit amount in the defined benefit  
559 program plan, the then-present value of the ~~such~~ accrued benefit  
560 shall be deemed part of the required transfer amount ~~described~~  
561 ~~in this subparagraph~~. The division shall ensure that the  
562 transfer sum is prepared using a formula and methodology  
563 certified by an enrolled actuary.

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

574 4. An employee's ~~Employees'~~ ability to transfer from the  
575 ~~Florida Retirement System~~ defined benefit program to the  
576 investment Public Employee Optional Retirement program pursuant  
577 to paragraphs (a) and (b) ~~(a)-(d)~~, and the ability of a ~~for~~  
578 current employee ~~employees~~ to have an option to later transfer  
579 back into the defined benefit program under subparagraph 2.,  
580 shall be deemed a significant system amendment. Pursuant to s.

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581 121.031(4), any ~~such~~ resulting unfunded liability arising from  
582 actual original transfers from the defined benefit program to  
583 the investment optional program must ~~shall~~ be amortized within  
584 30 plan years as a separate unfunded actuarial base independent  
585 of the reserve stabilization mechanism defined in s.  
586 121.031(3)(f). For the first 25 years, a ~~no~~ direct amortization  
587 payment may not ~~shall~~ be calculated for this base. During this  
588 25-year period, the ~~such~~ separate base shall be used to offset  
589 the impact of employees exercising their second program election  
590 under this paragraph. It is the ~~legislative~~ intent of the  
591 Legislature that the actuarial funded status of the ~~Florida~~  
592 ~~Retirement System~~ defined benefit program not be affected ~~plan~~  
593 ~~is neither beneficially nor adversely impacted~~ by such second  
594 program elections in any significant manner, after due  
595 recognition of the separate unfunded actuarial base. Following  
596 this initial 25-year period, any remaining balance of the  
597 original separate base shall be amortized over the remaining 5  
598 years of the required 30-year amortization period.

599 (5) CONTRIBUTIONS.—

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

607 1. The portion earmarked for participant accounts shall be  
608 used to purchase interests in the appropriate investment  
609 vehicles ~~for the accounts of each participant~~ as specified by

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610 the participant, or in accordance with paragraph (4) (b) ~~(4) (d)~~.

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

613 3. The portion earmarked for disability benefits shall be  
614 transferred to the department.

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

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

633 (6) VESTING REQUIREMENTS.—

634 (a)1. With respect to employer contributions paid on behalf  
635 of the participant to the investment ~~Public Employee Optional~~  
636 ~~Retirement~~ program, plus interest and earnings thereon and less  
637 investment fees and administrative charges, a participant is  
638 ~~shall be~~ vested after completing 1 work year, ~~as defined in s.~~

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639 ~~121.021(54)~~, with an employer, including any service while the  
640 participant was a member of the defined benefit ~~retirement~~  
641 program or an optional retirement program authorized under s.  
642 121.051(2)(c) or s. 121.055(6).

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

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

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

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

685           (7) BENEFITS.—Under the Public Employee ~~Optional~~ Retirement  
 686 Investment Program, benefits shall:

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

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

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

694           (8) PROGRAM ADMINISTRATION OF PROGRAM.—

695           ~~(a)~~ The Public Employee ~~Optional~~ Retirement Investment  
 696 Program shall be administered by the state board and affected



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

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

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726 approved provider.

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

747 (b)1.3. The state board shall select and contract with one  
748 or more organizations to provide educational services. With  
749 approval of the state board, the organizations may subcontract  
750 ~~with other organizations or individuals~~ to provide components of  
751 the educational services. As a cost of administration, the state  
752 board may compensate any such contractor for its services in  
753 accordance with the terms of the contract, as is deemed  
754 necessary or proper by the board. The education organization may

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755 not be an approved provider or be affiliated with an approved  
756 provider.

757 2.4. Educational services shall be designed by the state  
758 board and department to assist employers, eligible employees,  
759 participants, and beneficiaries in order to maintain compliance  
760 with United States Department of Labor regulations under s.  
761 404(c) of the Employee Retirement Income Security Act of 1974  
762 and to assist employees in understanding their ~~choice of defined~~  
763 ~~benefit or defined contribution~~ retirement program ~~alternatives~~.  
764 Educational services include, but are not limited to,  
765 disseminating educational materials; providing retirement  
766 planning education; explaining the ~~differences between the~~  
767 defined benefit ~~retirement plan~~ and the defined contribution  
768 retirement programs ~~plan~~; and offering financial planning  
769 guidance on matters such as investment diversification,  
770 investment risks, investment costs, and asset allocation. An  
771 approved provider may also provide educational information,  
772 including retirement planning and investment allocation  
773 information concerning its products and services.

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

779 a. The administrator's demonstrated experience in providing  
780 administrative services to public or private sector retirement  
781 systems.

782 b. The administrator's demonstrated experience in providing  
783 daily valued recordkeeping to defined contribution programs

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784 plans.

785 c. The administrator's ability and willingness to  
786 coordinate its activities with ~~the Florida Retirement System~~  
787 employers, the state board, and the division, and to supply to  
788 such employers, the board, and the division the information and  
789 data they require, including, but not limited to, monthly  
790 management reports, quarterly participant reports, and ad hoc  
791 reports requested by the department or state board.

792 d. The cost-effectiveness and levels of the administrative  
793 services provided.

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

801 f. Any other factor deemed necessary by the ~~Trustees of the~~  
802 state board ~~of Administration~~.

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

808 a. Demonstrated experience in providing educational  
809 services to public or private sector retirement systems.

810 b. Ability and willingness to coordinate its activities  
811 with the ~~Florida Retirement System~~ employers, the state board,  
812 and the division, and to supply to such employers, the board,

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813 and the division the information and data they require,  
814 including, but not limited to, reports on educational contacts.

815 c. The cost-effectiveness and levels of the educational  
816 services provided.

817 d. Ability to provide educational services via different  
818 media, including, but not limited to, the Internet, personal  
819 contact, seminars, brochures, and newsletters.

820 e. Any other factor deemed necessary by the ~~Trustees of the~~  
821 ~~state board of Administration.~~

822 3. The establishment of the criteria shall be solely within  
823 the discretion of the state board.

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

828 1. The nature and extent of the rights and benefits to be  
829 afforded in relation to the ~~required~~ contributions required  
830 under the program.

831 2. The suitability of the rights and benefits provided ~~to~~  
832 ~~be afforded~~ and the interests of employers in the recruitment  
833 and retention of eligible employees.

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

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842 shall be paid by those participants who choose to use the  
843 services of the vendor.

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

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

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

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

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

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

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

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

899 2. Investment options or products offered by ~~the group of~~

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900 approved providers may include mutual funds, group annuity  
901 contracts, individual retirement annuities, interests in trusts,  
902 collective trusts, separate accounts, and other such financial  
903 instruments, and ~~may include~~ products that give participants the  
904 option of committing their contributions for an extended time  
905 period in an effort to obtain returns higher than those that  
906 could be obtained from investment products offering full  
907 liquidity.

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

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

924 (c) In evaluating and selecting approved providers and  
925 products, the state board shall establish criteria for  
926 evaluating ~~under which it shall consider~~ the relative  
927 capabilities and qualifications of each proposed provider  
928 company and product. In developing such criteria, the board



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929 shall consider the following to the extent such factors may be  
930 applied in connection with investment products, services, or  
931 providers:

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

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

939 3. Intrastate and interstate portability of the product  
940 offered, including early withdrawal options.

941 4. Compliance with the Internal Revenue Code.

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

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

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

957 8. The provider company's policies with respect to the

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958 transfer of individual account balances, contributions, and  
959 earnings thereon, both internally among investment products  
960 offered by the provider company and externally between approved  
961 providers, as well as any fees, charges, reductions, or  
962 penalties that may be applied.

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

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

973 (d) By March 1, 2010, the state board shall identify and  
974 offer at least one terror-free investment product that allocates  
975 its funds among securities not subject to divestiture as  
976 provided in s. 215.473 if the investment product is deemed by  
977 the board to be consistent with prudent investor standards. No  
978 person may bring a civil, criminal, or administrative action  
979 against an approved provider; the state board; or any employee,  
980 officer, director, or trustee of such provider based upon the  
981 divestiture of any security or the offering of a terror-free  
982 investment product as specified in this paragraph.

983 (e) As a condition of offering an ~~any~~ investment option or  
984 product in the investment ~~optional retirement~~ program, the  
985 approved provider must agree to make the investment product or  
986 service available under the most beneficial terms offered to any

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987 other customer, subject to approval by the ~~Trustees of the state~~  
988 ~~board of Administration.~~

989 (f) The state board shall regularly review the performance  
990 of each approved provider and product and related organizational  
991 factors to ensure continued compliance with established  
992 selection criteria and with board policy and procedures.  
993 Providers and products may be terminated subject to contract  
994 provisions. The state board shall adopt procedures to transfer  
995 account balances from terminated products or providers to other  
996 products or providers in the investment ~~optional~~ program.

997 (g)1. An approved provider shall comply with all applicable  
998 federal and state securities and insurance laws and regulations  
999 ~~applicable to the provider~~, as well as with the applicable rules  
1000 and guidelines of the National Association of Securities Dealers  
1001 which govern the ethical marketing of investment products. In  
1002 furtherance of this mandate, an approved provider must agree in  
1003 its contract with the state board to establish and maintain a  
1004 compliance education and monitoring system to supervise the  
1005 activities of all personnel who directly communicate with  
1006 individual participants and recommend investment products, which  
1007 system is consistent with rules of the National Association of  
1008 Securities Dealers.

1009 2. Approved provider personnel who directly communicate  
1010 with individual participants and who recommend investment  
1011 products shall make an independent and unbiased determination as  
1012 to whether an investment product is suitable for a particular  
1013 participant.

1014 3. The state board shall develop procedures to receive and  
1015 resolve participant complaints against a provider or approved

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1016 provider personnel, and, if ~~when~~ appropriate, refer such  
1017 complaints to the appropriate agency.

1018 4. Approved providers may not sell or in any way distribute  
1019 any customer list or participant identification information  
1020 generated through their offering of products or services through  
1021 the investment ~~optional retirement~~ program.

1022 (10) EDUCATION COMPONENT.—

1023 ~~(a) The state board, in coordination with the department,~~  
1024 ~~shall provide for an education component for eligible employees~~  
1025 ~~system members in a manner consistent with the provisions of~~  
1026 ~~this section. The education component must be available to~~  
1027 ~~eligible employees at least 90 days prior to the beginning date~~  
1028 ~~of the election period for the employees of the respective types~~  
1029 ~~of employers.~~

1030 ~~(b) The education component must provide system members~~  
1031 ~~with impartial and balanced information about plan choices. The~~  
1032 ~~education component must involve multimedia formats. Program~~  
1033 ~~comparisons must, to the greatest extent possible, be based upon~~  
1034 ~~the retirement income that different retirement programs may~~  
1035 ~~provide to the participant. The board shall monitor the~~  
1036 ~~performance of the contract to ensure that the program is~~  
1037 ~~conducted in accordance with the contract, applicable law, and~~  
1038 ~~the rules of the board.~~

1039 ~~(c) The board, in coordination with the department, shall~~  
1040 ~~provide for an initial and ongoing transfer education component~~  
1041 ~~to provide system members with information necessary to make~~  
1042 ~~informed plan choice decisions. The transfer education component~~  
1043 ~~must include, but is not limited to, information on:~~

1044 1. ~~The amount of money available to a member to transfer to~~

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1045 ~~the defined contribution program.~~

1046 ~~2. The features of and differences between the defined~~  
1047 ~~benefit program and the defined contribution program, both~~  
1048 ~~generally and specifically, as those differences may affect the~~  
1049 ~~member.~~

1050 ~~3. The expected benefit available if the member were to~~  
1051 ~~retire under each of the retirement programs, based on~~  
1052 ~~appropriate alternative sets of assumptions.~~

1053 ~~4. The rate of return from investments in the defined~~  
1054 ~~contribution program and the period of time over which such rate~~  
1055 ~~of return must be achieved to equal or exceed the expected~~  
1056 ~~monthly benefit payable to the member under the defined benefit~~  
1057 ~~program.~~

1058 ~~5. The historical rates of return for the investment~~  
1059 ~~alternatives available in the defined contribution programs.~~

1060 ~~6. The benefits and historical rates of return on~~  
1061 ~~investments available in a typical deferred compensation plan or~~  
1062 ~~a typical plan under s. 403(b) of the Internal Revenue Code for~~  
1063 ~~which the employee may be eligible.~~

1064 ~~7. The program choices available to employees of the State~~  
1065 ~~University System and the comparative benefits of each available~~  
1066 ~~program, if applicable.~~

1067 ~~8. Payout options available in each of the retirement~~  
1068 ~~programs.~~

1069 ~~(a)(d)~~ An ongoing education and communication component  
1070 must provide eligible employees ~~system members~~ with information  
1071 necessary to make informed decisions about choices within their  
1072 retirement program ~~of membership~~ and in preparation for  
1073 retirement. The component must include, but is not limited to,

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1074 information concerning:

1075 1. Rights and conditions of membership.

1076 2. Benefit features within the program, options, and  
1077 effects of certain decisions.

1078 3. Coordination of contributions and benefits with a  
1079 deferred compensation plan under s. 457 or a plan under s.  
1080 403(b) of the Internal Revenue Code.

1081 4. Significant program changes.

1082 5. Contribution rates and program funding status.

1083 6. Planning for retirement.

1084 (b)~~(e)~~ Descriptive materials must be prepared under the  
1085 assumption that the employee is an unsophisticated investor, and  
1086 all materials used in the education component must be approved  
1087 by the state board before ~~prior to~~ dissemination.

1088 (c)~~(f)~~ The state board and the department shall also  
1089 establish a communication component to provide program  
1090 information to participating employers and the employers'  
1091 personnel and payroll officers and to explain their respective  
1092 responsibilities in conjunction with the retirement programs.

1093 (d)~~(g)~~ Funding for education of new employees may reflect  
1094 administrative costs to the investment ~~optional~~ program and the  
1095 defined benefit program.

1096 ~~(h) Pursuant to paragraph (8) (a), all Florida Retirement  
1097 System employers have an obligation to regularly communicate the  
1098 existence of the two Florida Retirement System plans and the  
1099 plan choice in the natural course of administering their  
1100 personnel functions, using the educational materials supplied by  
1101 the state board and the Department of Management Services.~~

1102 (11) PARTICIPANT INFORMATION REQUIREMENTS.—The state board

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1103 shall ensure that each participant is provided a quarterly  
1104 statement that accounts for ~~the~~ contributions made on behalf of  
1105 the such participant; the interest and investment earnings  
1106 thereon; and any fees, penalties, or other deductions that apply  
1107 ~~thereto~~. At a minimum, such statements must:

1108 (a) Indicate the participant's investment options.

1109 (b) State the market value of the account at the close of  
1110 the current quarter and previous quarter.

1111 (c) Show account gains and losses ~~for the period~~ and  
1112 changes in account accumulation unit values for the quarter  
1113 period.

1114 (e) Indicate any account changes due to adjustment of  
1115 contribution levels, reallocation of contributions, balance  
1116 transfers, or withdrawals.

1117 (f) Set forth any fees, charges, penalties, and deductions  
1118 that apply to the account.

1119 (g) Indicate the amount of the account in which the  
1120 participant is fully vested and the amount of the account in  
1121 which the participant is not vested.

1122 (h) Indicate each investment product's performance relative  
1123 to an appropriate market benchmark.

1124

1125 The third-party administrator shall provide quarterly and annual  
1126 summary reports to the state board and any other reports  
1127 requested by the department or the board. In any solicitation or  
1128 offer of coverage under the defined contribution ~~an optional~~  
1129 ~~retirement~~ program, a provider company shall be governed by the  
1130 contract readability provisions of s. 627.4145, notwithstanding  
1131 s. 627.4145(6)(c). In addition, all descriptive materials must

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1132 be prepared under the assumption that the participant is an  
1133 unsophisticated investor. Provider companies must maintain an  
1134 internal system of quality assurance, have proven functional  
1135 systems that are date-calculation compliant, and be subject to a  
1136 due-diligence inquiry that proves their capacity and fitness to  
1137 undertake service responsibilities.

1138 (12) ADVISORY COUNCIL TO PROVIDE ADVICE AND ASSISTANCE.—The  
1139 Investment Advisory Council, created pursuant to s. 215.444,  
1140 shall assist the state board in implementing and administering  
1141 the Public Employee ~~Optional~~ Retirement Investment Program. The  
1142 ~~Investment Advisory council, created pursuant to s. 215.444,~~  
1143 shall review the state board's initial recommendations regarding  
1144 the criteria to be used in selecting and evaluating approved  
1145 providers and investment products. The council may provide  
1146 comments on the recommendations to the board within 45 days  
1147 after receiving the initial recommendations. The state board  
1148 shall make the final determination as to whether any investment  
1149 provider or product, any contractor, or any and all contract  
1150 provisions are ~~shall be~~ approved for the investment program.

1151 (13) FEDERAL REQUIREMENTS.—

1152 (a) ~~Provisions of~~ This section shall be construed, and the  
1153 investment ~~Public Employee Optional Retirement~~ program shall be  
1154 administered, so as to comply with the Internal Revenue Code, 26  
1155 U.S.C., and specifically with plan qualification requirements  
1156 imposed on governmental plans under s. 401(a) of the Internal  
1157 Revenue Code. The state board may ~~shall have the power and~~  
1158 ~~authority to~~ adopt rules reasonably necessary to establish or  
1159 maintain the qualified status of the investment ~~Optional~~  
1160 ~~Retirement~~ program under the Internal Revenue Code and to



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1161 implement and administer the ~~Optional Retirement~~ program in  
1162 compliance with the Internal Revenue Code and as designated  
1163 under this part; ~~provided however, that the board shall not have~~  
1164 ~~the authority to adopt any rule which makes a substantive change~~  
1165 ~~to the Optional Retirement Program as designed by this part.~~

1166 (b) Any section or provision of this chapter which is  
1167 susceptible to more than one construction shall ~~must~~ be  
1168 interpreted in favor of the construction most likely to satisfy  
1169 requirements imposed by s. 401(a) of the Internal Revenue Code.

1170 (c) Contributions payable under this section for any  
1171 limitation year may not exceed the maximum amount allowable for  
1172 qualified defined contribution pension plans under applicable  
1173 provisions of the Internal Revenue Code. If an employee who is  
1174 enrolled ~~who has elected to participate~~ in the Public Employee  
1175 ~~Optional Retirement Investment~~ Program participates in any other  
1176 plan that is maintained by the participating employer, benefits  
1177 that accrue under the investment ~~Public Employee Optional~~  
1178 ~~Retirement~~ program shall be considered primary for any aggregate  
1179 limitation applicable under s. 415 of the Internal Revenue Code.

1180 (14) INVESTMENT POLICY STATEMENT.—

1181 (a) Investment products and approved providers selected for  
1182 the investment ~~Public Employee Optional Retirement~~ program must  
1183 ~~shall~~ conform with the Public Employee ~~Optional Retirement~~  
1184 Investment Program Investment Policy Statement, herein referred  
1185 to as the "statement," as developed and approved by the ~~Trustees~~  
1186 ~~of the state board of Administration~~. The statement must  
1187 include, among other items, the investment objectives of the  
1188 investment ~~Public Employee Optional Retirement~~ program, manager  
1189 selection and monitoring guidelines, and performance measurement

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1190 criteria. As required from time to time, the executive director  
1191 of the state board may present recommended changes in the  
1192 statement to the board for approval.

1193 (b) Before ~~Prior to~~ presenting the statement, or any  
1194 recommended changes ~~thereto~~, to the state board, the executive  
1195 director of the board shall present such statement or changes to  
1196 the Investment Advisory Council for review. The council shall  
1197 present the results of its review to the board prior to the  
1198 board's final approval of the statement or changes in the  
1199 statement.

1200 (15) STATEMENT OF FIDUCIARY STANDARDS AND  
1201 RESPONSIBILITIES.—

1202 (a) Investment of ~~optional~~ defined contribution program  
1203 ~~retirement plan~~ assets shall be made for the sole interest and  
1204 exclusive purpose of providing benefits to ~~plan~~ participants and  
1205 beneficiaries and defraying reasonable expenses of administering  
1206 the program ~~plan~~. The program's assets shall ~~are to~~ be invested,  
1207 on behalf of the program participants, with the care, skill, and  
1208 diligence that a prudent person acting in a like manner would  
1209 undertake. The performance of the investment duties set forth in  
1210 this paragraph shall comply with the fiduciary standards set  
1211 forth in the Employee Retirement Income Security Act of 1974 at  
1212 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other  
1213 provisions of law authorizing investments, the investment and  
1214 fiduciary standards set forth in this subsection shall prevail.

1215 (b) If a participant or beneficiary of the defined  
1216 contribution ~~Public Employee Optional Retirement~~ program  
1217 exercises control over the assets in his or her account, as  
1218 determined by reference to regulations of the United States

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1219 Department of Labor under s. 404(c) of the Employee Retirement  
1220 Income Security Act of 1974 and all applicable laws governing  
1221 the operation of the program, a ~~ne~~ program fiduciary is not  
1222 ~~shall be~~ liable for any loss to a participant's or beneficiary's  
1223 account which results from the ~~such~~ participant's or  
1224 beneficiary's exercise of control.

1225 (c) Subparagraph (8)(b)2. ~~(8)(b)4.~~ and paragraph (15)(b)  
1226 incorporate the federal law concept of participant control,  
1227 established by regulations of the United States Department of  
1228 Labor under s. 404(c) of the Employee Retirement Income Security  
1229 Act of 1974 (ERISA). The purpose of this paragraph is to assist  
1230 employers and the state board ~~of Administration~~ in maintaining  
1231 compliance with s. 404(c), while avoiding unnecessary costs and  
1232 eroding participant benefits under the defined contribution  
1233 ~~Public Employee Optional Retirement~~ program. Pursuant to 29  
1234 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(1)(viii), the state board ~~of~~  
1235 ~~Administration~~ or its designated agents shall deliver to  
1236 participants of the defined contribution ~~Public Employee~~  
1237 ~~Optional Retirement~~ program a copy of the prospectus most  
1238 recently provided to the plan, and, pursuant to 29 C.F.R. s.  
1239 2550.404c-1(b)(2)(i)(B)(2)(ii), shall provide such participants  
1240 an opportunity to obtain this information, except that:

1241 1. The requirement to deliver a prospectus shall be ~~deemed~~  
1242 ~~to be~~ satisfied by delivery of a fund profile that contains the  
1243 information that would be included in a summary prospectus as  
1244 described by Rule 498 under the Securities Act of 1933, 17  
1245 C.F.R. s. 230.498. If ~~When~~ the transaction fees, expense  
1246 information, or other information provided by a mutual fund in  
1247 the prospectus does not reflect terms negotiated by the state

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1248 board ~~of Administration~~ or its designated agents, the  
1249 ~~aforementioned~~ requirement is ~~deemed to be~~ satisfied by delivery  
1250 of a separate document described by Rule 498 substituting  
1251 accurate information; and

1252 2. Delivery shall be ~~deemed to have been~~ effected if  
1253 delivery is through electronic means and the following standards  
1254 are satisfied:

1255 a. Electronically-delivered documents are prepared and  
1256 provided consistent with style, format, and content requirements  
1257 applicable to printed documents;

1258 b. Each participant is provided timely and adequate notice  
1259 of the documents that are to be delivered and their significance  
1260 thereof, and of the participant's right to obtain a paper copy  
1261 of such documents free of charge;

1262 c. ~~(I)~~ Participants have adequate access to the electronic  
1263 documents, at locations such as their worksites or public  
1264 facilities, and have the ability to convert the documents to  
1265 paper free of charge by the state board ~~of Administration~~, and  
1266 the board or its designated agents take appropriate and  
1267 reasonable measures to ensure that the system for furnishing  
1268 electronic documents results in actual receipt. ~~or~~

1269 ~~(II)~~ Participants have provided consent to receive  
1270 information in electronic format, which consent may be revoked;  
1271 and

1272 d. The state board ~~of Administration~~, or its designated  
1273 agent, actually provides paper copies of the documents free of  
1274 charge, upon request.

1275 (16) DISABILITY BENEFITS.—For any participant of the  
1276 investment optional retirement program who becomes totally and

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1277 permanently disabled, benefits must ~~shall~~ be paid in accordance  
1278 with the provisions of s. 121.591.

1279 (17) SOCIAL SECURITY COVERAGE.—Social security coverage  
1280 shall be provided for all officers and employees who become  
1281 participants of the investment ~~optional~~ program. Any  
1282 modification of the present agreement with the Social Security  
1283 Administration, or referendum required under the Social Security  
1284 Act, for the purpose of providing social security coverage for  
1285 any member shall be requested by the state agency in compliance  
1286 with the applicable provisions of the Social Security Act  
1287 governing such coverage. However, retroactive social security  
1288 coverage for service before ~~prior to~~ December 1, 1970, with the  
1289 employer may ~~shall~~ not be provided for any member who was not  
1290 covered under the agreement as of November 30, 1970.

1291 (18) RETIREE HEALTH INSURANCE SUBSIDY.—All officers and  
1292 employees who are participants of the investment ~~optional~~  
1293 program are ~~shall be~~ eligible to receive the retiree health  
1294 insurance subsidy, subject to the provisions of s. 112.363.

1295 (19) PARTICIPANT RECORDS.—Personal identifying information  
1296 of a participant in the investment ~~Public Employee Optional~~  
1297 ~~Retirement~~ program contained in Florida Retirement System  
1298 records held by the state board of ~~Administration~~ or the  
1299 department of ~~Management Services~~ is exempt from s. 119.07(1)  
1300 and s. 24(a), Art. I of the State Constitution.

1301 (20) DESIGNATION OF BENEFICIARIES.—

1302 (a) Each participant may, on a form provided for that  
1303 purpose, signed and filed with the third-party administrator,  
1304 designate a choice of one or more persons, named sequentially or  
1305 jointly, as his or her beneficiary for receiving ~~who shall~~

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1306 ~~receive~~ the benefits, if any, which may be payable pursuant to  
1307 this chapter in the event of the participant's death. If no  
1308 beneficiary is named in this manner, or if no beneficiary  
1309 designated by the participant survives the participant, the  
1310 beneficiary shall be the spouse of the deceased, if living. If  
1311 the participant's spouse is not alive at the time of the  
1312 beneficiary's ~~his or her~~ death, the beneficiary shall be the  
1313 living children of the participant. If no children survive, the  
1314 beneficiary shall be the participant's father or mother, if  
1315 living; otherwise, the beneficiary shall be the participant's  
1316 estate. The beneficiary most recently designated by a  
1317 participant ~~on a form or letter filed with the third-party~~  
1318 ~~administrator~~ shall be the beneficiary entitled to any benefits  
1319 payable at the time of the participant's death. However  
1320 ~~Notwithstanding any other provision in this subsection to the~~  
1321 ~~contrary~~, for a participant who dies before ~~prior to~~ his or her  
1322 effective date of retirement, the spouse at the time of death  
1323 shall be the participant's beneficiary unless the ~~such~~  
1324 participant designates a different beneficiary ~~as provided in~~  
1325 ~~this subsection~~ subsequent to the participant's most recent  
1326 marriage.

1327 (b) If a participant designates a primary beneficiary other  
1328 than the participant's spouse, the participant's spouse must  
1329 sign the beneficiary designation form to acknowledge the  
1330 designation. This requirement does not apply to the designation  
1331 of one or more contingent beneficiaries to receive benefits  
1332 remaining upon the death of the primary beneficiary or  
1333 beneficiaries.

1334 (c) Notwithstanding the participant's designation of

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1335 benefits to be paid through a trust to a beneficiary that is a  
1336 natural person, ~~and notwithstanding~~ the provisions of the trust,  
1337 benefits must ~~shall~~ be paid directly to the beneficiary if the  
1338 person is no longer a minor or an incapacitated person as  
1339 defined in s. 744.102.

1340 (21) PARTICIPATION BY TERMINATED DEFERRED RETIREMENT OPTION  
1341 PROGRAM PARTICIPANTS.—Notwithstanding any other provision of law  
1342 ~~to the contrary~~, participants in the Deferred Retirement Option  
1343 Program offered under part I may, after conclusion of their  
1344 participation in the program, elect to roll over or authorize a  
1345 direct trustee-to-trustee transfer to an account under the  
1346 Public Employee ~~Optional Retirement~~ Investment Program of their  
1347 Deferred Retirement Option Program proceeds distributed as  
1348 provided under s. 121.091(13)(c)5. The transaction must  
1349 constitute an “eligible rollover distribution” within the  
1350 meaning of s. 402(c)(4) of the Internal Revenue Code.

1351 (a) The investment ~~Public Employee Optional Retirement~~  
1352 program may accept such amounts for deposit into participant  
1353 accounts as provided in paragraph (5)(c).

1354 (b) The affected participant shall direct the investment of  
1355 his or her investment account; however, unless he or she becomes  
1356 a renewed member of the Florida Retirement System under s.  
1357 121.122 and elects to participate in the investment ~~Public~~  
1358 ~~Employee Optional Retirement~~ program, employer contributions may  
1359 not be made to the participant’s account as provided under  
1360 paragraph (5)(a).

1361 (c) The state board or the department is not responsible  
1362 for locating those persons who may be eligible to participate in  
1363 the investment ~~Public Employee Optional Retirement~~ program under

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1364 this subsection.

1365 (22) CREDIT FOR MILITARY SERVICE.—Creditable service of any  
1366 member of the Public Employee ~~Optional~~ Retirement Investment  
1367 Program includes ~~shall include~~ military service in the Armed  
1368 Forces of the United States as provided in ~~the conditions~~  
1369 ~~outlined in~~ s. 121.111(1).

1370 Section 2. Section 121.4502, Florida Statutes, is amended  
1371 to read:

1372 121.4502 Public Employee ~~Optional~~ Retirement Investment  
1373 Program Trust Fund.—

1374 (1) The Public Employee ~~Optional~~ Retirement Investment  
1375 Program Trust Fund is created to hold the assets of the Public  
1376 Employee ~~Optional~~ Retirement Investment Program in trust for the  
1377 exclusive benefit of program ~~such program's~~ participants and  
1378 beneficiaries, and for the payment of reasonable administrative  
1379 expenses of the program, in accordance with s. 401 of the  
1380 Internal Revenue Code, and shall be administered by the State  
1381 Board of Administration as trustee. Funds shall be credited to  
1382 the trust fund as provided in this part and, ~~to be~~ used for the  
1383 purposes of this part. The trust fund is exempt from the service  
1384 charges imposed by s. 215.20.

1385 (2) The Public Employee ~~Optional~~ Retirement Investment  
1386 Program Trust Fund is a ~~retirement~~ trust fund of the Florida  
1387 Retirement System that accounts for retirement plan assets held  
1388 by the state in a trustee capacity as a fiduciary for individual  
1389 participants in the Public Employee ~~Optional~~ Retirement  
1390 Investment Program and, pursuant to s. 19(f), Art. III of the  
1391 State Constitution, is not subject to termination.

1392 Section 3. Paragraph (g) of subsection (2) of section



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1393 110.123, Florida Statutes, is amended to read:

1394 110.123 State group insurance program.—

1395 (2) DEFINITIONS.—As used in this section, the term:

1396 (g) "Retired state officer or employee" or "retiree" means  
 1397 any state or state university officer or employee who retires  
 1398 under a state retirement system or a state optional annuity or  
 1399 retirement program or is placed on disability retirement, and  
 1400 who was insured under the state group insurance program at the  
 1401 time of retirement, and who begins receiving retirement benefits  
 1402 immediately after retirement from state or state university  
 1403 office or employment. In addition ~~to these requirements,~~ the  
 1404 term includes any state officer or state employee who retires  
 1405 under the defined contribution Public Employee Optional  
 1406 ~~Retirement~~ program established under part II of chapter 121  
 1407 ~~shall be considered a "retired state officer or employee" or~~  
 1408 ~~"retiree" as used in this section~~ if he or she:

1409 1. Meets the age and service requirements to qualify for  
 1410 normal retirement as set forth in s. 121.021(29); or

1411 2. Has attained the age specified by s. 72(t)(2)(A)(i) of  
 1412 the Internal Revenue Code and has 6 years of creditable service.

1413 Section 4. Section 112.0801, Florida Statutes, is amended  
 1414 to read:

1415 112.0801 Group insurance; participation by retired  
 1416 employees.—

1417 ~~(1)~~ Any state agency, county, municipality, special  
 1418 district, community college, or district school board that ~~which~~  
 1419 provides life, health, accident, hospitalization, or annuity  
 1420 insurance, or all of any kinds of such insurance, for its  
 1421 officers and employees and their dependents upon a group

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1422 insurance plan or self-insurance plan shall allow all former  
1423 personnel who ~~have~~ retired before ~~prior to~~ October 1, 1987, as  
1424 well as those who retire on or after such date, and their  
1425 eligible dependents, the option of continuing to participate in  
1426 the ~~such~~ group insurance plan or self-insurance plan. Retirees  
1427 and their eligible dependents shall be offered the same health  
1428 and hospitalization insurance coverage as is offered to active  
1429 employees at a premium cost of no more than the premium cost  
1430 applicable to active employees. For ~~the~~ retired employees and  
1431 their eligible dependents, the cost of ~~any such~~ continued  
1432 participation ~~in any type of plan or any of the cost thereof~~ may  
1433 be paid by the employer or by the retired employees. To  
1434 determine health and hospitalization plan costs, the employer  
1435 shall commingle the claims experience of the retiree group with  
1436 the claims experience of the active employees; and, for other  
1437 types of coverage, the employer may commingle the claims  
1438 experience of the retiree group with the claims experience of  
1439 active employees. Retirees covered under Medicare may be  
1440 experience-rated separately from the retirees not covered by  
1441 Medicare and from active employees if, ~~provided that~~ the total  
1442 premium does not exceed that of the active group and coverage is  
1443 basically the same as for the active group.

1444 ~~(2)~~ For purposes of this section, "retiree" has the same  
1445 meaning as in s. 110.123(2). ~~means any officer or employee who~~  
1446 ~~retires under a state retirement system or a state optional~~  
1447 ~~annuity or retirement program or is placed on disability~~  
1448 ~~retirement and who begins receiving retirement benefits~~  
1449 ~~immediately after retirement from employment. In addition to~~  
1450 ~~these requirements, any officer or employee who retires under~~

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1451 ~~the Public Employee Optional Retirement Program established~~  
 1452 ~~under part II of chapter 121 shall be considered a "retired~~  
 1453 ~~officer or employee" or "retiree" as used in this section if he~~  
 1454 ~~or she:~~

1455 ~~(a) Meets the age and service requirements to qualify for~~  
 1456 ~~normal retirement as set forth in s. 121.021(29); or~~

1457 ~~(b) Has attained the age specified by s. 72(t)(2)(A)(i) of~~  
 1458 ~~the Internal Revenue Code and has 6 years of creditable service.~~

1459 Section 5. Paragraph (b) of subsection (2) and paragraph  
 1460 (e) of subsection (3) of section 112.363, Florida Statutes, are  
 1461 amended to read:

1462 112.363 Retiree health insurance subsidy.—

1463 (2) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—

1464 (b) For purposes of this section, a person is deemed  
 1465 retired from a state-administered retirement system when he or  
 1466 she terminates employment with all employers participating in  
 1467 the Florida Retirement System as described in s. 121.021(39)  
 1468 and:

1469 1. For a participant of the defined contribution Public  
 1470 ~~Employee Optional Retirement~~ program established under part II  
 1471 of chapter 121, the participant meets the age or service  
 1472 requirements to qualify for normal retirement as set forth in s.  
 1473 121.021(29).

1474 2. For a member of the ~~Florida Retirement System~~ defined  
 1475 benefit program, or any employee who maintains creditable  
 1476 service under ~~both~~ the defined benefit program and the defined  
 1477 contribution Public Employee Optional Retirement program, the  
 1478 member begins drawing retirement benefits from the defined  
 1479 benefit program ~~of the Florida Retirement System.~~

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1480 (3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—

1481 (e)1. Beginning July 1, 2001, each eligible retiree of the  
1482 defined benefit program of the Florida Retirement System, or, if  
1483 the retiree is deceased, his or her beneficiary who is receiving  
1484 a monthly benefit from such retiree's account and who is a  
1485 spouse, or a person who meets the definition of joint annuitant  
1486 in s. 121.021(28), shall receive a monthly retiree health  
1487 insurance subsidy payment equal to the number of years of  
1488 creditable service, as defined in s. 121.021(17), completed at  
1489 the time of retirement multiplied by \$5; however, no eligible  
1490 retiree or beneficiary may receive a subsidy payment of more  
1491 than \$150 or less than \$30. If there are multiple beneficiaries,  
1492 the total payment may ~~must~~ not be greater than the payment to  
1493 which the retiree was entitled. The health insurance subsidy  
1494 amount payable to any person receiving the retiree health  
1495 insurance subsidy payment on July 1, 2001, may ~~shall~~ not be  
1496 reduced solely by operation of this subparagraph.

1497 2. Beginning July 1, 2002, each eligible participant of the  
1498 defined contribution ~~Public Employee Optional Retirement~~ program  
1499 of the Florida Retirement System who has met the requirements of  
1500 this section, or, if the participant is deceased, his or her  
1501 spouse who is the participant's designated beneficiary, shall  
1502 receive a monthly retiree health insurance subsidy payment equal  
1503 to the number of years of creditable service, as provided in  
1504 this subparagraph, completed at the time of retirement,  
1505 multiplied by \$5; however, no eligible retiree or beneficiary  
1506 may receive a subsidy payment of more than \$150 or less than  
1507 \$30. For purposes of determining a participant's creditable  
1508 service used to calculate the health insurance subsidy, a

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1509 participant's years of service credit or fraction thereof shall  
 1510 be based on the participant's work year as defined in s.  
 1511 121.021(54). Credit must ~~shall~~ be awarded for a full work year  
 1512 whenever health insurance subsidy contributions have been made  
 1513 ~~as required by law~~ for each month in the participant's work  
 1514 year. In addition, all years of creditable service retained  
 1515 under the Florida Retirement System defined benefit program must  
 1516 ~~shall~~ be included as creditable service for purposes of this  
 1517 section. Notwithstanding any other provision in this section ~~to~~  
 1518 ~~the contrary~~, the spouse at the time of death is ~~shall be~~ the  
 1519 participant's beneficiary unless such participant has designated  
 1520 a different beneficiary subsequent to the participant's most  
 1521 recent marriage.

1522 Section 6. Subsection (1) of section 112.65, Florida  
 1523 Statutes, is amended to read:

1524 112.65 Limitation of benefits.—

1525 (1) ESTABLISHMENT OF PROGRAM.—The normal retirement benefit  
 1526 or pension payable to a retiree who becomes a member of any  
 1527 retirement system or plan and who has not previously  
 1528 participated in such plan, on or after January 1, 1980, may  
 1529 ~~shall~~ not exceed 100 percent of his or her average final  
 1530 compensation. However, ~~nothing contained in this section~~ does  
 1531 not ~~shall~~ apply to supplemental retirement benefits or to  
 1532 pension increases attributable to cost-of-living increases or  
 1533 adjustments. For the purposes of this section, benefits accruing  
 1534 in individual participant accounts established under the defined  
 1535 contribution ~~Public Employee Optional Retirement~~ program  
 1536 established in part II of chapter 121 are considered  
 1537 supplemental benefits. As used in this section, the term

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1538 "average final compensation" means the average of the member's  
1539 earnings over a period of time which the governmental entity has  
1540 established by statute, charter, or ordinance.

1541 Section 7. Subsection (3) and paragraph (b) of subsection  
1542 (22) of section 121.021, Florida Statutes, are amended to read:

1543 121.021 Definitions.—The following words and phrases as  
1544 used in this chapter have the respective meanings set forth  
1545 unless a different meaning is plainly required by the context:

1546 (3) "System" means the general retirement system  
1547 established by this chapter to be known and cited as the  
1548 "Florida Retirement System," including, but not limited to, the  
1549 defined benefit ~~retirement~~ program administered under the  
1550 ~~provisions of part I of this part chapter~~ and the defined  
1551 contribution retirement program ~~known as the Public Employee~~  
1552 ~~Optional Retirement Program and~~ administered under the  
1553 ~~provisions of part II of this chapter.~~

1554 (22) "Compensation" means the monthly salary paid a member  
1555 by his or her employer for work performed arising from that  
1556 employment.

1557 (b) ~~Under no circumstances shall~~ Compensation for a member  
1558 participating in the defined benefit ~~retirement~~ program or the  
1559 Public Employee ~~Optional~~ Retirement Investment Program of the  
1560 Florida Retirement System may not include:

1561 1. Fees paid professional persons for special or particular  
1562 services or ~~include~~ salary payments made from a faculty practice  
1563 plan authorized by the Board of Governors of the State  
1564 University System for eligible clinical faculty at a college in  
1565 a state university that has a faculty practice plan; or

1566 2. Any bonuses or other payments prohibited from inclusion

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1567 in the member's average final compensation ~~and defined in~~  
1568 ~~subsection (47)~~.

1569 Section 8. Paragraph (c) of subsection (2) of section  
1570 121.051, Florida Statutes, is amended to read:

1571 121.051 Participation in the system.—

1572 (2) OPTIONAL PARTICIPATION.—

1573 (c) Employees of public community colleges or charter  
1574 technical career centers sponsored by public community colleges,  
1575 designated in s. 1000.21(3), who are members of the Regular  
1576 Class of the Florida Retirement System and who comply with the  
1577 criteria set forth in this paragraph and s. 1012.875 may, in  
1578 lieu of participating in the Florida Retirement System, elect to  
1579 withdraw from the system altogether and participate in the State  
1580 Community College System Optional Retirement Program provided by  
1581 the employing agency under s. 1012.875.

1582 1. Through June 30, 2001, the cost to the employer for an  
1583 ~~such~~ annuity under the optional retirement program equals the  
1584 normal cost portion of the employer retirement contribution  
1585 which would be required if the employee were a member of the  
1586 Regular Class defined benefit program, plus the portion of the  
1587 contribution rate required by s. 112.363(8) which would  
1588 otherwise be assigned to the Retiree Health Insurance Subsidy  
1589 Trust Fund. Effective July 1, 2001, each employer shall  
1590 contribute on behalf of each participant in the optional program  
1591 an amount equal to 10.43 percent of the participant's gross  
1592 monthly compensation. The employer shall deduct an amount for  
1593 the administration of the program. The employer shall contribute  
1594 an additional amount to the Florida Retirement System Trust Fund  
1595 equal to the unfunded actuarial accrued liability portion of the

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1596 Regular Class contribution rate.

1597       2. The decision to participate in the ~~an~~ optional  
1598 retirement program is irrevocable as long as the employee holds  
1599 a position eligible for participation, except as provided in  
1600 subparagraph 3. Any service creditable under the Florida  
1601 Retirement System is retained after the member withdraws from  
1602 the system; however, additional service credit in the system may  
1603 not be earned while a member of the optional retirement program.

1604       3. An employee who has elected to participate in the  
1605 optional retirement program shall have one opportunity, at the  
1606 employee's discretion, to transfer from the optional retirement  
1607 program to the defined benefit program of the Florida Retirement  
1608 System or to the defined contribution program established under  
1609 part II of this chapter ~~Public Employee Optional Retirement~~  
1610 ~~Program~~, subject to the terms of the applicable optional  
1611 retirement program contracts.

1612       a. If the employee chooses to move to the defined  
1613 contribution ~~Public Employee Optional Retirement~~ program, any  
1614 contributions, interest, and earnings creditable to the employee  
1615 under the ~~State Community College System~~ optional retirement  
1616 program are retained by the employee in the ~~State Community~~  
1617 ~~College System~~ optional retirement program, and the applicable  
1618 provisions of s. 121.4501(4) govern the election.

1619       b. If the employee chooses to move to the defined benefit  
1620 program ~~of the Florida Retirement System~~, the employee shall  
1621 receive service credit equal to his or her years of service  
1622 under the ~~State Community College System~~ optional retirement  
1623 program.

1624       (I) The cost for such credit is the amount representing the



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1625 present value of the employee's accumulated benefit obligation  
1626 for the affected period of service. The cost shall be calculated  
1627 as if the benefit commencement occurs on the first date the  
1628 employee becomes eligible for unreduced benefits, using the  
1629 discount rate and other relevant actuarial assumptions that were  
1630 used to value the ~~Florida Retirement System~~ defined benefit  
1631 program plan liabilities in the most recent actuarial valuation.  
1632 The calculation must include any service already maintained  
1633 under the defined benefit program plan in addition to the years  
1634 under the ~~State Community College System~~ optional retirement  
1635 program. The present value of any service already maintained  
1636 must be applied as a credit to total cost resulting from the  
1637 calculation. The division shall ensure that the transfer sum is  
1638 prepared using a formula and methodology certified by an  
1639 enrolled actuary.

1640 (II) The employee must transfer from his or her ~~State~~  
1641 ~~Community College System~~ optional retirement program account and  
1642 from other employee moneys as necessary, a sum representing the  
1643 present value of the employee's accumulated benefit obligation  
1644 immediately following the time of such movement, determined  
1645 assuming that attained service equals the sum of service in the  
1646 defined benefit program and service in the ~~State Community~~  
1647 ~~College System~~ optional retirement program.

1648 4. Participation in the optional retirement program is  
1649 limited to employees who satisfy the following eligibility  
1650 criteria:

1651 a. The employee is ~~must be~~ otherwise eligible for  
1652 membership or renewed membership in the Regular Class of the  
1653 Florida Retirement System, as provided in s. 121.021(11) and

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1654 (12) or s. 121.122.

1655 b. The employee is ~~must be~~ employed in a full-time position  
1656 classified in the Accounting Manual for Florida's Public  
1657 Community Colleges as:

1658 (I) Instructional; or

1659 (II) Executive Management, Instructional Management, or  
1660 Institutional Management and the, ~~if a~~ community college  
1661 determines that recruiting to fill a vacancy in the position is  
1662 to be conducted in the national or regional market, and the  
1663 duties and responsibilities of the position include the  
1664 formulation, interpretation, or implementation of policies, or  
1665 the performance of functions that are unique or specialized  
1666 within higher education and that frequently support the mission  
1667 of the community college.

1668 c. The employee is ~~must be~~ employed in a position not  
1669 included in the Senior Management Service Class of the Florida  
1670 Retirement System, ~~as~~ described in s. 121.055.

1671 5. Participants in the program are subject to the same  
1672 reemployment limitations, renewed membership provisions, and  
1673 forfeiture provisions as are applicable to regular members of  
1674 the Florida Retirement System under ss. 121.091(9), 121.122, and  
1675 121.091(5), respectively. A participant who receives a program  
1676 distribution funded by employer contributions shall be deemed to  
1677 be retired from a state-administered retirement system if the  
1678 participant is subsequently employed with an employer that  
1679 participates in the Florida Retirement System.

1680 6. Eligible community college employees are compulsory  
1681 members of the Florida Retirement System until, pursuant to s.  
1682 1012.875, a written election to withdraw from the system and

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1683 participate in the ~~State Community College System~~ optional  
1684 retirement program is filed with the program administrator and  
1685 received by the division.

1686 a. A community college employee whose program eligibility  
1687 results from initial employment shall ~~must~~ be enrolled in the  
1688 ~~State Community College System~~ optional retirement program  
1689 retroactive to the first day of eligible employment. The  
1690 employer retirement contributions paid through the month of the  
1691 employee plan change shall be transferred to the community  
1692 college to the employee's optional program account, and,  
1693 effective the first day of the next month, the employer shall  
1694 pay the applicable contributions based upon subparagraph 1.

1695 b. A community college employee whose program eligibility  
1696 is due to the subsequent designation of the employee's position  
1697 as one of those specified in subparagraph 4., or due to the  
1698 employee's appointment, promotion, transfer, or reclassification  
1699 to a position specified in subparagraph 4., must be enrolled in  
1700 the program on the first day of the first full calendar month  
1701 that such change in status becomes effective. The employer  
1702 retirement contributions paid from the effective date through  
1703 the month of the employee plan change must be transferred to the  
1704 community college to the employee's optional program account,  
1705 and, effective the first day of the next month, the employer  
1706 shall pay the applicable contributions based upon subparagraph  
1707 1.

1708 7. Effective July 1, 2003, through December 31, 2008, any  
1709 participant in ~~of~~ the ~~State Community College System~~ optional  
1710 retirement program who has service credit in the defined benefit  
1711 program ~~plan~~ of the Florida Retirement System for the period

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1712 between his or her first eligibility to transfer from the  
1713 defined benefit program plan to the optional retirement program  
1714 and the actual date of transfer may, during employment, transfer  
1715 to the optional retirement program a sum representing the  
1716 present value of the accumulated benefit obligation under the  
1717 defined benefit retirement program for the period of service  
1718 credit. Upon transfer, all service credit previously earned  
1719 under the defined benefit program ~~of the Florida Retirement~~  
1720 ~~System~~ during this period is nullified for purposes of  
1721 entitlement to a future benefit under the defined benefit  
1722 program ~~of the Florida Retirement System~~.

1723 Section 9. Paragraph (b) of subsection (1) of section  
1724 121.055, Florida Statutes, is amended to read:

1725 121.055 Senior Management Service Class.—There is hereby  
1726 established a separate class of membership within the Florida  
1727 Retirement System to be known as the "Senior Management Service  
1728 Class," which shall become effective February 1, 1987.

1729 (1)

1730 (b)1. Except as provided in subparagraph 2., effective  
1731 January 1, 1990, participation in the Senior Management Service  
1732 Class is ~~shall be~~ compulsory for the president of each community  
1733 college, the manager of each participating city or county, and  
1734 all appointed district school superintendents. Effective January  
1735 1, 1994, additional positions may be designated for inclusion in  
1736 the Senior Management Service Class of the Florida Retirement  
1737 System, provided that:

1738 a. Positions to be included in the class shall be  
1739 designated by the local agency employer. Notice of intent to  
1740 designate positions for inclusion in the class shall be

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1741 published once a week for 2 consecutive weeks in a newspaper of  
1742 general circulation published in the county or counties  
1743 affected, as provided in chapter 50.

1744 b. Up to 10 nonelective full-time positions may be  
1745 designated for each local agency employer reporting to the  
1746 department ~~of Management Services~~; for local agencies with 100  
1747 or more regularly established positions, additional nonelective  
1748 full-time positions may be designated, not to exceed 1 percent  
1749 of the regularly established positions within the agency.

1750 c. Each position added to the class must be a managerial or  
1751 policymaking position filled by an employee who is not subject  
1752 to continuing contract and serves at the pleasure of the local  
1753 agency employer without civil service protection, and who:

1754 (I) Heads an organizational unit; or

1755 (II) Has responsibility to effect or recommend personnel,  
1756 budget, expenditure, or policy decisions in his or her areas of  
1757 responsibility.

1758 2. In lieu of participation in the Senior Management  
1759 Service Class, members of the Senior Management Service class,  
1760 pursuant to the provisions of subparagraph 1., may withdraw from  
1761 the Florida Retirement System altogether. The decision to  
1762 withdraw from the Florida Retirement System ~~is shall be~~  
1763 irrevocable ~~for~~ as long as the employee holds the ~~such a~~  
1764 position. Any service creditable under the Senior Management  
1765 Service Class shall be retained after the member withdraws from  
1766 the Florida Retirement System; however, additional service  
1767 credit in the Senior Management Service Class may ~~shall~~ not be  
1768 earned after such withdrawal. Such members are ~~shall~~ not be  
1769 eligible to participate in the Senior Management Service

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1770 Optional Annuity Program.

1771 ~~3. Effective January 1, 2006, through June 30, 2006, an~~  
1772 ~~employee who has withdrawn from the Florida Retirement System~~  
1773 ~~under subparagraph 2. has one opportunity to elect to~~  
1774 ~~participate in either the defined benefit program or the Public~~  
1775 ~~Employee Optional Retirement Program of the Florida Retirement~~  
1776 ~~System.~~

1777 ~~a. If the employee elects to participate in the Public~~  
1778 ~~Employee Optional Retirement Program, membership shall be~~  
1779 ~~prospective, and the applicable provisions of s. 121.4501(4)~~  
1780 ~~shall govern the election.~~

1781 ~~b. If the employee elects to participate in the defined~~  
1782 ~~benefit program of the Florida Retirement System, the employee~~  
1783 ~~shall, upon payment to the system trust fund of the amount~~  
1784 ~~calculated under sub-sub-subparagraph (I), receive service~~  
1785 ~~credit for prior service based upon the time during which the~~  
1786 ~~employee had withdrawn from the system.~~

1787 ~~(I) The cost for such credit shall be an amount~~  
1788 ~~representing the actuarial accrued liability for the affected~~  
1789 ~~period of service. The cost shall be calculated using the~~  
1790 ~~discount rate and other relevant actuarial assumptions that were~~  
1791 ~~used to value the Florida Retirement System defined benefit plan~~  
1792 ~~liabilities in the most recent actuarial valuation. The~~  
1793 ~~calculation shall include any service already maintained under~~  
1794 ~~the defined benefit plan in addition to the period of~~  
1795 ~~withdrawal. The actuarial accrued liability attributable to any~~  
1796 ~~service already maintained under the defined benefit plan shall~~  
1797 ~~be applied as a credit to the total cost resulting from the~~  
1798 ~~calculation. The division shall ensure that the transfer sum is~~

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1799 ~~prepared using a formula and methodology certified by an~~  
 1800 ~~actuary.~~

1801 ~~(II) The employee must transfer a sum representing the net~~  
 1802 ~~cost owed for the actuarial accrued liability in sub-sub-~~  
 1803 ~~subparagraph (I) immediately following the time of such~~  
 1804 ~~movement, determined assuming that attained service equals the~~  
 1805 ~~sum of service in the defined benefit program and the period of~~  
 1806 ~~withdrawal.~~

1807 Section 10. Paragraph (d) of subsection (9) of section  
 1808 121.091, Florida Statutes, is amended to read:

1809 121.091 Benefits payable under the system.—Benefits may not  
 1810 be paid under this section unless the member has terminated  
 1811 employment as provided in s. 121.021(39) (a) or begun  
 1812 participation in the Deferred Retirement Option Program as  
 1813 provided in subsection (13), and a proper application has been  
 1814 filed in the manner prescribed by the department. The department  
 1815 may cancel an application for retirement benefits when the  
 1816 member or beneficiary fails to timely provide the information  
 1817 and documents required by this chapter and the department's  
 1818 rules. The department shall adopt rules establishing procedures  
 1819 for application for retirement benefits and for the cancellation  
 1820 of such application when the required information or documents  
 1821 are not received.

1822 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

1823 (d) The provisions of this subsection apply to retirees, as  
 1824 defined in s. 121.4501(2), of the Public Employee Optional  
 1825 Retirement Program, subject to the following conditions:

1826 1. The retiree ~~retirees~~ may not be reemployed with an  
 1827 employer participating in the Florida Retirement System until

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1828 such person has been retired for 6 calendar months.

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

1838       Section 11. Paragraphs (g) and (i) of subsection (3) of  
1839 section 121.35, Florida Statutes, are amended to read:

1840       121.35 Optional retirement program for the State University  
1841 System.—

1842       (3) ELECTION OF OPTIONAL PROGRAM.—

1843       (g) An eligible employee who is a member of the Florida  
1844 Retirement System at the time of election to participate in the  
1845 optional retirement program shall retain all retirement service  
1846 credit earned under the Florida Retirement System, ~~at the rate~~  
1847 earned. ~~No~~ Additional service credit in the Florida Retirement  
1848 System may not ~~shall~~ be earned while the employee participates  
1849 in the optional program, and ~~nor shall~~ the employee is not ~~be~~  
1850 eligible for disability retirement under the Florida Retirement  
1851 System. An eligible employee may transfer from the Florida  
1852 Retirement System to his or her accounts under the State  
1853 University System Optional Retirement Program a sum representing  
1854 the present value of the employee's accumulated benefit  
1855 obligation under the defined benefit program of the Florida  
1856 Retirement System for any service credit accrued from the



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

1868 (i) Effective January 1, 2008, through December 31, 2008,  
1869 except for an employee who is a mandatory participant of the  
1870 State University System Optional Retirement Program, an employee  
1871 who has elected to participate in the State University System  
1872 Optional Retirement Program shall have one opportunity, at the  
1873 employee's discretion, to choose to transfer from this program  
1874 to the defined benefit program of the Florida Retirement System  
1875 or to the Public Employee Optional Retirement Program, subject  
1876 to the terms of the applicable contracts of the State University  
1877 System Optional Retirement Program.

1878 1. If the employee chooses to move to the defined  
1879 contribution ~~Public Employee Optional Retirement~~ program, any  
1880 contributions, interest, and earnings creditable to the employee  
1881 under the State University System Optional Retirement Program  
1882 must ~~shall~~ be retained by the employee in the State University  
1883 System Optional Retirement Program, and the applicable  
1884 provisions of s. 121.4501(4) shall govern the election.

1885 2. If the employee chooses to move to the defined benefit

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1886 program of the Florida Retirement System, the employee shall  
 1887 receive service credit equal to his or her years of service  
 1888 under the State University System Optional Retirement Program.

1889 a. The cost for such credit must be in ~~shall be~~ an amount  
 1890 representing the actuarial accrued liability for the affected  
 1891 period of service. The cost must ~~shall~~ be calculated using the  
 1892 discount rate and other relevant actuarial assumptions that were  
 1893 used to value the Florida Retirement System defined benefit plan  
 1894 liabilities in the most recent actuarial valuation. The  
 1895 calculation must ~~shall~~ include any service already maintained  
 1896 under the defined benefit program plan in addition to the years  
 1897 under the State University System Optional Retirement Program.  
 1898 The actuarial accrued liability of any service already  
 1899 maintained under the defined benefit program must ~~plan shall~~ be  
 1900 applied as a credit to total cost resulting from the  
 1901 calculation. The division shall ensure that the transfer sum is  
 1902 prepared using a formula and methodology certified by an  
 1903 enrolled actuary.

1904 b. The employee must transfer from his or her State  
 1905 University System Optional Retirement Program account, and from  
 1906 other employee moneys as necessary, a sum representing the  
 1907 actuarial accrued liability immediately following the time of  
 1908 such movement, determined assuming that attained service equals  
 1909 the sum of service in the defined benefit program and service in  
 1910 the State University System Optional Retirement Program.

1911 Section 12. Subsection (1) of section 121.4503, Florida  
 1912 Statutes, is amended to read:

1913 121.4503 Florida Retirement System Contributions Clearing  
 1914 Trust Fund.—

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1915 (1) The Florida Retirement System Contributions Clearing  
1916 Trust Fund is created as a clearing fund for disbursing employer  
1917 contributions to the component plans of the Florida Retirement  
1918 System and shall be administered by the Department of Management  
1919 Services. Funds shall be credited to the trust fund as provided  
1920 in this chapter and shall be held in trust for the contributing  
1921 employers until such time as the assets are transferred by the  
1922 department to the Florida Retirement System Trust Fund, the  
1923 Public Employee ~~Optional~~ Retirement Investment Program Trust  
1924 Fund, or other trust funds as authorized by law, to be used for  
1925 the purposes of this chapter. The trust fund is exempt from the  
1926 service charges imposed by s. 215.20.

1927 Section 13. Section 121.571, Florida Statutes, is amended  
1928 to read:

1929 121.571 Contributions.—Contributions to the Public Employee  
1930 ~~Optional~~ Retirement Investment Program shall be made as follows:

1931 (1) NONCONTRIBUTORY PLAN.—Each employer shall make  
1932 ~~accomplish~~ the monthly contributions required under ~~by~~ s. 121.71  
1933 without reducing an ~~by a procedure in which no~~ employee's gross  
1934 salary ~~shall be reduced~~.

1935 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund the  
1936 retirement and disability benefits provided under this part must  
1937 ~~shall~~ be based on the uniform contribution rates established by  
1938 s. 121.71 and on the membership class or subclass of the  
1939 participant. Such contributions must ~~shall~~ be allocated as  
1940 provided in ss. 121.72 and 121.73.

1941 (3) CONTRIBUTIONS FOR SOCIAL SECURITY COVERAGE AND FOR  
1942 RETIREE HEALTH INSURANCE SUBSIDY.—Contributions required under  
1943 s. 121.71 ~~this section shall be~~ in addition to employer and

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1944 member contributions ~~required~~ for social security and the  
1945 Retiree Health Insurance Subsidy Trust Fund as required under  
1946 ~~provided in~~ ss. 112.363, 121.052, 121.055, and 121.071, as  
1947 appropriate.

1948 Section 14. Section 121.591, Florida Statutes, is amended  
1949 to read:

1950 121.591 Payment of benefits payable under the Public  
1951 ~~Employee Optional Retirement Program of the Florida Retirement~~  
1952 ~~System.~~ Benefits may not be paid under the Public Employee  
1953 Retirement Investment Program ~~this section~~ unless the member has  
1954 terminated employment as provided in s. 121.021(39)(a) or is  
1955 deceased and a proper application has been filed as in the  
1956 ~~manner~~ prescribed by the state board or the department. The  
1957 state board or department, as appropriate, may cancel an  
1958 application for retirement benefits if when the member or  
1959 beneficiary fails to timely provide the information and  
1960 documents required by this chapter and the rules of the state  
1961 board and department. In accordance with their respective  
1962 responsibilities ~~as provided herein~~, the state board of  
1963 ~~Administration~~ and the department of ~~Management Services~~ shall  
1964 adopt rules establishing procedures for application for  
1965 retirement benefits and for the cancellation of such application  
1966 if when the required information or documents are not received.  
1967 The state board of ~~Administration~~ and the department of  
1968 ~~Management Services~~, as appropriate, are authorized to cash out  
1969 a de minimis account of not more than \$5,000 of a participant  
1970 who has been terminated from Florida Retirement System covered  
1971 employment for a minimum of 6 calendar months. ~~A de minimis~~  
1972 ~~account is an account containing employer contributions and~~

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

1996 (1) NORMAL BENEFITS.—Under the Public Employee ~~Optional~~  
 1997 Retirement Investment Program:

1998 (a) Benefits in the form of vested accumulations as  
 1999 described in s. 121.4501(6) are payable under this subsection in  
 2000 accordance with the following terms and conditions:

2001 1. ~~To the extent vested,~~ Benefits are payable only to a

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2002 participant.

2003 2. Benefits shall be paid by the third-party administrator  
2004 or designated approved providers in accordance with the law, the  
2005 contracts, and any applicable board rule or policy.

2006 3. ~~To receive benefits,~~ The participant must be terminated  
2007 from all employment with all Florida Retirement System  
2008 employers, as provided in s. 121.021(39).

2009 4. Benefit payments may not be made until the participant  
2010 has been terminated for 3 calendar months, except that the state  
2011 board may authorize by rule for the distribution of up to 10  
2012 percent of the participant's account after being terminated for  
2013 1 calendar month if the participant has reached the normal  
2014 retirement date as defined in s. 121.021 ~~of the defined benefit~~  
2015 ~~plan~~.

2016 5. If a member or former member of the Florida Retirement  
2017 System receives an invalid distribution ~~from the Public Employee~~  
2018 ~~Optional Retirement Program Trust Fund~~, such person must repay  
2019 the full amount ~~invalid distribution to the trust fund~~ within 90  
2020 days after receipt of final notification by the state board or  
2021 the third-party administrator that the distribution was invalid.  
2022 If such person fails to repay the full invalid distribution  
2023 within 90 days after receipt of final notification, the person  
2024 may be deemed retired from the investment ~~optional retirement~~  
2025 program by the state board, ~~as provided pursuant to s.~~  
2026 ~~121.4501(2)(j),~~ and is subject to s. 121.122. If such person is  
2027 deemed retired ~~by the state board~~, any joint and several  
2028 liability set out in s. 121.091(9)(d)2. is ~~becomes~~ null and  
2029 void, and the state board, the department, or the employing  
2030 agency is not liable for gains on payroll contributions that

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2031 have not been deposited to the person's account in the  
2032 investment ~~retirement~~ program, pending resolution of the invalid  
2033 distribution. The member or former member who has been deemed  
2034 retired or who has been determined by the state board to have  
2035 taken an invalid distribution may appeal the agency decision  
2036 through the complaint process as provided under s.  
2037 121.4501(9)(g)3. As used in this subparagraph, the term "invalid  
2038 distribution" means any distribution from an account in the  
2039 investment ~~optional retirement~~ program which is taken in  
2040 violation of this section, s. 121.091(9), or s. 121.4501.

2041 (b) If a participant elects to receive his or her benefits  
2042 upon termination of employment as defined in s. 121.021, the  
2043 participant must submit a written application or an equivalent  
2044 form to the third-party administrator indicating his or her  
2045 preferred distribution date and selecting an authorized method  
2046 of distribution as provided in paragraph (c). The participant  
2047 may defer receipt of benefits until he or she chooses to make  
2048 such application, subject to federal requirements.

2049 (c) Upon receipt by the third-party administrator of a  
2050 properly executed application for distribution of benefits, the  
2051 total accumulated benefit is ~~shall be~~ payable to the  
2052 participant, as:

- 2053 1. A lump-sum distribution to the participant;
- 2054 2. A lump-sum direct rollover distribution whereby all  
2055 accrued benefits, plus interest and investment earnings, are  
2056 paid from the participant's account directly to the custodian of  
2057 an eligible retirement plan, as defined in s. 402(c)(8)(B) of  
2058 the Internal Revenue Code, on behalf of the participant; or
- 2059 3. Periodic distributions, as authorized by the state

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2060 board.

2061 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under  
 2062 this subsection are payable in lieu of the benefits that ~~which~~  
 2063 would otherwise be payable under the provisions of subsection  
 2064 (1). Such benefits must ~~shall~~ be funded entirely from employer  
 2065 contributions ~~made under s. 121.571~~, transferred participant  
 2066 funds accumulated pursuant to paragraph (a), and interest and  
 2067 earnings thereon. ~~Pursuant thereto:~~

2068 (a) *Transfer of funds.*— To qualify for ~~to receive~~ monthly  
 2069 disability benefits under this subsection:

2070 1. All moneys accumulated in the participant's ~~Public~~  
 2071 ~~Employee Optional Retirement Program~~ accounts, including vested  
 2072 and nonvested accumulations as described in s. 121.4501(6), must  
 2073 ~~shall~~ be transferred from such individual accounts to the  
 2074 division ~~of Retirement~~ for deposit in the disability account of  
 2075 the Florida Retirement System Trust Fund. Such moneys must ~~shall~~  
 2076 be ~~separately~~ accounted for separately. Earnings must ~~shall~~ be  
 2077 credited on an annual basis for amounts held in the disability  
 2078 accounts ~~of the Florida Retirement System Trust Fund~~ based on  
 2079 actual earnings of the ~~Florida Retirement System~~ trust fund.

2080 2. If the participant has retained retirement credit ~~he or~~  
 2081 ~~she had~~ earned under the defined benefit program ~~of the Florida~~  
 2082 ~~Retirement System~~ as provided in s. 121.4501(3) ~~s.~~  
 2083 ~~121.4501(3)(b)~~, a sum representing the actuarial present value  
 2084 of such credit within the Florida Retirement System Trust Fund  
 2085 shall be reassigned by the division ~~of Retirement~~ from the  
 2086 defined benefit program to the disability program as implemented  
 2087 under this subsection and shall be deposited in the disability  
 2088 account of the ~~Florida Retirement System~~ trust fund. Such moneys



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2089 ~~must~~ shall be ~~separately~~ accounted for separately.

2090 (b) *Disability retirement; entitlement.*—

2091 1. A participant of the investment ~~Public Employee Optional~~  
2092 ~~Retirement~~ program who becomes totally and permanently disabled,  
2093 as defined in paragraph (d) ~~s. 121.091(4)(b)~~, after completing 8  
2094 years of creditable service, or a participant who becomes  
2095 totally and permanently disabled in the line of duty regardless  
2096 of ~~his or her~~ length of service, is ~~shall be~~ entitled to a  
2097 monthly disability benefit ~~as provided herein~~.

2098 2. In order for service to apply toward the 8 years of  
2099 creditable service required ~~to vest~~ for regular disability  
2100 benefits, or toward the creditable service used in calculating a  
2101 service-based benefit as provided ~~for~~ under paragraph (g), the  
2102 service must be creditable service as described below:

2103 a. The participant's period of service under the investment  
2104 ~~Public Employee Optional Retirement~~ program shall ~~will~~ be  
2105 considered creditable service, except as provided in  
2106 subparagraph d.

2107 b. If the participant has elected to retain credit for ~~his~~  
2108 ~~or her~~ service under the defined benefit program ~~of the Florida~~  
2109 ~~Retirement System~~ as provided under s. 121.4501(3) ~~s.~~  
2110 ~~121.4501(3)(b)~~, all such service shall ~~will~~ be considered  
2111 creditable service.

2112 c. If the participant elects ~~has elected~~ to transfer to his  
2113 or her participant accounts a sum representing the present value  
2114 of his or her retirement credit under the defined benefit  
2115 program as provided under s. 121.4501(3) ~~s. 121.4501(3)(c)~~, the  
2116 period of service under the defined benefit program represented  
2117 in the present value amounts transferred shall ~~will~~ be

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2118 considered creditable service ~~for purposes of vesting for~~  
2119 ~~disability benefits~~, except as provided in subparagraph d.

2120 d. Whenever a participant has terminated employment and has  
2121 taken distribution of his or her funds as provided in subsection  
2122 (1), all creditable service represented by such distributed  
2123 funds is forfeited for purposes of this subsection.

2124 (c) *Disability retirement effective date.*—The effective  
2125 retirement date for a participant who applies and is approved  
2126 for disability retirement shall be established as provided under  
2127 s. 121.091(4) (a)2. and 3.

2128 (d) *Total and permanent disability.*—A participant shall be  
2129 considered totally and permanently disabled if, in the opinion  
2130 of the division, he or she is prevented, by reason of a  
2131 medically determinable physical or mental impairment, from  
2132 rendering useful and efficient service as an officer or  
2133 employee.

2134 (e) *Proof of disability.*—~~The division,~~ Before approving  
2135 payment of any disability retirement benefit, the division shall  
2136 require proof that the participant is totally and permanently  
2137 disabled ~~in the same manner as provided for members of the~~  
2138 ~~defined benefit program of the Florida Retirement System~~ under  
2139 s. 121.091(4) (c).

2140 (f) *Disability retirement benefit.*—Upon the disability  
2141 retirement of a participant under this subsection, the  
2142 participant shall receive a monthly benefit that begins accruing  
2143 ~~shall begin to accrue~~ on the first day of the month of  
2144 disability retirement, as approved by the division, and is ~~shall~~  
2145 ~~be~~ payable on the last day of that month and each month  
2146 thereafter during his or her lifetime and continued disability.

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2147 All disability benefits must ~~payable to such member shall~~ be  
2148 paid out of the disability account of the Florida Retirement  
2149 System Trust Fund established under this subsection.

2150 (g) *Computation of disability retirement benefit.*—The  
2151 amount of each monthly payment must ~~shall~~ be calculated ~~in the~~  
2152 ~~same manner~~ as provided ~~for members of the defined benefit~~  
2153 ~~program of the Florida Retirement System~~ under s. 121.091(4)(f).  
2154 ~~For such purpose,~~ Creditable service under both the defined  
2155 benefit program and the investment ~~Public Employee Optional~~  
2156 ~~Retirement program of the Florida Retirement System~~ shall be  
2157 applicable as provided under paragraph (b).

2158 (h) *Reapplication.*—A participant whose initial application  
2159 for disability retirement is ~~has been~~ denied may reapply for  
2160 disability benefits ~~in the same manner, and under the same~~  
2161 ~~conditions,~~ as provided ~~for members of the defined benefit~~  
2162 ~~program of the Florida Retirement System~~ under s. 121.091(4)(g).

2163 (i) *Membership.*—Upon approval of a participant's an  
2164 application for disability benefits ~~under this subsection,~~ the  
2165 applicant shall be transferred to the defined benefit program ~~of~~  
2166 ~~the Florida Retirement System,~~ effective upon his or her  
2167 disability retirement effective date.

2168 (j) *Option to cancel.*—A ~~Any~~ participant whose application  
2169 for disability benefits is approved may cancel the ~~his or her~~  
2170 application if ~~for disability benefits,~~ provided that the  
2171 cancellation request is received by the division before a  
2172 disability retirement warrant has been deposited, cashed, or  
2173 received by direct deposit. Upon ~~such~~ cancellation:

2174 1. The participant's transfer to the defined benefit  
2175 program under paragraph (i) shall be nullified;

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2176           2. The participant shall be retroactively reinstated in the  
2177 investment ~~Public Employee Optional Retirement~~ program without  
2178 hiatus;

2179           3. All funds transferred to the Florida Retirement System  
2180 Trust Fund under paragraph (a) must ~~shall~~ be returned to the  
2181 participant accounts from which the ~~such~~ funds were drawn; and

2182           4. The participant may elect to receive the benefit payable  
2183 under ~~the provisions of~~ subsection (1) in lieu of disability  
2184 benefits ~~as provided under this subsection.~~

2185           (k) *Recovery from disability.*—

2186           1. The division may require periodic reexaminations at the  
2187 expense of the disability program account of the Florida  
2188 Retirement System Trust Fund. Except as ~~otherwise~~ provided in  
2189 subparagraph 2., ~~the requirements, procedures, and restrictions~~  
2190 ~~relating to the conduct and review of such reexaminations,~~  
2191 ~~discontinuation or termination of benefits, reentry into~~  
2192 ~~employment, disability retirement after reentry into covered~~  
2193 ~~employment, and all other matters relating to recovery from~~  
2194 disability shall be ~~the same as~~ provided ~~are set forth~~ under s.  
2195 121.091(4)(h).

2196           2. Upon recovery from disability, the ~~any~~ recipient of  
2197 disability retirement benefits under this subsection shall be  
2198 transferred back to the investment program ~~a compulsory member~~  
2199 ~~of the Public Employee Optional Retirement Program of the~~  
2200 ~~Florida Retirement System.~~ The net difference between the  
2201 recipient's original account balance transferred to the Florida  
2202 Retirement System Trust Fund, including earnings, ~~under~~  
2203 ~~paragraph (a)~~ and total disability benefits paid to such  
2204 recipient, if any, shall be determined as provided in sub-

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2205 subparagraph a.

2206 a. An amount equal to the total benefits paid shall be  
2207 subtracted from that portion of the transferred account balance  
2208 consisting of vested accumulations as described under s.  
2209 121.4501(6), if any, and an amount equal to the remainder of  
2210 benefit amounts paid, if any, shall ~~then~~ be subtracted from any  
2211 remaining ~~portion consisting of~~ nonvested accumulations ~~as~~  
2212 ~~described under s. 121.4501(6).~~

2213 b. Amounts subtracted under sub-subparagraph a. must ~~shall~~  
2214 be retained within the disability account of the Florida  
2215 Retirement System Trust Fund. Any remaining account balance  
2216 shall be transferred to the third-party administrator for  
2217 disposition as provided under sub-subparagraph c. or sub-  
2218 subparagraph d., as appropriate.

2219 c. If the recipient returns to covered employment,  
2220 transferred amounts must ~~shall~~ be deposited in individual  
2221 accounts under the investment ~~Public Employee Optional~~  
2222 ~~Retirement~~ program, as directed by the participant. Vested and  
2223 nonvested amounts shall be separately accounted for as provided  
2224 in s. 121.4501(6).

2225 d. If the recipient fails to return to covered employment  
2226 upon recovery from disability:

2227 (I) Any remaining vested amount must ~~shall~~ be deposited in  
2228 individual accounts under the investment ~~Public Employee~~  
2229 ~~Optional Retirement~~ program, as directed by the participant, and  
2230 is ~~shall be~~ payable as provided in subsection (1).

2231 (II) Any remaining nonvested amount must ~~shall~~ be held in a  
2232 suspense account and is ~~shall be~~ forfeitable after 5 years as  
2233 provided in s. 121.4501(6).

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2234 3. If present value was reassigned from the defined benefit  
2235 program to the disability program ~~of the Florida Retirement~~  
2236 ~~System~~ as provided under subparagraph (a)2., the full present  
2237 value amount must ~~shall~~ be returned to the defined benefit  
2238 account within the Florida Retirement System Trust Fund and the  
2239 recipient's ~~affected individual's~~ associated retirement credit  
2240 under the defined benefit program must ~~shall~~ be reinstated in  
2241 full. Any benefit based upon such credit must ~~shall~~ be  
2242 calculated as provided in s. 121.091(4)(h)1.

2243 (l) *Nonadmissible causes of disability.*—A participant is  
2244 ~~shall~~ not be entitled to receive a disability retirement benefit  
2245 if the disability results from any injury or disease ~~sustained~~  
2246 ~~or inflicted~~ as described in s. 121.091(4)(i).

2247 (m) *Disability retirement of justice or judge by order of*  
2248 *Supreme Court.*—

2249 1. If a participant is a justice of the Supreme Court,  
2250 judge of a district court of appeal, circuit judge, or judge of  
2251 a county court who has served for 6 years or more as an elected  
2252 constitutional judicial officer, including service as a judicial  
2253 officer in any court abolished pursuant to Art. V of the State  
2254 Constitution, and who is retired for disability ~~by order of the~~  
2255 ~~Supreme Court upon recommendation of the Judicial Qualifications~~  
2256 ~~Commission~~ pursuant to s. 12, ~~the provisions of~~ Art. V of the  
2257 State Constitution, the participant's Option 1 monthly  
2258 disability benefit amount as provided in s. 121.091(6)(a)1.  
2259 shall be two-thirds of his or her monthly compensation as of the  
2260 participant's disability retirement date. The ~~Such~~ a participant  
2261 may alternatively elect to receive an actuarially adjusted  
2262 disability retirement benefit under any other option as provided

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2263 in s. 121.091(6)(a), or ~~to~~ receive the normal benefit payable  
2264 under ~~the Public Employee Optional Retirement Program as set~~  
2265 ~~forth in~~ subsection (1).

2266 2. If any justice or judge who is a participant of the  
2267 investment Public Employee Optional Retirement program of the  
2268 ~~Florida Retirement System~~ is retired for disability ~~by order of~~  
2269 ~~the Supreme Court upon recommendation of the Judicial~~  
2270 ~~Qualifications Commission pursuant to s. 12, the provisions of~~  
2271 Art. V of the State Constitution and elects to receive a monthly  
2272 disability benefit under the provisions of this paragraph:

2273 a. Any present value amount that was transferred to his or  
2274 her program account and all employer contributions made to such  
2275 account on his or her behalf, plus interest and earnings  
2276 thereon, must ~~shall~~ be transferred to and deposited in the  
2277 disability account of the Florida Retirement System Trust Fund;  
2278 and

2279 b. The monthly disability benefits payable under this  
2280 paragraph ~~for any affected justice or judge retired from the~~  
2281 ~~Florida Retirement System pursuant to Art. V of the State~~  
2282 ~~Constitution~~ shall be paid from the disability account of the  
2283 Florida Retirement System Trust Fund.

2284 (n) *Death of retiree or beneficiary.*—Upon the death of a  
2285 disabled retiree or beneficiary of the retiree ~~thereof~~ who is  
2286 receiving monthly disability benefits under this subsection, the  
2287 monthly benefits shall be paid through the last day of the month  
2288 of death and shall terminate, or be adjusted, if applicable, as  
2289 of that date in accordance with the optional form of benefit  
2290 selected at the time of retirement. The department ~~of Management~~  
2291 ~~Services~~ may adopt rules necessary to administer this paragraph.

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2292 (3) DEATH BENEFITS.—Under the Public Employee ~~Optional~~  
2293 Retirement Investment Program:

2294 (a) Survivor benefits are ~~shall be~~ payable in accordance  
2295 with the following terms and conditions:

2296 1. To the extent vested, benefits are ~~shall be~~ payable only  
2297 to a participant's beneficiary or beneficiaries as designated by  
2298 the participant as provided in s. 121.4501(20).

2299 2. Benefits must ~~shall~~ be paid by the third-party  
2300 administrator or designated approved providers in accordance  
2301 with the law, the contracts, and any applicable state board rule  
2302 or policy.

2303 3. To receive benefits under this subsection, the  
2304 participant must be deceased.

2305 (b) In the event of a participant's death, all vested  
2306 accumulations as described in s. 121.4501(6), less withholding  
2307 taxes remitted to the Internal Revenue Service, shall be  
2308 distributed, as provided in paragraph (c) or as described in s.  
2309 121.4501(20), as if the participant retired on the date of  
2310 death. No other death benefits are ~~shall be~~ available for  
2311 survivors of participants ~~under the Public Employee Optional~~  
2312 ~~Retirement Program~~, except for ~~such~~ benefits, or coverage for  
2313 ~~such~~ benefits, as are otherwise provided by law or are  
2314 separately provided ~~afforded~~ by the employer, at the employer's  
2315 discretion.

2316 (c) Upon receipt by the third-party administrator of a  
2317 properly executed application for distribution of benefits, the  
2318 total accumulated benefit is ~~shall be~~ payable by the third-party  
2319 administrator to the participant's surviving beneficiary or  
2320 beneficiaries, as:



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2321 1. A lump-sum distribution payable to the beneficiary or  
2322 beneficiaries, or to the deceased participant's estate;

2323 2. An eligible rollover distribution on behalf of the  
2324 surviving spouse of a deceased participant, whereby all accrued  
2325 benefits, plus interest and investment earnings, are paid from  
2326 the deceased participant's account directly to the custodian of  
2327 an eligible retirement plan, as described in s. 402(c)(8)(B) of  
2328 the Internal Revenue Code, on behalf of the surviving spouse; or

2329 3. A partial lump-sum payment whereby a portion of the  
2330 accrued benefit is paid to the deceased participant's surviving  
2331 spouse or other designated beneficiaries, less withholding taxes  
2332 remitted to the Internal Revenue Service, and the remaining  
2333 amount is transferred directly to the custodian of an eligible  
2334 retirement plan, as described in s. 402(c)(8)(B) of the Internal  
2335 Revenue Code, on behalf of the surviving spouse. The proportions  
2336 must be specified by the participant or the surviving  
2337 beneficiary.

2338  
2339 This paragraph does not abrogate other applicable provisions of  
2340 state or federal law providing for payment of death benefits.

2341 (4) LIMITATION ON LEGAL PROCESS.—The benefits payable to  
2342 any person under the Public Employee ~~Optional~~ Retirement  
2343 Investment Program, and any contributions accumulated under such  
2344 program, are not subject to assignment, execution, attachment,  
2345 or any legal process, except for qualified domestic relations  
2346 orders by a court of competent jurisdiction, income deduction  
2347 orders as provided in s. 61.1301, and federal income tax levies.

2348 Section 15. Section 121.5911, Florida Statutes, is amended  
2349 to read:

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2350           121.5911 Disability retirement program; qualified status;  
 2351 rulemaking authority.—It is the intent of the Legislature that  
 2352 the disability retirement program for participants of the Public  
 2353 Employee ~~Optional~~ Retirement Investment Program ~~as created in~~  
 2354 ~~this act must~~ meet all applicable requirements of federal law  
 2355 for a qualified plan. The department ~~of Management Services~~  
 2356 shall seek a private letter ruling from the Internal Revenue  
 2357 Service on the disability retirement program ~~for participants of~~  
 2358 ~~the Public Employee Optional Retirement Program~~. Consistent with  
 2359 the private letter ruling, the department ~~of Management Services~~  
 2360 shall adopt ~~any necessary~~ rules necessary ~~required~~ to maintain  
 2361 the qualified status of the disability retirement program and  
 2362 the Florida Retirement System defined benefit program ~~plan~~.

2363           Section 16. Section 121.70, Florida Statutes, is amended to  
 2364 read:

2365           121.70 Legislative purpose and intent.—

2366           (1) This part provides for a uniform system for funding  
 2367 benefits provided under the Florida Retirement System defined  
 2368 benefit program established under part I of this chapter  
 2369 (referred to in this part as the defined benefit program) and  
 2370 under the Public Employee ~~Optional~~ Retirement Investment Program  
 2371 established under part II of this chapter (referred to in this  
 2372 part as the defined contribution ~~optional retirement~~ program).  
 2373 The Legislature recognizes and declares that the Florida  
 2374 Retirement System is a single retirement system, consisting of  
 2375 two retirement plans and other nonintegrated programs. Employers  
 2376 participating in the Florida Retirement System collectively  
 2377 shall be responsible for making contributions to support the  
 2378 benefits provided ~~afforded~~ under both programs ~~plans~~. The As

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2379 ~~provided in this part,~~ employers ~~participating in the Florida~~  
 2380 ~~Retirement System~~ shall make contributions based upon uniform  
 2381 contribution rates determined as a percentage of the total  
 2382 payroll for each class or subclass of Florida Retirement System  
 2383 membership, irrespective of which retirement program the plan  
 2384 individual employee is enrolled in ~~employees may elect.~~ This  
 2385 shall be known as a uniform or blended contribution rate system.

2386 (2) In establishing a uniform contribution rate system, it  
 2387 is the intent of the Legislature to:

2388 (a) Provide greater stability and certainty in financial  
 2389 planning and budgeting for Florida Retirement System employers  
 2390 by eliminating the fiscal instability that would be caused by  
 2391 dual rates ~~coupled with employee-selected plan participation;~~  
 2392 and

2393 (b) Provide greater fiscal equity and uniformity for system  
 2394 employers by effectively distributing the financial burden and  
 2395 benefit of short-term system deficits and surpluses,  
 2396 respectively, in proportion to total system payroll. ~~;~~ and

2397 ~~(c) Allow employees to make their retirement plan selection~~  
 2398 ~~decisions free of circumstances that may cause employers to~~  
 2399 ~~favor one plan choice over another.~~

2400 Section 17. Subsection (1) of section 121.71, Florida  
 2401 Statutes, is amended to read:

2402 121.71 Uniform rates; process; calculations; levy.—

2403 (1) In conducting the system actuarial study required under  
 2404 s. 121.031, the actuary shall follow all requirements specified  
 2405 ~~thereunder~~ to determine, by Florida Retirement System employee  
 2406 membership class, the dollar contribution amounts necessary for  
 2407 the next ~~forthcoming~~ fiscal year for the defined benefit

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2408 program. In addition, the actuary shall determine, by Florida  
2409 Retirement System membership class, based on an estimate for the  
2410 forthcoming fiscal year of the gross compensation of employees  
2411 participating in the defined contribution ~~optional retirement~~  
2412 program, the dollar contribution amounts necessary to make the  
2413 allocations required under ss. 121.72 and 121.73. For each  
2414 employee membership class and subclass, the actuarial study must  
2415 ~~shall~~ establish a uniform rate necessary to fund the benefit  
2416 obligations under both Florida Retirement System retirement  
2417 plans by dividing the sum of total dollars required by the  
2418 estimated gross compensation of members in both plans.

2419 Section 18. Section 121.72, Florida Statutes, is amended to  
2420 read:

2421 121.72 Allocations to defined contribution ~~optional~~  
2422 ~~retirement~~ program participant accounts; percentage amounts.—

2423 (1) The allocations established in subsection (4) shall  
2424 fund retirement benefits under the defined contribution ~~optional~~  
2425 ~~retirement~~ program and shall be transferred monthly by the  
2426 Division of Retirement from the Florida Retirement System  
2427 Contributions Clearing Trust Fund to the third-party  
2428 administrator for deposit in each participating employee's  
2429 individual account based on the membership class of the  
2430 participant.

2431 (2) The allocations are stated as a percentage of each  
2432 defined contribution ~~optional retirement~~ program participant's  
2433 gross compensation for the calendar month. A change in a  
2434 contribution percentage is effective the first day of the month  
2435 for which a full month's employer contribution may be made on or  
2436 after the beginning date of the change. Contribution percentages

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2437 may be modified by general law.

2438 (3) Employer and participant contributions to participant  
 2439 accounts shall be accounted for separately. Participant  
 2440 contributions may be made only if expressly authorized by law.  
 2441 Interest and investment earnings on contributions shall accrue  
 2442 on a tax-deferred basis until proceeds are distributed.

2443 (4) Effective July 1, 2002, allocations from the Florida  
 2444 Retirement System Contributions Clearing Trust Fund to defined  
 2445 contribution ~~optional retirement~~ program participant accounts  
 2446 shall be as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	9.00%
Special Risk Class	20.00%
Special Risk Administrative Support Class	11.35%
Elected Officers' Class - Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.40%
Elected Officers' Class - Justices, Judges	18.90%
Elected Officers' Class - County Elected Officers	16.20%

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 Senior Management Service Class 10.95%

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

121.73 Allocations for ~~optional retirement program~~ participant disability coverage; percentage amounts.—

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

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

(3) Effective July 1, 2002, allocations from the Florida Retirement System ~~FRS~~ Contribution Clearing Fund to provide disability coverage for participants in the defined contribution ~~optional retirement~~ program, and to offset the costs of administering said coverage, shall be as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	0.25%

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2480	Special Risk Class	1.33%
2481	Special Risk Administrative Support Class	0.45%
2482	Elected Officers' Class - Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
2483	Elected Officers' Class - Justices, Judges	0.73%
2484	Elected Officers' Class - County Elected Officers	0.41%
2485	Senior Management Service Class	0.26%

2486 Section 20. Section 121.74, Florida Statutes, is amended to  
2487 read:

2488 121.74 Administrative and educational expenses.—In addition  
2489 to contributions required under s. 121.71, employers  
2490 participating in the Florida Retirement System shall contribute  
2491 an amount equal to 0.05 percent of the payroll reported for each  
2492 class or subclass of Florida Retirement System membership, which  
2493 amount shall be transferred by the Division of Retirement from  
2494 the Florida Retirement System Contributions Clearing Trust Fund  
2495 to the State Board of Administration's Administrative Trust Fund  
2496 to offset the costs of administering the defined contribution  
2497 ~~optional retirement~~ program and the costs of providing

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2498 educational services to participants in the defined benefit  
2499 program and the defined contribution ~~optional retirement~~  
2500 program. Approval of the Trustees of the State Board of  
2501 Administration is required prior to the expenditure of these  
2502 funds. Payments for third-party administrative or educational  
2503 expenses shall be made only pursuant to the terms of the  
2504 approved contracts for such services.

2505 Section 21. Section 121.77, Florida Statutes, is amended to  
2506 read:

2507 121.77 Deductions from participant accounts.— The State  
2508 Board of Administration may authorize the third-party  
2509 administrator to deduct reasonable fees and apply appropriate  
2510 charges to defined contribution ~~optional retirement~~ program  
2511 participant accounts. In no event may ~~shall~~ administrative and  
2512 educational expenses exceed the portion of employer  
2513 contributions earmarked for such expenses under this part,  
2514 except for reasonable administrative charges assessed against  
2515 participant accounts of persons for whom no employer  
2516 contributions are made during the calendar quarter. Investment  
2517 management fees shall be deducted from participant accounts,  
2518 pursuant to the terms of the contract between the provider and  
2519 the board.

2520 Section 22. Subsection (3) of section 121.78, Florida  
2521 Statutes, is amended to read:

2522 121.78 Payment and distribution of contributions.—

2523 (3) (a) Employer contributions and accompanying payroll data  
2524 received after the 5th working day of the month shall be  
2525 considered late. The employer shall be assessed by the Division  
2526 of Retirement a penalty of 1 percent of the contributions due



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2527 for each calendar month or part thereof that the contributions  
2528 or accompanying payroll data are late. Proceeds from the 1-  
2529 percent assessment against contributions made on behalf of  
2530 participants of the defined benefit program must ~~shall~~ be  
2531 deposited in the Florida Retirement System Trust Fund, and  
2532 proceeds from the 1-percent assessment against contributions  
2533 made on behalf of participants of the defined contribution  
2534 ~~optional retirement~~ program shall be transferred to the third-  
2535 party administrator for deposit into participant accounts, as  
2536 provided in paragraph (b).

2537 (b) If contributions made by an employer on behalf of  
2538 participants of the defined contribution ~~optional retirement~~  
2539 program or accompanying payroll data are not received within the  
2540 calendar month they are due, including, but not limited to,  
2541 contribution adjustments as a result of employer errors or  
2542 corrections, and if that delinquency results in market losses to  
2543 participants, the employer shall reimburse each participant's  
2544 account for market losses resulting from the late contributions.  
2545 If a participant has terminated employment and taken a  
2546 distribution, the participant is responsible for returning any  
2547 excess contributions erroneously provided by employers, adjusted  
2548 for any investment gain or loss incurred during the period such  
2549 excess contributions were in the participant's ~~Public Employee~~  
2550 ~~Optional Retirement Program~~ account. The State Board of  
2551 Administration or its designated agent shall communicate to  
2552 terminated participants any obligation to repay such excess  
2553 contribution amounts. However, the State Board of  
2554 Administration, its designated agents, the Public Employee  
2555 ~~Optional Retirement~~ Investment Program Trust Fund, the

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2556 Department of Management Services, or the Florida Retirement  
2557 System Trust Fund may ~~shall~~ not incur any loss or gain as a  
2558 result of an employer's correction of such excess contributions.  
2559 The third-party administrator, hired by the state board pursuant  
2560 to s. 121.4501(8), shall calculate the market losses for each  
2561 affected participant. If ~~When~~ contributions made on behalf of  
2562 participants of the defined contribution ~~optional retirement~~  
2563 program or accompanying payroll data are not received within the  
2564 calendar month due, the employer shall also pay the cost of the  
2565 third-party administrator's calculation and reconciliation  
2566 adjustments resulting from the late contributions. The third-  
2567 party administrator shall notify the employer of the results of  
2568 the calculations and the total amount due from the employer for  
2569 such losses and the costs of calculation and reconciliation. The  
2570 employer shall remit to the division the amount due within 10  
2571 working days after the date of the penalty notice sent by the  
2572 division. The Division of Retirement shall transfer said amount  
2573 to the third-party administrator, which ~~who~~ shall deposit  
2574 proceeds from the 1-percent assessment and from individual  
2575 market losses into participant accounts, as appropriate. The  
2576 state board may ~~is authorized to~~ adopt rules to administer  
2577 ~~implement the~~ provisions regarding late contributions, late  
2578 submission of payroll data, the process for reimbursing  
2579 participant accounts for resultant market losses, and the  
2580 penalties charged to the employers.

2581 (c) Delinquency fees may be waived by the Division of  
2582 Retirement, with regard to defined benefit program  
2583 contributions, and by the State Board of Administration, with  
2584 regard to defined contribution ~~optional retirement~~ program

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2585 contributions, only if ~~when~~, in the opinion of the division or  
2586 the board, as appropriate, exceptional circumstances beyond the  
2587 employer's control prevented remittance by the prescribed due  
2588 date, notwithstanding the employer's good faith efforts to  
2589 effect delivery. Such a waiver of delinquency may be granted an  
2590 employer only one time each state fiscal year.

2591 Section 23. The Division of Statutory Revision is requested  
2592 to rename the title of part II of chapter 121, Florida Statutes,  
2593 as "Public Employee Retirement Investment Program."

2594 Section 24. This act shall take effect July 1, 2010.