

1 A bill to be entitled  
2 An act relating to retirement; amending ss. 110.123,  
3 112.0801, and 112.65, F.S.; conforming provisions to  
4 changes made by the act; amending s. 112.363, F.S.;  
5 revising provisions relating to retiree health insurance  
6 subsidies; revising provisions relating to payments of  
7 subsidies; providing that no additional service credit for  
8 the health insurance subsidy can be earned after July 1,  
9 2011; amending s. 121.021, F.S.; revising definitions;  
10 amending s. 121.051, F.S.; requiring that a local  
11 governmental entity or the governing body of a charter  
12 school or charter technical career center make certain  
13 elections regarding benefits at the time the entity or  
14 governing body joins the Florida Retirement System;  
15 providing that employer-paid employee contributions are  
16 subject to certain taxes; amending s. 121.0515, F.S.;  
17 redefining membership in the Special Risk Class;  
18 redefining criteria for Special Risk Class membership;  
19 providing procedures for designation and removal of  
20 designation of Special Risk Class members; providing for  
21 employee contributions to be used, if applicable, when  
22 purchasing credit for past service; amending s. 121.052,  
23 F.S., relating to the membership class of elected  
24 officers; conforming provisions to changes made by the  
25 act; requiring member contributions; providing for a  
26 refund of contributions under certain circumstances for an  
27 officer who leaves office; providing that a member who  
28 obtains a refund of contributions waives certain rights

29 | under the Florida Retirement System; reducing the accrual  
30 | value to 1.60 percent for each year of service earned  
31 | after July 1, 2011; amending s. 121.053, F.S.; clarifying  
32 | the employer contributions required for Elected Officers'  
33 | Class members who participate in the Deferred Retirement  
34 | Option Program; amending s. 121.055, F.S., relating to the  
35 | Senior Management Service Class; conforming provisions to  
36 | changes made by the act; requiring employee contributions;  
37 | providing for a refund of contributions under certain  
38 | circumstances for a member who terminates employment;  
39 | providing that a member who obtains a refund of  
40 | contributions waives certain rights under the Florida  
41 | Retirement System; reducing the accrual value to 1.60  
42 | percent for each year of service earned after July 1,  
43 | 2011; limiting the payment of benefits prior to a  
44 | participant's termination of employment; amending s.  
45 | 121.071, F.S.; requiring employee and employer  
46 | contributions to the retirement system effective July 1,  
47 | 2011; providing for a refund of contributions under  
48 | certain circumstances following termination of employment;  
49 | prohibiting such refund if an approved qualified domestic  
50 | relations order is filed against the participant's  
51 | retirement account; requiring repayment plus interest of  
52 | an invalid refund; amending s. 121.081, F.S.; providing  
53 | and revising requirements for contributions for prior  
54 | service performed on or after July 1, 2011; amending s.  
55 | 121.091, F.S.; setting the annual service accrual rates  
56 | for the classes for service earned after July 1, 2011;

57 |        modifying the monthly benefit calculation for those  
58 |        members retiring on or after July 1, 2011, to reflect the  
59 |        change in normal retirement age; providing for the refund  
60 |        of accumulated contributions if a member's employment is  
61 |        terminated for any reason other than retirement; closing  
62 |        the Deferred Retirement Option Program to new participants  
63 |        on July 1, 2011; amending s. 121.121, F.S., relating to  
64 |        the purchase of creditable service following an authorized  
65 |        leave of absence; requiring that service credit be  
66 |        purchased at the employee and employer contribution rates  
67 |        in effect during the leave of absence effective a certain  
68 |        date; amending s. 121.125, F.S.; requiring that certain  
69 |        employers make the required employee and employer  
70 |        retirement contributions following an employee's workers'  
71 |        compensation injury or illness; requiring that a penalty  
72 |        be assessed against certain employers that fail to pay the  
73 |        required contributions; reenacting s. 121.161, F.S.,  
74 |        relating to the references of other laws as amended;  
75 |        amending s. 121.35, F.S., relating to the optional  
76 |        retirement program for the State University System;  
77 |        limiting the payment of benefits prior to a participant's  
78 |        termination of employment; amending s. 121.4501, F.S.;  
79 |        changing the name of the Public Employee Optional  
80 |        Retirement Program to the Florida Retirement System  
81 |        Investment Plan; requiring members of the Florida  
82 |        Retirement System Investment Plan to make certain  
83 |        contributions to the Florida Retirement System Investment  
84 |        Plan Trust Fund based on the employee's membership class;

85 | revising and providing definitions; revising the benefit  
86 | commencement age for a member enrolled on or after July 1,  
87 | 2011; providing for contribution adjustments as a result  
88 | of employer errors or corrections; requiring an employer  
89 | to receive a credit for excess contributions and to  
90 | reimburse an employee for excess contributions, subject to  
91 | certain limitations; providing for a pension plan  
92 | participant to retain his or her prior plan choice  
93 | following a return to employment; limiting certain refunds  
94 | of contributions which exceed the amount that would have  
95 | accrued had the member remained in the defined benefit  
96 | program; providing certain requirements and limitations  
97 | with respect to contributions; clarifying that participant  
98 | and employer contributions are earmarked for specified  
99 | purposes; providing duties of the third-party  
100 | administrator; providing that a member is fully and  
101 | immediately vested with respect to employee contributions  
102 | paid by the member; providing for the forfeiture of  
103 | nonvested employer contributions and service credit under  
104 | certain circumstances; amending s. 121.4502, F.S.;  
105 | changing the name of the Public Employee Optional  
106 | Retirement Program Trust Fund to the Florida Retirement  
107 | System Investment Plan Trust Fund; amending s. 121.4503,  
108 | F.S.; providing for the deposit of participant  
109 | contributions into the Florida Retirement System  
110 | Contributions Clearing Trust Fund; amending s. 121.571,  
111 | F.S.; providing requirements for submitting employee  
112 | contributions; amending s. 121.591, F.S.; limiting the

113 payment of benefits prior to a participant's termination  
114 of employment; providing for the forfeiture of nonvested  
115 accumulations and service credits upon payment of certain  
116 vested benefits; providing that the distribution payment  
117 method selected by the participant or beneficiary is final  
118 and irrevocable at the time of benefit distribution;  
119 prohibiting a distribution of employee contributions if a  
120 qualified domestic relations order is filed against the  
121 participant's account; amending s. 121.5911, F.S.;  
122 conforming provisions to changes made by the act; amending  
123 s. 121.70, F.S.; revising legislative intent; amending s.  
124 121.71, F.S.; requiring that employee contributions be  
125 deducted from the employee's monthly salary, beginning on  
126 a specified date, and treated as employer contributions  
127 under certain provisions of federal law; clarifying that  
128 an employee may not receive such contributions directly;  
129 specifying the required employee retirement contribution  
130 rates for the membership of each membership class and  
131 subclass of the Florida Retirement System; specifying the  
132 required employer retirement contribution rates for each  
133 membership class and subclass of the Florida Retirement  
134 System in order to address unfunded actuarial liabilities  
135 of the system; requiring an assessment to be imposed if  
136 the employee contributions remitted are less than the  
137 amount required under certain circumstances; providing for  
138 the employer to receive a credit for excess contributions  
139 remitted and to apply such credit against future  
140 contributions owed; amending s. 121.72, F.S.; revising

141 certain requirements governing allocations to optional  
142 retirement program participant accounts; setting the  
143 allocation into retirement accounts at 11.25 percent for  
144 Special Risk Class members and 9 percent for all other  
145 members; amending s. 121.73, F.S., relating to disability  
146 coverage for participants in the optional retirement  
147 program; amending ss. 121.74, 121.75 and 121.77, F.S.;  
148 conforming provisions to changes made by the act; amending  
149 s. 121.78, F.S.; revising certain requirements for  
150 administering the payment and distribution of  
151 contributions; requiring that certain fees be imposed for  
152 delinquent payments; providing that an employer is  
153 responsible for recovering any refund provided to an  
154 employee in error; revising the terms of an authorized  
155 waiver of delinquency; requiring an employer to receive a  
156 credit for excess contributions and to reimburse an  
157 employee for excess contributions, subject to certain  
158 limitations; requiring the State Board of Administration  
159 and the Department of Management Services to request a  
160 determination letter and private letter ruling from the  
161 United States Internal Revenue Service; providing for  
162 severability; providing legislative findings; providing  
163 that the act fulfills an important state interest;  
164 providing appropriations to and authorizing additional  
165 positions for the Division of Retirement within the  
166 Department of Management Services; providing effective  
167 dates.

168

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

170

171 Section 1. Paragraph (g) of subsection (2) of section  
 172 110.123, Florida Statutes, is amended to read:

173 110.123 State group insurance program.—

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

175 (g) "Retired state officer or employee" or "retiree" means  
 176 any state or state university officer or employee who retires  
 177 under a state retirement system or a state optional annuity or  
 178 retirement program or is placed on disability retirement, and  
 179 who was insured under the state group insurance program at the  
 180 time of retirement, and who begins receiving retirement benefits  
 181 immediately after retirement from state or state university  
 182 office or employment. The term also includes ~~In addition to~~  
 183 ~~these requirements,~~ any state officer or state employee who  
 184 retires under the Florida Retirement System Investment Plan  
 185 ~~Public Employee Optional Retirement Program~~ established under  
 186 part II of chapter 121 ~~shall be considered a "retired state~~  
 187 ~~officer or employee" or "retiree" as used in this section if he~~  
 188 or she:

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

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

193 Section 2. Section 112.0801, Florida Statutes, is amended  
 194 to read:

195 112.0801 Group insurance; participation by retired  
 196 employees.—

197           ~~(1)~~ Any state agency, county, municipality, special  
 198 district, community college, or district school board that ~~which~~  
 199 provides life, health, accident, hospitalization, or annuity  
 200 insurance, or all of any kinds of such insurance, for its  
 201 officers and employees and their dependents upon a group  
 202 insurance plan or self-insurance plan shall allow all former  
 203 personnel who ~~have~~ retired prior to October 1, 1987, as well as  
 204 those who retire on or after such date, and their eligible  
 205 dependents, the option of continuing to participate in the ~~such~~  
 206 group insurance plan or self-insurance plan. Retirees and their  
 207 eligible dependents shall be offered the same health and  
 208 hospitalization insurance coverage as is offered to active  
 209 employees at a premium cost of no more than the premium cost  
 210 applicable to active employees. For ~~the~~ retired employees and  
 211 their eligible dependents, the cost of ~~any such~~ continued  
 212 participation ~~in any type of plan or any of the cost thereof~~ may  
 213 be paid by the employer or by the retired employees. To  
 214 determine health and hospitalization plan costs, the employer  
 215 shall commingle the claims experience of the retiree group with  
 216 the claims experience of the active employees; and, for other  
 217 types of coverage, the employer may commingle the claims  
 218 experience of the retiree group with the claims experience of  
 219 active employees. Retirees covered under Medicare may be  
 220 experience-rated separately from the retirees not covered by  
 221 Medicare and from active employees if, ~~provided that~~ the total  
 222 premium does not exceed that of the active group and coverage is  
 223 basically the same as for the active group.

224           ~~(2)~~ For purposes of this section, the term "retiree" has



225 the same meaning as in s. 110.123(2). ~~means any officer or~~  
 226 ~~employee who retires under a state retirement system or a state~~  
 227 ~~optional annuity or retirement program or is placed on~~  
 228 ~~disability retirement and who begins receiving retirement~~  
 229 ~~benefits immediately after retirement from employment. In~~  
 230 ~~addition to these requirements, any officer or employee who~~  
 231 ~~retires under the Public Employee Optional Retirement Program~~  
 232 ~~established under part II of chapter 121 shall be considered a~~  
 233 ~~"retired officer or employee" or "retiree" as used in this~~  
 234 ~~section if he or she:~~

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

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

239 Section 3. Paragraphs (b) and (e) of subsection (2) and  
 240 paragraph (e) of subsection (3) of section 112.363, Florida  
 241 Statutes, are amended, and paragraphs (f) and (g) are added to  
 242 subsection (3) of that section, to read:

243 112.363 Retiree health insurance subsidy.—

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

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

250 1. For a member participant of the investment plan ~~Public~~  
 251 ~~Employee Optional Retirement Program~~ established under part II  
 252 of chapter 121, the participant meets the age or service

253 requirements to qualify for normal retirement as set forth in s.  
 254 121.021(29) and meets the definition of retiree in s.  
 255 121.4501(2).

256 2. For a member of the Florida Retirement System Pension  
 257 Plan ~~defined benefit program~~, or any employee who maintains  
 258 creditable service under ~~both the~~ pension plan ~~defined benefit~~  
 259 ~~program~~ and the investment plan ~~Public Employee Optional~~  
 260 ~~Retirement Program~~, the member begins drawing retirement  
 261 benefits from the pension plan ~~defined benefit program of the~~  
 262 ~~Florida Retirement System.~~

263 (e) Participants in the Senior Management Service Optional  
 264 Annuity Program as provided in s. 121.055(6) and the State  
 265 University System Optional Retirement Program as provided in s.  
 266 121.35 shall not receive the retiree health insurance subsidy  
 267 provided in this section. Prior to July 1, 2011, the employer of  
 268 such participant shall pay the contributions required in  
 269 subsection (8) to the annuity program provided in s.  
 270 121.055(6) (d) or s. 121.35(4) (a), as applicable. Effective July  
 271 1, 2011, employer contributions required in subsection (8) may  
 272 not be paid to the optional retirement programs provided in ss.  
 273 121.35 and 1012.875 or the optional annuity program provided in  
 274 s. 121.055(6).

275 (3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—

276 (e)1. Beginning July 1, 2001, each eligible retiree of the  
 277 pension plan ~~defined benefit program~~ of the Florida Retirement  
 278 System, or, if the retiree is deceased, his or her beneficiary  
 279 who is receiving a monthly benefit from such retiree's account  
 280 and who is a spouse, or a person who meets the definition of

281 joint annuitant in s. 121.021(28), shall receive a monthly  
 282 retiree health insurance subsidy payment equal to the number of  
 283 years of creditable service, as defined in s. 121.021(17),  
 284 completed at the time of retirement multiplied by \$5; however,  
 285 no eligible retiree or beneficiary may receive a subsidy payment  
 286 of more than \$150 or less than \$30. If there are multiple  
 287 beneficiaries, the total payment may ~~must~~ not be greater than  
 288 the payment to which the retiree was entitled. The health  
 289 insurance subsidy amount payable to any person receiving the  
 290 retiree health insurance subsidy payment on July 1, 2001, may  
 291 ~~shall~~ not be reduced solely by operation of this subparagraph.

292 2. Beginning July 1, 2002, each eligible participant of  
 293 the investment plan ~~Public Employee Optional Retirement Program~~  
 294 of the Florida Retirement System who has met the requirements of  
 295 this section, or, if the participant is deceased, his or her  
 296 spouse who is the participant's designated beneficiary, shall  
 297 receive a monthly retiree health insurance subsidy payment equal  
 298 to the number of years of creditable service, as provided in  
 299 this subparagraph, completed at the time of retirement,  
 300 multiplied by \$5; however, an ~~no~~ eligible retiree or beneficiary  
 301 may not receive a subsidy payment of more than \$150 or less than  
 302 \$30. For purposes of determining a participant's creditable  
 303 service used to calculate the health insurance subsidy, a  
 304 participant's years of service credit or fraction thereof shall  
 305 be based on the participant's work year as defined in s.  
 306 121.021(54). Credit must ~~shall~~ be awarded for a full work year  
 307 if ~~whenever~~ health insurance subsidy contributions have been  
 308 made ~~as required by law~~ for each month in the participant's work

CS/HB 1405

2011

309 year. In addition, all years of creditable service retained  
310 under the Florida Retirement System Pension Plan must ~~defined~~  
311 ~~benefit program shall~~ be included as creditable service for  
312 purposes of this section. Notwithstanding any other provision in  
313 this section ~~to the contrary~~, the spouse at the time of death is  
314 ~~shall be~~ the participant's beneficiary unless such participant  
315 has designated a different beneficiary subsequent to the  
316 participant's most recent marriage.

317 (f)1. Beginning July 1, 2011, each eligible retiree of the  
318 pension plan of the Florida Retirement System, or, if the  
319 retiree is deceased, his or her beneficiary who is receiving a  
320 monthly benefit from such retiree's account and who is a spouse,  
321 or a person who meets the definition of joint annuitant in s.  
322 121.021(28), shall receive a monthly retiree health insurance  
323 subsidy payment equal to the number of years of creditable  
324 service, as defined in s. 121.021(17), completed at the time of  
325 retirement but prior to July 1, 2011, multiplied by \$5. However,  
326 an eligible retiree or beneficiary may not receive a subsidy  
327 payment of more than \$150 or less than \$5. If there are multiple  
328 beneficiaries, the total payment may not be greater than the  
329 payment to which the retiree was entitled. The health insurance  
330 subsidy amount payable to any person receiving the retiree  
331 health insurance subsidy payment on July 1, 2011, may not be  
332 reduced solely by operation of this subparagraph.

333 2. Beginning July 1, 2011, each eligible participant of  
334 the investment plan of the Florida Retirement System who has met  
335 the requirements of this section, or, if the participant is  
336 deceased, his or her spouse who is the participant's designated

CS/HB 1405

2011

337 beneficiary, shall receive a monthly retiree health insurance  
338 subsidy payment equal to the number of years of creditable  
339 service, as provided in this subparagraph, completed at the time  
340 of retirement, multiplied by \$5. However, an eligible retiree or  
341 beneficiary may not receive a subsidy payment of more than \$150  
342 or less than \$5. For purposes of determining a participant's  
343 creditable service used to calculate the health insurance  
344 subsidy, a participant's years of service credit or fraction  
345 thereof shall be based on the participant's work year as defined  
346 in s. 121.021(54). Credit shall be awarded for a full work year  
347 whenever health insurance subsidy contributions have been made  
348 for each month in the participant's work year. In addition, all  
349 years of creditable service retained under the Florida  
350 Retirement System pension plan must be included as creditable  
351 service for purposes of this section. Notwithstanding any other  
352 provision in this section, the spouse at the time of death is  
353 the participant's beneficiary unless such participant has  
354 designated a different beneficiary subsequent to the  
355 participant's most recent marriage.

356 3. A retiree or beneficiary is not eligible to receive the  
357 subsidy unless the retiree earned 6 years of creditable service  
358 in the Florida Retirement System. Service in the optional  
359 retirement programs administered under ss. 121.35 and 1012.875  
360 and the optional annuity program administered under s.  
361 121.055(6) may not be used to meet this service requirement.

362 (g) Service credit earned on or after July 1, 2011, may  
363 not be used toward the calculation of the amount of the retiree  
364 health insurance subsidy.

365 Section 4. Subsection (1) of section 112.65, Florida  
 366 Statutes, is amended to read:

367 112.65 Limitation of benefits.—

368 (1) ESTABLISHMENT OF PROGRAM.—The normal retirement  
 369 benefit or pension payable to a retiree who becomes a member of  
 370 any retirement system or plan and who has not previously  
 371 participated in such plan, on or after January 1, 1980, may  
 372 ~~shall~~ not exceed 100 percent of his or her average final  
 373 compensation. However, ~~nothing contained in this section~~ does  
 374 not shall apply to supplemental retirement benefits or to  
 375 pension increases attributable to cost-of-living increases or  
 376 adjustments. For the purposes of this section, benefits accruing  
 377 in individual member participant accounts established under the  
 378 investment plan ~~Public Employee Optional Retirement Program~~  
 379 established in part II of chapter 121 are considered  
 380 supplemental benefits. As used in this section, the term  
 381 "average final compensation" means the average of the member's  
 382 earnings over a period of time which the governmental entity has  
 383 established by statute, charter, or ordinance.

384 Section 5. Subsections (3) and (15), paragraph (a) of  
 385 subsection (19), paragraph (b) of subsection (22), and  
 386 subsections (29), (38), (39), (55), and (59) of section 121.021,  
 387 Florida Statutes, are amended to read:

388 121.021 Definitions.—The following words and phrases as  
 389 used in this chapter have the respective meanings set forth  
 390 unless a different meaning is plainly required by the context:

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

CS/HB 1405

2011

393 "Florida Retirement System," including, but not limited to, the  
394 defined benefit ~~retirement~~ program administered under the  
395 ~~provisions of part I of this part,~~ referred to as the "Florida  
396 Retirement System Pension Plan" or "pension plan" chapter and  
397 the defined contribution ~~retirement~~ program known as the Public  
398 ~~Employee Optional Retirement Program~~ and administered under the  
399 ~~provisions of part II of this chapter,~~ referred to as the  
400 "Florida Retirement System Investment Plan" or "investment  
401 plan".

402 (15) "Special risk member" or "Special Risk Class member"  
403 means a member of the Florida Retirement System who meets the  
404 eligibility and criteria in s. 121.0515 to participate in the  
405 Special Risk Class.

406 ~~(a) Until October 1, 1978, "special risk member" means any~~  
407 ~~officer or employee whose application is approved by the~~  
408 ~~administrator and who receives salary payments for work~~  
409 ~~performed as a peace officer; law enforcement officer; police~~  
410 ~~officer; highway patrol officer; custodial employee at a~~  
411 ~~correctional or detention facility; correctional agency employee~~  
412 ~~whose duties and responsibilities involve direct contact with~~  
413 ~~inmates, but excluding secretarial and clerical employees;~~  
414 ~~firefighter; or an employee in any other job in the field of law~~  
415 ~~enforcement or fire protection if the duties of such person are~~  
416 ~~certified as hazardous by his or her employer.~~

417 ~~(b) Effective October 1, 1978, "special risk member" means~~  
418 ~~a member of the Florida Retirement System who is designated as a~~  
419 ~~special risk member by the division in accordance with s.~~  
420 ~~121.0515. Such member must be employed as a law enforcement~~

CS/HB 1405

2011

421 ~~officer, a firefighter, or a correctional officer and must meet~~  
422 ~~certain other special criteria as set forth in s. 121.0515.~~

423 ~~(c) Effective October 1, 1999, "special risk member" means~~  
424 ~~a member of the Florida Retirement System who is designated as a~~  
425 ~~special risk member by the division in accordance with s.~~  
426 ~~121.0515. Such member must be employed as a law enforcement~~  
427 ~~officer, a firefighter, a correctional officer, an emergency~~  
428 ~~medical technician, or a paramedic and must meet certain other~~  
429 ~~special criteria as set forth in s. 121.0515.~~

430 ~~(d)1. Effective January 1, 2001, "special risk member"~~  
431 ~~includes any member who is employed as a community-based~~  
432 ~~correctional probation officer and meets the special criteria~~  
433 ~~set forth in s. 121.0515(2)(e).~~

434 ~~2. Effective January 1, 2001, "special risk member"~~  
435 ~~includes any professional health care bargaining unit or non-~~  
436 ~~unit member who is employed by the Department of Corrections or~~  
437 ~~the Department of Children and Family Services and meets the~~  
438 ~~special criteria set forth in s. 121.0515(2)(f).~~

439 ~~(e) Effective July 1, 2001, the term "special risk member"~~  
440 ~~includes any member who is employed as a youth custody officer~~  
441 ~~by the Department of Juvenile Justice and meets the special~~  
442 ~~criteria set forth in s. 121.0515(2)(g).~~

443 ~~(f) Effective August 1, 2008, "special risk member"~~  
444 ~~includes any member who meets the special criteria for continued~~  
445 ~~membership set forth in s. 121.0515(2)(k).~~

446 (19) "Prior service" under part I of this chapter means:

447 (a) Service for which the member had credit under one of  
448 the existing systems and received a refund of his or her



CS/HB 1405

2011

449 contributions upon termination of employment. Prior service  
450 shall also includes ~~include that~~ service ~~between December 1,~~  
451 ~~1970, and the date the system becomes noncontributory~~ for which  
452 the member had credit under the Florida Retirement System and  
453 received a refund of his or her contributions upon termination  
454 of employment.

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

458 (b) ~~Under no circumstances shall~~ Compensation for a member  
459 participating in the pension plan ~~defined benefit retirement~~  
460 ~~program~~ or the investment plan ~~Public Employee Optional~~  
461 ~~Retirement Program~~ of the Florida Retirement System may not  
462 include:

463 1. Fees paid professional persons for special or  
464 particular services or ~~include~~ salary payments made from a  
465 faculty practice plan authorized by the Board of Governors of  
466 the State University System for eligible clinical faculty at a  
467 college in a state university that has a faculty practice plan;  
468 or

469 2. Any bonuses or other payments prohibited from inclusion  
470 in the member's average final compensation ~~and defined in~~  
471 ~~subsection (47)~~.

472 (29) "Normal retirement date" means the date a member  
473 attains normal retirement age and is vested, which is determined  
474 as follows:

475 (a) 1. If a Regular Class member, a Senior Management  
476 Service Class member, or an Elected Officers' Class member

CS/HB 1405

2011

477 initially enrolled before July 1, 2011:

478 ~~a.1.~~ The first day of the month the member completes 6 or  
479 more years of creditable service and attains age 62; or

480 ~~b.2.~~ The first day of the month following the date the  
481 member completes 30 years of creditable service, regardless of  
482 age.

483 2. If a Regular Class member, a Senior Management Service  
484 Class member, or an Elected Officers' Class member initially  
485 enrolled on or after July 1, 2011:

486 a. The first day of the month the member completes 6 or  
487 more years of creditable service and attains age 65; or

488 b. The first day of the month following the date the  
489 member completes 33 years of creditable service, regardless of  
490 age.

491 (b)1. If a Special Risk Class member initially enrolled  
492 before July 1, 2011:

493 ~~a.1.~~ The first day of the month the member completes 6 or  
494 more years of creditable service in the Special Risk Class and  
495 attains age 55;

496 ~~b.2.~~ The first day of the month following the date the  
497 member completes 25 years of creditable service in the Special  
498 Risk Class, regardless of age; or

499 ~~c.3.~~ The first day of the month following the date the  
500 member completes 25 years of creditable service and attains age  
501 52, which service may include a maximum of 4 years of military  
502 service credit as long as such credit is not claimed under any  
503 other system and the remaining years are in the Special Risk  
504 Class.

505 2. If a Special Risk Class member initially enrolled on or  
506 after July 1, 2011:

507 a. The first day of the month the member completes 6 or  
508 more years of creditable service in the Special Risk Class and  
509 attains age 60; or

510 b. The first day of the month following the date the  
511 member completes 30 years of creditable service in the Special  
512 Risk Class, regardless of age; or

513 c. The first day of the month following the date the  
514 member completes 30 years of creditable service and attains age  
515 57, which service may include a maximum of 4 years of military  
516 service credit as long as such credit is not claimed under any  
517 other system and the remaining years are in the Special Risk  
518 Class.

519  
520 "Normal retirement age" is attained on the "normal retirement  
521 date."

522 (38) "Continuous service" means creditable service as a  
523 member, beginning with the first day of employment with an  
524 employer covered under a state-administered retirement system  
525 consolidated herein and continuing for as long as the member  
526 remains in an employer-employee relationship with an employer  
527 covered under this chapter. An absence of 1 calendar month or  
528 more from an employer's payroll shall be considered a break in  
529 continuous service, except for periods of absence during which  
530 an employer-employee relationship continues to exist and such  
531 period of absence is creditable under this chapter or under one  
532 of the existing systems consolidated herein. However, a law

CS/HB 1405

2011

533 enforcement officer as defined in s. 121.0515 (3) ~~(2)~~ (a) who was a  
534 member of a state-administered retirement system under chapter  
535 122 or chapter 321 and who resigned and was subsequently  
536 reemployed in a law enforcement position within 12 calendar  
537 months of such resignation by an employer under such state-  
538 administered retirement system shall be deemed to have not  
539 experienced a break in service. Further, with respect to a  
540 state-employed law enforcement officer who meets the criteria  
541 specified in s. 121.0515 (3) ~~(2)~~ (a), if the absence from the  
542 employer's payroll is the result of a "layoff" as defined in s.  
543 110.107 or a resignation to run for an elected office that meets  
544 the criteria specified in s. 121.0515 (3) ~~(2)~~ (a), no break in  
545 continuous service shall be deemed to have occurred if the  
546 member is reemployed as a state law enforcement officer or is  
547 elected to an office which meets the criteria specified in s.  
548 121.0515 (3) ~~(2)~~ (a) within 12 calendar months after the date of  
549 the layoff or resignation, notwithstanding the fact that such  
550 period of layoff or resignation is not creditable service under  
551 this chapter. A withdrawal of contributions will constitute a  
552 break in service. Continuous service also includes past service  
553 purchased under this chapter, provided such service is  
554 continuous within this definition and the rules established by  
555 the administrator. The administrator may establish  
556 administrative rules and procedures for applying this definition  
557 to creditable service authorized under this chapter. Any  
558 correctional officer, as defined in s. 943.10, whose  
559 participation in the state-administered retirement system is  
560 terminated due to the transfer of a county detention facility

561 through a contractual agreement with a private entity pursuant  
562 to s. 951.062, shall be deemed an employee with continuous  
563 service in the Special Risk Class, provided return to employment  
564 with the former employer takes place within 3 years due to  
565 contract termination or the officer is employed by a covered  
566 employer in a special risk position within 1 year after his or  
567 her initial termination of employment by such transfer of its  
568 detention facilities to the private entity.

569 (39) (a) "Termination" occurs, except as provided in  
570 paragraph (b), when a member ceases all employment relationships  
571 with participating employers ~~an employer~~, however:

572 1. For retirements effective before July 1, 2010, if a  
573 member is employed by any such employer within the next calendar  
574 month, termination shall be deemed not to have occurred. A leave  
575 of absence constitutes a continuation of the employment  
576 relationship, except that a leave of absence without pay due to  
577 disability may constitute termination if such member makes  
578 application for and is approved for disability retirement in  
579 accordance with s. 121.091(4). The department or state board may  
580 require other evidence of termination as it deems necessary.

581 2. For retirements effective on or after July 1, 2010, if  
582 a member is employed by any such employer within the next 6  
583 calendar months, termination shall be deemed not to have  
584 occurred. A leave of absence constitutes a continuation of the  
585 employment relationship, except that a leave of absence without  
586 pay due to disability may constitute termination if such member  
587 makes application for and is approved for disability retirement  
588 in accordance with s. 121.091(4). The department or state board

CS/HB 1405

2011

589 may require other evidence of termination as it deems necessary.

590 (b) "Termination" for a member electing to participate in  
591 the Deferred Retirement Option Program occurs when the program  
592 participant ceases all employment relationships with  
593 participating employers ~~an employer~~ in accordance with s.

594 121.091(13), however:

595 1. For termination dates occurring before July 1, 2010, if  
596 the member ~~participant~~ is employed by any such employer within  
597 the next calendar month, termination will be deemed not to have  
598 occurred, except as provided in s. 121.091(13)(b)4.c. A leave of  
599 absence shall constitute a continuation of the employment  
600 relationship.

601 2. For termination dates occurring on or after July 1,  
602 2010, if the member ~~participant~~ becomes employed by any such  
603 employer within the next 6 calendar months, termination will be  
604 deemed not to have occurred, except as provided in s.  
605 121.091(13)(b)4.c. A leave of absence constitutes a continuation  
606 of the employment relationship.

607 (c) Effective July 1, 2011, "termination" for a member  
608 receiving a refund of employee contributions occurs when a  
609 member ceases all employment relationships with participating  
610 employers for 3 calendar months. A leave of absence constitutes  
611 a continuation of the employment relationship.

612 (55) "Benefit" means any pension payment, lump-sum or  
613 periodic, to a member, retiree, or beneficiary, based partially  
614 or entirely on employer contributions or employee contributions,  
615 if applicable.

616 (59) "Payee" means a retiree or beneficiary of a retiree

617 | who has received or is receiving a retirement benefit payment.

618 | Section 6. Paragraphs (b) and (c) of subsection (2) and  
 619 | subsection (3) of section 121.051, Florida Statutes, are amended  
 620 | to read:

621 | 121.051 Participation in the system.—

622 | (2) OPTIONAL PARTICIPATION.—

623 | (b)1. The governing body of any municipality, metropolitan  
 624 | planning organization, or special district in the state may  
 625 | elect to participate in the system upon proper application to  
 626 | the administrator and may cover all or any of its units as  
 627 | approved by the Secretary of Health and Human Services and the  
 628 | administrator. The department shall adopt rules establishing  
 629 | procedures ~~provisions~~ for the submission of documents necessary  
 630 | for such application. Prior to being approved for participation  
 631 | in the Florida Retirement System, the governing body of a any  
 632 | ~~such~~ municipality, metropolitan planning organization, or  
 633 | special district that has a local retirement system must ~~shall~~  
 634 | submit to the administrator a certified financial statement  
 635 | showing the condition of the local retirement system as of a  
 636 | date within 3 months prior to the proposed effective date of  
 637 | membership in the Florida Retirement System. The statement must  
 638 | be certified by a recognized accounting firm that is independent  
 639 | of the local retirement system. All required documents necessary  
 640 | for extending Florida Retirement System coverage must be  
 641 | received by the department for consideration at least 15 days  
 642 | prior to the proposed effective date of coverage. If the  
 643 | municipality, metropolitan planning organization, or special  
 644 | district does not comply with this requirement, the department

645 may require that the effective date of coverage be changed.

646 2. Any city, metropolitan planning organization, or  
 647 special district that has an existing retirement system covering  
 648 the employees in the units that are to be brought under the  
 649 Florida Retirement System may participate only after holding a  
 650 referendum in which all employees in the affected units have the  
 651 right to participate. Only those employees electing coverage  
 652 under the Florida Retirement System by affirmative vote in said  
 653 referendum shall be eligible for coverage under this chapter,  
 654 and those not participating or electing not to be covered by the  
 655 Florida Retirement System shall remain in their present systems  
 656 and shall not be eligible for coverage under this chapter. After  
 657 the referendum is held, all future employees shall be compulsory  
 658 members of the Florida Retirement System.

659 3. At the time of joining the Florida Retirement System,  
 660 the governing body of any city, metropolitan planning  
 661 organization, or special district complying with subparagraph 1.  
 662 may elect to provide, or not provide, benefits based on past  
 663 service of officers and employees as described in s. 121.081(1).  
 664 However, if such employer elects to provide past service  
 665 benefits, such benefits must be provided for all officers and  
 666 employees of its covered group.

667 4. Once this election is made and approved it may not be  
 668 revoked, except pursuant to subparagraphs 5. and 6., and all  
 669 present officers and employees electing coverage under this  
 670 chapter and all future officers and employees shall be  
 671 compulsory members of the Florida Retirement System.

672 5. Subject to the conditions set forth in subparagraph 6.,



673 the governing body of a ~~any~~ hospital licensed under chapter 395  
674 which is governed by the board of a special district as defined  
675 in s. 189.403(1) or by the board of trustees of a public health  
676 trust created under s. 154.07, hereinafter referred to as  
677 "hospital district," and which participates in the system, may  
678 elect to cease participation in the system with regard to future  
679 employees in accordance with the following procedure:

680 a. No more than 30 days and at least 7 days before  
681 adopting a resolution to partially withdraw from the Florida  
682 Retirement System and establish an alternative retirement plan  
683 for future employees, a public hearing must be held on the  
684 proposed withdrawal and proposed alternative plan.

685 b. From 7 to 15 days before such hearing, notice of intent  
686 to withdraw, specifying the time and place of the hearing, must  
687 be provided in writing to employees of the hospital district  
688 proposing partial withdrawal and must be published in a  
689 newspaper of general circulation in the area affected, as  
690 provided by ss. 50.011-50.031. Proof of publication of such  
691 notice shall be submitted to the Department of Management  
692 Services.

693 c. The governing body of a ~~any~~ hospital district seeking  
694 to partially withdraw from the system must, before such hearing,  
695 have an actuarial report prepared and certified by an enrolled  
696 actuary, as defined in s. 112.625(3), illustrating the cost to  
697 the hospital district of providing, through the retirement plan  
698 that the hospital district is to adopt, benefits for new  
699 employees comparable to those provided under the Florida  
700 Retirement System.

701 d. Upon meeting all applicable requirements of this  
 702 subparagraph, and subject to the conditions set forth in  
 703 subparagraph 6., partial withdrawal from the system and adoption  
 704 of the alternative retirement plan may be accomplished by  
 705 resolution duly adopted by the hospital district board. The  
 706 hospital district board must provide written notice of such  
 707 withdrawal to the division by mailing a copy of the resolution  
 708 to the division, postmarked by ~~no later than~~ December 15, 1995.  
 709 The withdrawal shall take effect January 1, 1996.

710 6. Following the adoption of a resolution under sub-  
 711 subparagraph 5.d., all employees of the withdrawing hospital  
 712 district who were participants in the Florida Retirement System  
 713 before ~~prior to~~ January 1, 1996, shall remain as participants in  
 714 the system for as long as they are employees of the hospital  
 715 district, and all rights, duties, and obligations between the  
 716 hospital district, the system, and the employees shall remain in  
 717 full force and effect. Any employee who is hired or appointed on  
 718 or after January 1, 1996, may not participate in the Florida  
 719 Retirement System, and the withdrawing hospital district shall  
 720 have no obligation to the system with respect to such employees.

721 (c) Employees of public community colleges or charter  
 722 technical career centers sponsored by public community colleges,  
 723 designated in s. 1000.21(3), who are members of the Regular  
 724 Class of the Florida Retirement System and who comply with the  
 725 criteria set forth in this paragraph and s. 1012.875 may, in  
 726 lieu of participating in the Florida Retirement System, elect to  
 727 withdraw from the system altogether and participate in the State  
 728 Community College System Optional Retirement Program provided by

CS/HB 1405

2011

729 the employing agency under s. 1012.875.

730 1. Through June 30, 2001, the cost to the employer for  
731 benefits under the optional retirement program ~~such annuity~~  
732 equals the normal cost portion of the employer retirement  
733 contribution which would be required if the employee were a  
734 member of the pension plan's Regular Class ~~defined benefit~~  
735 ~~program~~, plus the portion of the contribution rate required by  
736 s. 112.363(8) which would otherwise be assigned to the Retiree  
737 Health Insurance Subsidy Trust Fund. Effective July 1, 2001,  
738 each employer shall contribute on behalf of each participant in  
739 the optional program an amount equal to 10.43 percent of the  
740 participant's gross monthly compensation. The employer shall  
741 deduct an amount for the administration of the program. The  
742 employer shall contribute an additional amount to the Florida  
743 Retirement System Trust Fund equal to the unfunded actuarial  
744 accrued liability portion of the Regular Class contribution  
745 rate.

746 2. The decision to participate in the ~~an~~ optional  
747 retirement program is irrevocable as long as the employee holds  
748 a position eligible for participation, except as provided in  
749 subparagraph 3. Any service creditable under the Florida  
750 Retirement System is retained after the member withdraws from  
751 the system; however, additional service credit in the system may  
752 not be earned while a member of the optional retirement program.

753 3. An employee who has elected to participate in the  
754 optional retirement program shall have one opportunity, at the  
755 employee's discretion, to transfer from the optional retirement  
756 program to the pension plan ~~defined benefit program~~ of the

CS/HB 1405

2011

757 Florida Retirement System or to the investment plan established  
758 under part II of this chapter ~~Public Employee Optional~~  
759 ~~Retirement Program~~, subject to the terms of the applicable  
760 optional retirement program contracts.

761 a. If the employee chooses to move to the investment plan  
762 ~~Public Employee Optional Retirement Program~~, any contributions,  
763 interest, and earnings creditable to the employee under the  
764 ~~State Community College System~~ optional retirement program are  
765 retained by the employee in the ~~State Community College System~~  
766 optional retirement program, and the applicable provisions of s.  
767 121.4501(4) govern the election.

768 b. If the employee chooses to move to the pension plan  
769 ~~defined benefit program~~ of the Florida Retirement System, the  
770 employee shall receive service credit equal to his or her years  
771 of service under the ~~State Community College System~~ optional  
772 retirement program.

773 (I) The cost for such credit is the amount representing  
774 the present value of the employee's accumulated benefit  
775 obligation for the affected period of service. The cost shall be  
776 calculated as if the benefit commencement occurs on the first  
777 date the employee becomes eligible for unreduced benefits, using  
778 the discount rate and other relevant actuarial assumptions that  
779 were used to value the Florida Retirement System pension ~~defined~~  
780 ~~benefit~~ plan liabilities in the most recent actuarial valuation.  
781 The calculation must include any service already maintained  
782 under the pension ~~defined benefit~~ plan in addition to the years  
783 under the ~~State Community College System~~ optional retirement  
784 program. The present value of any service already maintained

785 must be applied as a credit to total cost resulting from the  
 786 calculation. The division shall ensure that the transfer sum is  
 787 prepared using a formula and methodology certified by an  
 788 enrolled actuary.

789 (II) The employee must transfer from his or her ~~State~~  
 790 ~~Community College System~~ optional retirement program account and  
 791 from other employee moneys as necessary, a sum representing the  
 792 present value of the employee's accumulated benefit obligation  
 793 immediately following the time of such movement, determined  
 794 assuming that attained service equals the sum of service in the  
 795 pension plan ~~defined benefit program~~ and service in the ~~State~~  
 796 ~~Community College System~~ optional retirement program.

797 4. Participation in the optional retirement program is  
 798 limited to employees who satisfy the following eligibility  
 799 criteria:

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

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

807 (I) Instructional; or

808 (II) Executive Management, Instructional Management, or  
 809 Institutional Management and the, ~~if a~~ community college  
 810 determines that recruiting to fill a vacancy in the position is  
 811 to be conducted in the national or regional market, and the  
 812 duties and responsibilities of the position include the

813 formulation, interpretation, or implementation of policies, or  
814 the performance of functions that are unique or specialized  
815 within higher education and that frequently support the mission  
816 of the community college.

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

820 5. Participants in the program are subject to the same  
821 reemployment limitations, renewed membership provisions, and  
822 forfeiture provisions as are applicable to regular members of  
823 the Florida Retirement System under ss. 121.091(9), 121.122, and  
824 121.091(5), respectively. A participant who receives a program  
825 distribution funded by employer contributions shall be deemed to  
826 be retired from a state-administered retirement system if the  
827 participant is subsequently employed with an employer that  
828 participates in the Florida Retirement System.

829 6. Eligible community college employees are compulsory  
830 members of the Florida Retirement System until, pursuant to s.  
831 1012.875, a written election to withdraw from the system and  
832 participate in the ~~State Community College System~~ optional  
833 retirement program is filed with the program administrator and  
834 received by the division.

835 a. A community college employee whose program eligibility  
836 results from initial employment shall ~~must~~ be enrolled in the  
837 ~~State Community College System~~ optional retirement program  
838 retroactive to the first day of eligible employment. The  
839 employer retirement contributions paid through the month of the  
840 employee plan change shall be transferred to the community

CS/HB 1405

2011

841 college to the employee's optional program account, and,  
 842 effective the first day of the next month, the employer shall  
 843 pay the applicable contributions based upon subparagraph 1.

844 b. A community college employee whose program eligibility  
 845 is due to the subsequent designation of the employee's position  
 846 as one of those specified in subparagraph 4., or due to the  
 847 employee's appointment, promotion, transfer, or reclassification  
 848 to a position specified in subparagraph 4., must be enrolled in  
 849 the program on the first day of the first full calendar month  
 850 that such change in status becomes effective. The employer  
 851 retirement contributions paid from the effective date through  
 852 the month of the employee plan change must be transferred to the  
 853 community college to the employee's optional program account,  
 854 and, effective the first day of the next month, the employer  
 855 shall pay the applicable contributions based upon subparagraph  
 856 1.

857 7. Effective July 1, 2003, through December 31, 2008, any  
 858 participant in ~~of the State Community College System~~ optional  
 859 retirement program who has service credit in the pension ~~defined~~  
 860 ~~benefit~~ plan of the Florida Retirement System for the period  
 861 between his or her first eligibility to transfer from the  
 862 pension ~~defined benefit~~ plan to the optional retirement program  
 863 and the actual date of transfer may, during employment, transfer  
 864 to the optional retirement program a sum representing the  
 865 present value of the accumulated benefit obligation under the  
 866 defined benefit retirement program for the period of service  
 867 credit. Upon transfer, all service credit previously earned  
 868 under the pension plan ~~defined benefit program of the Florida~~

869 ~~Retirement System~~ during this period is nullified for purposes  
 870 of entitlement to a future benefit under the pension plan  
 871 ~~defined benefit program of the Florida Retirement System.~~

872 (3) SOCIAL SECURITY COVERAGE.—Social security coverage  
 873 shall be provided for all officers and employees who become  
 874 members under the provisions of subsection (1) or subsection  
 875 (2). Any modification of the present agreement with the Social  
 876 Security Administration, or referendum required under the Social  
 877 Security Act, for the purpose of providing social security  
 878 coverage for any member shall be requested by the state agency  
 879 in compliance with the applicable provisions of the Social  
 880 Security Act governing such coverage. However, retroactive  
 881 social security coverage for service prior to December 1, 1970,  
 882 with the employer shall not be provided for a any member who was  
 883 not covered under the agreement as of November 30, 1970. The  
 884 employer-paid employee contributions specified in s. 121.71(2)  
 885 are subject to taxes imposed under the Federal Insurance  
 886 Contributions Act, 26 U.S.C. ss. 3101-3128.

887 Section 7. Section 121.0515, Florida Statutes, is amended  
 888 to read:

889 121.0515 Special Risk Class ~~membership~~.—

890 (1) ESTABLISHMENT OF CLASS LEGISLATIVE INTENT.—There is  
 891 established a separate ~~In creating the Special Risk~~ class of  
 892 membership within the Florida Retirement System, to be known as  
 893 the "Special Risk Class," ~~it is the intent and purpose of the~~  
 894 ~~Legislature~~ to recognize that persons employed in certain  
 895 categories of law enforcement, firefighting, criminal detention,  
 896 and emergency medical care positions are required as one of the



897 essential functions of their positions to perform work that is  
 898 physically demanding or arduous, or work that requires  
 899 extraordinary agility and mental acuity, and that such persons,  
 900 because of diminishing physical and mental faculties, may find  
 901 that they are not able, without risk to the health and safety of  
 902 themselves, the public, or their coworkers, to continue  
 903 performing such duties and thus enjoy the full career and  
 904 retirement benefits enjoyed by persons employed in other  
 905 membership classes ~~positions~~ and that, if they find it  
 906 necessary, due to the physical and mental limitations of their  
 907 age, to retire at an earlier age and usually with less service,  
 908 they will suffer an economic deprivation therefrom. To address  
 909 ~~Therefore, as a means of recognizing~~ the peculiar and special  
 910 problems of this class of employees, ~~it is the intent and~~  
 911 ~~purpose of the Legislature to establish~~ a class of retirement  
 912 membership is established that awards more retirement credit per  
 913 year of service than that awarded to other employees; however,  
 914 nothing contained herein shall require ineligibility for Special  
 915 Risk Class membership upon reaching age 55.

916 (2) MEMBERSHIP.—

917 (a) Until October 1, 1978, "special risk member" means any  
 918 officer or employee whose application is approved by the  
 919 administrator and who receives salary payments for work  
 920 performed as a peace officer; law enforcement officer; police  
 921 officer; highway patrol officer; custodial employee at a  
 922 correctional or detention facility; correctional agency employee  
 923 whose duties and responsibilities involve direct contact with  
 924 inmates, but excluding secretarial and clerical employees;

925 firefighter; or an employee in any other job in the field of law  
 926 enforcement or fire protection if the duties of such person are  
 927 certified as hazardous by his or her employer.

928 (b) Effective October 1, 1978, through September 30, 1999,  
 929 "special risk member" means a member of the Florida Retirement  
 930 System who is designated as a special risk member by the  
 931 division in accordance with this section. Such member must be  
 932 employed as a law enforcement officer, a firefighter, or a  
 933 correctional officer and must meet certain other special  
 934 criteria as set forth in this section.

935 (c) Effective October 1, 1999, "special risk member" means  
 936 a member of the Florida Retirement System who is designated as a  
 937 special risk member by the division in accordance with this  
 938 section. Such member must be employed as a law enforcement  
 939 officer, a firefighter, a correctional officer, an emergency  
 940 medical technician, or a paramedic and must meet certain other  
 941 special criteria as set forth in this section.

942 (d)1. Effective January 1, 2001, "special risk member"  
 943 includes any member who is employed as a community-based  
 944 correctional probation officer and meets the special criteria  
 945 set forth in paragraph (3)(e).

946 2. Effective January 1, 2001, "special risk member"  
 947 includes any professional health care bargaining unit or non-  
 948 unit member who is employed by the Department of Corrections or  
 949 the Department of Children and Family Services and meets the  
 950 special criteria set forth in paragraph (3)(f).

951 (e) Effective July 1, 2001, the term "special risk member"  
 952 includes any member who is employed as a youth custody officer

953 by the Department of Juvenile Justice and meets the special  
 954 criteria set forth in paragraph (3) (g).

955 (f) Effective August 1, 2008, "special risk member"  
 956 includes any member who meets the special criteria for continued  
 957 membership set forth in paragraph (3) (k).

958 (3)-(2) CRITERIA.—A member, to be designated as a special  
 959 risk member, must meet the following criteria:

960 (a) Effective October 1, 1978, the member must be employed  
 961 as a law enforcement officer and be certified, or required to be  
 962 certified, in compliance with s. 943.1395; however, sheriffs and  
 963 elected police chiefs shall be excluded from meeting the  
 964 certification requirements of this paragraph. In addition, the  
 965 member's duties and responsibilities must include the pursuit,  
 966 apprehension, and arrest of law violators or suspected law  
 967 violators; or as of July 1, 1982, the member must be an active  
 968 member of a bomb disposal unit whose primary responsibility is  
 969 the location, handling, and disposal of explosive devices; or  
 970 the member must be the supervisor or command officer of a member  
 971 or members who have such responsibilities; provided, however,  
 972 administrative support personnel, including, but not limited to,  
 973 those whose primary duties and responsibilities are in  
 974 accounting, purchasing, legal, and personnel, shall not be  
 975 included;

976 (b) Effective October 1, 1978, the member must be employed  
 977 as a firefighter and be certified, or required to be certified,  
 978 in compliance with s. 633.35 and be employed solely within the  
 979 fire department of a local government employer or an agency of  
 980 state government with firefighting responsibilities. In

CS/HB 1405

2011

981 addition, the member's duties and responsibilities must include  
982 on-the-scene fighting of fires; as of October 1, 2001, fire  
983 prevention, ~~or~~ firefighter training; as of October 1, 2001,  
984 direct supervision of firefighting units, fire prevention, or  
985 firefighter training; or as of July 1, 2001, aerial firefighting  
986 surveillance performed by fixed-wing aircraft pilots employed by  
987 the Division of Forestry of the Department of Agriculture and  
988 Consumer Services; or the member must be the supervisor or  
989 command officer of a member or members who have such  
990 responsibilities; provided, however, administrative support  
991 personnel, including, but not limited to, those whose primary  
992 duties and responsibilities are in accounting, purchasing,  
993 legal, and personnel, shall not be included and further provided  
994 that all periods of creditable service in fire prevention or  
995 firefighter training, or as the supervisor or command officer of  
996 a member or members who have such responsibilities, and for  
997 which the employer paid the special risk contribution rate,  
998 shall be included;

999 (c) Effective October 1, 1978, the member must be employed  
1000 as a correctional officer and be certified, or required to be  
1001 certified, in compliance with s. 943.1395. In addition, the  
1002 member's primary duties and responsibilities must be the  
1003 custody, and physical restraint when necessary, of prisoners or  
1004 inmates within a prison, jail, or other criminal detention  
1005 facility, or while on work detail outside the facility, or while  
1006 being transported; or as of July 1, 1984, the member must be the  
1007 supervisor or command officer of a member or members who have  
1008 such responsibilities; provided, however, administrative support

CS/HB 1405

2011

1009 personnel, including, but not limited to, those whose primary  
 1010 duties and responsibilities are in accounting, purchasing,  
 1011 legal, and personnel, shall not be included; however, wardens  
 1012 and assistant wardens, as defined by rule, shall participate in  
 1013 the Special Risk Class;

1014 (d) Effective October 1, 1999, the member must be employed  
 1015 by a licensed Advance Life Support (ALS) or Basic Life Support  
 1016 (BLS) employer as an emergency medical technician or a paramedic  
 1017 and be certified in compliance with s. 401.27. In addition, the  
 1018 member's primary duties and responsibilities must include on-  
 1019 the-scene emergency medical care or as of October 1, 2001,  
 1020 direct supervision of emergency medical technicians or  
 1021 paramedics, or the member must be the supervisor or command  
 1022 officer of one or more members who have such responsibility.  
 1023 However, administrative support personnel, including, but not  
 1024 limited to, those whose primary responsibilities are in  
 1025 accounting, purchasing, legal, and personnel, shall not be  
 1026 included;

1027 (e) Effective January 1, 2001, the member must be employed  
 1028 as a community-based correctional probation officer and be  
 1029 certified, or required to be certified, in compliance with s.  
 1030 943.1395. In addition, the member's primary duties and  
 1031 responsibilities must be the supervised custody, surveillance,  
 1032 control, investigation, and counseling of assigned inmates,  
 1033 probationers, parolees, or community controllees within the  
 1034 community; or the member must be the supervisor of a member or  
 1035 members who have such responsibilities. Administrative support  
 1036 personnel, including, but not limited to, those whose primary

CS/HB 1405

2011

1037 duties and responsibilities are in accounting, purchasing, legal  
 1038 services, and personnel management, shall not be included;  
 1039 however, probation and parole circuit and deputy circuit  
 1040 administrators shall participate in the Special Risk Class;

1041 (f) Effective January 1, 2001, the member must be employed  
 1042 in one of the following classes and must spend at least 75  
 1043 percent of his or her time performing duties which involve  
 1044 contact with patients or inmates in a correctional or forensic  
 1045 facility or institution:

- 1046 1. Dietitian (class codes 5203 and 5204);
- 1047 2. Public health nutrition consultant (class code 5224);
- 1048 3. Psychological specialist (class codes 5230 and 5231);
- 1049 4. Psychologist (class code 5234);
- 1050 5. Senior psychologist (class codes 5237 and 5238);
- 1051 6. Regional mental health consultant (class code 5240);
- 1052 7. Psychological Services Director—DCF (class code 5242);
- 1053 8. Pharmacist (class codes 5245 and 5246);
- 1054 9. Senior pharmacist (class codes 5248 and 5249);
- 1055 10. Dentist (class code 5266);
- 1056 11. Senior dentist (class code 5269);
- 1057 12. Registered nurse (class codes 5290 and 5291);
- 1058 13. Senior registered nurse (class codes 5292 and 5293);
- 1059 14. Registered nurse specialist (class codes 5294 and  
 1060 5295);
- 1061 15. Clinical associate (class codes 5298 and 5299);
- 1062 16. Advanced registered nurse practitioner (class codes  
 1063 5297 and 5300);
- 1064 17. Advanced registered nurse practitioner specialist

CS/HB 1405

2011

- 1065 (class codes 5304 and 5305);
- 1066 18. Registered nurse supervisor (class codes 5306 and
- 1067 5307);
- 1068 19. Senior registered nurse supervisor (class codes 5308
- 1069 and 5309);
- 1070 20. Registered nursing consultant (class codes 5312 and
- 1071 5313);
- 1072 21. Quality management program supervisor (class code
- 1073 5314);
- 1074 22. Executive nursing director (class codes 5320 and
- 1075 5321);
- 1076 23. Speech and hearing therapist (class code 5406); or
- 1077 24. Pharmacy manager (class code 5251);
- 1078 (g) Effective July 1, 2001, the member must be employed as
- 1079 a youth custody officer and be certified, or required to be
- 1080 certified, in compliance with s. 943.1395. In addition, the
- 1081 member's primary duties and responsibilities must be the
- 1082 supervised custody, surveillance, control, investigation,
- 1083 apprehension, arrest, and counseling of assigned juveniles
- 1084 within the community;
- 1085 (h) Effective October 1, 2005, through June 30, 2008, the
- 1086 member must be employed by a law enforcement agency or medical
- 1087 examiner's office in a forensic discipline recognized by the
- 1088 International Association for Identification and must qualify
- 1089 for active membership in the International Association for
- 1090 Identification. The member's primary duties and responsibilities
- 1091 must include the collection, examination, preservation,
- 1092 documentation, preparation, or analysis of physical evidence or

CS/HB 1405

2011

1093 testimony, or both, or the member must be the direct supervisor,  
 1094 quality management supervisor, or command officer of one or more  
 1095 individuals with such responsibility. Administrative support  
 1096 personnel, including, but not limited to, those whose primary  
 1097 responsibilities are clerical or in accounting, purchasing,  
 1098 legal, and personnel, shall not be included;

1099 (i) Effective July 1, 2008, the member must be employed by  
 1100 the Department of Law Enforcement in the crime laboratory or by  
 1101 the Division of State Fire Marshal in the forensic laboratory in  
 1102 one of the following classes:

- 1103 1. Forensic technologist (class code 8459);
- 1104 2. Crime laboratory technician (class code 8461);
- 1105 3. Crime laboratory analyst (class code 8463);
- 1106 4. Senior crime laboratory analyst (class code 8464);
- 1107 5. Crime laboratory analyst supervisor (class code 8466);
- 1108 6. Forensic chief (class code 9602); or
- 1109 7. Forensic services quality manager (class code 9603);

1110 (j) Effective July 1, 2008, the member must be employed by  
 1111 a local government law enforcement agency or medical examiner's  
 1112 office and must spend at least 65 percent of his or her time  
 1113 performing duties that involve the collection, examination,  
 1114 preservation, documentation, preparation, or analysis of human  
 1115 tissues or fluids or physical evidence having potential  
 1116 biological, chemical, or radiological hazard or contamination,  
 1117 or use chemicals, processes, or materials that may have  
 1118 carcinogenic or health-damaging properties in the analysis of  
 1119 such evidence, or the member must be the direct supervisor of  
 1120 one or more individuals having such responsibility. If a special



1121 risk member changes to another position within the same agency,  
 1122 he or she must submit a complete application as provided in  
 1123 paragraph (4)~~(3)~~(a); or

1124 (k) The member must have already qualified for and be  
 1125 actively participating in special risk membership under  
 1126 paragraph (a), paragraph (b), or paragraph (c), must have  
 1127 suffered a qualifying injury as defined in this paragraph, must  
 1128 not be receiving disability retirement benefits as provided in  
 1129 s. 121.091(4), and must satisfy the requirements of this  
 1130 paragraph.

1131 1. The ability to qualify for the class of membership  
 1132 defined in paragraph (2) (f) ~~s. 121.021(15)(f)~~ shall occur when  
 1133 two licensed medical physicians, one of whom is a primary  
 1134 treating physician of the member, certify the existence of the  
 1135 physical injury and medical condition that constitute a  
 1136 qualifying injury as defined in this paragraph and that the  
 1137 member has reached maximum medical improvement after August 1,  
 1138 2008. The certifications from the licensed medical physicians  
 1139 must include, at a minimum, that the injury to the special risk  
 1140 member has resulted in a physical loss, or loss of use, of at  
 1141 least two of the following: left arm, right arm, left leg, or  
 1142 right leg; and:

1143 a. That this physical loss or loss of use is total and  
 1144 permanent, except in the event that the loss of use is due to a  
 1145 physical injury to the member's brain, in which event the loss  
 1146 of use is permanent with at least 75-percent loss of motor  
 1147 function with respect to each arm or leg affected.

1148 b. That this physical loss or loss of use renders the

1149 member physically unable to perform the essential job functions  
 1150 of his or her special risk position.

1151 c. That, notwithstanding this physical loss or loss of  
 1152 use, the individual is able to perform the essential job  
 1153 functions required by the member's new position, as provided in  
 1154 subparagraph 3.

1155 d. That use of artificial limbs is either not possible or  
 1156 does not alter the member's ability to perform the essential job  
 1157 functions of the member's position.

1158 e. That the physical loss or loss of use is a direct  
 1159 result of a physical injury and not a result of any mental,  
 1160 psychological, or emotional injury.

1161 2. For the purposes of this paragraph, "qualifying injury"  
 1162 means an injury sustained in the line of duty, as certified by  
 1163 the member's employing agency, by a special risk member that  
 1164 does not result in total and permanent disability as defined in  
 1165 s. 121.091(4)(b). An injury is a qualifying injury when the  
 1166 injury is a physical injury to the member's physical body  
 1167 resulting in a physical loss, or loss of use, of at least two of  
 1168 the following: left arm, right arm, left leg, or right leg.  
 1169 Notwithstanding anything in this section to the contrary, an  
 1170 injury that would otherwise qualify as a qualifying injury shall  
 1171 not be considered a qualifying injury if and when the member  
 1172 ceases employment with the employer for whom he or she was  
 1173 providing special risk services on the date the injury occurred.

1174 3. The new position, as described in sub-subparagraph  
 1175 1.c., that is required for qualification as a special risk  
 1176 member under this paragraph is not required to be a position

1177 with essential job functions that entitle an individual to  
 1178 special risk membership. Whether a new position as described in  
 1179 sub-subparagraph 1.c. exists and is available to the special  
 1180 risk member is a decision to be made solely by the employer in  
 1181 accordance with its hiring practices and applicable law.

1182 4. This paragraph does not grant or create additional  
 1183 rights for any individual to continued employment or to be hired  
 1184 or rehired by his or her employer that are not already provided  
 1185 within the Florida Statutes, the State Constitution, the  
 1186 Americans with Disabilities Act, if applicable, or any other  
 1187 applicable state or federal law.

1188 ~~(4)(3)~~ PROCEDURE FOR DESIGNATING.—

1189 (a) 1. Any Regular Class member of the Florida Retirement  
 1190 System employed by a county, city, or special district who feels  
 1191 that his or her position ~~he or she~~ meets the criteria set forth  
 1192 in this section for membership in the Special Risk Class may  
 1193 request that his or her employer submit an application to the  
 1194 department requesting that the department designate him or her  
 1195 as a Special Risk Class member. Such Regular Class member shall  
 1196 complete the appropriate portions of an Application for Special  
 1197 Risk Membership provided in Form FRS-400 or Form FRS-405. If the  
 1198 employer agrees that the member meets the requirements for  
 1199 Special Risk Class membership, the employer shall certify and  
 1200 submit an application as set forth in this section and submit a  
 1201 copy of the current official job description of the member's  
 1202 duties showing the percentage of time spent performing each duty  
 1203 and a copy of a personnel action form showing the effective date  
 1204 of membership in that position to the department on ~~in~~ behalf of

CS/HB 1405

2011

1205 the employee ~~containing a certification that the member meets~~  
1206 ~~the criteria for special risk membership set forth in this~~  
1207 ~~section and such other supporting documentation as may be~~  
1208 ~~required by administrative rule. The department shall, within 90~~  
1209 ~~days, either designate or refuse to designate the member as a~~  
1210 ~~special risk member.~~

1211 2. Upon receipt of the completed application, proof of  
1212 certification, and supporting documentation, the department  
1213 shall determine if the member meets the requirements for Special  
1214 Risk Class membership. If the requirements are met, the  
1215 department shall approve the member for Special Risk Class  
1216 membership. The employer shall certify to the department any  
1217 changes to the duties and responsibilities of a Special Risk  
1218 Class member. The department shall review the documentation for  
1219 changes to duties and responsibilities and either continue the  
1220 approval of Special Risk Class membership or reclassify the  
1221 member to Regular Class membership.

1222 3. If the employer refuses to certify the member's  
1223 application for Special Risk Class membership, the employer  
1224 shall notify the member of the employer's refusal to certify and  
1225 the reasons for the refusal. If the employer declines to submit  
1226 the member's application to the department, ~~or if~~ the department  
1227 does not designate the member to the ~~as a~~ Special Risk Class, or  
1228 the department removes the member from the Special Risk Class  
1229 member, the member or the employer may appeal to the State  
1230 Retirement Commission, as provided in s. 121.23, for designation  
1231 as a Special Risk Class member. A member who receives a final  
1232 affirmative ruling pursuant to such appeal for Special Risk

CS/HB 1405

2011

1233 Class membership shall have Special Risk Class membership  
 1234 retroactive to the date such member would have had Special Risk  
 1235 Class membership had such membership been approved by the  
 1236 employer and the department, as determined by the department,  
 1237 and the employer contributions shall be paid in full within 1  
 1238 year after such final ruling.

1239 (b)1. Applying the criteria set forth in this section, the  
 1240 Department of Management Services shall specify which current  
 1241 and newly created classes of positions under the uniform  
 1242 classification plan established pursuant to chapter 110 entitle  
 1243 the incumbents of positions in those classes to membership in  
 1244 the Special Risk Class. Only employees employed in the classes  
 1245 so specified shall be special risk members.

1246 2. When a class is not specified by the department as  
 1247 provided in subparagraph 1., the employing agency may petition  
 1248 the State Retirement Commission for approval in accordance with  
 1249 s. 121.23.

1250 (5)~~(4)~~ REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

1251 (a) Any member who is a special risk member on October 1,  
 1252 1978, and who fails to meet the criteria for special risk  
 1253 membership established by this section shall have his or her  
 1254 special risk designation removed and thereafter shall be a  
 1255 regular member and shall earn only regular membership credit.  
 1256 The department shall have the authority to review the special  
 1257 risk designation of members to determine whether or not those  
 1258 members continue to meet the criteria for special risk  
 1259 membership.

1260 (b) Any member who is a special risk member on July 1,

CS/HB 1405

2011

1261 2008, and who became eligible to participate under paragraph  
1262 (3)~~(2)~~(h) but fails to meet the criteria for special risk  
1263 membership established by paragraph (3)~~(2)~~(i) or paragraph  
1264 (3)~~(2)~~(j) shall have his or her special risk designation removed  
1265 and thereafter shall be a Regular Class member and earn only  
1266 Regular Class membership credit. The department may review the  
1267 special risk designation of members to determine whether or not  
1268 those members continue to meet the criteria for special risk  
1269 membership.

1270 (c) Any member who is a Special Risk Class member and who  
1271 fails to meet the criteria for the Special Risk Class shall have  
1272 his or her special risk class designation removed and thereafter  
1273 shall be a Regular Class member and earn only Regular Class  
1274 membership service credit. The department may review the Special  
1275 Risk Class designation of members to determine whether or not  
1276 those members continue to meet the criteria for Special Risk  
1277 Class membership.

1278 (6)~~(5)~~ CREDIT FOR PAST SERVICE.—A special risk member may  
1279 purchase retirement credit in the Special Risk Class based upon  
1280 past service, and may upgrade retirement credit for such past  
1281 service, to the extent of 2 percent of the member's average  
1282 monthly compensation as specified in s. 121.091(1)(a) for such  
1283 service as follows:

1284 (a) The member may purchase special risk credit for past  
1285 service with a city or special district which has elected to  
1286 join the Florida Retirement System, or with a participating  
1287 agency to which a member's governmental unit was transferred,  
1288 merged, or consolidated as provided in s. 121.081(1)(f), if the

CS/HB 1405

2011

1289 member was employed with the city or special district at the  
 1290 time it commenced participating in the Florida Retirement System  
 1291 or with the governmental unit at the time of its transfer,  
 1292 merger, or consolidation with the participating agency. The  
 1293 service must satisfy the criteria set forth in subsection (3)  
 1294 ~~(2)~~ for special risk membership as a law enforcement officer,  
 1295 firefighter, or correctional officer; however, no certificate or  
 1296 waiver of certificate of compliance with s. 943.1395 or s.  
 1297 633.35 shall be required for such service.

1298 (b) Contributions for upgrading the additional special  
 1299 risk credit pursuant to this subsection shall be equal to the  
 1300 difference in the employer and, if applicable, employee  
 1301 contributions paid and the special risk percentage rate of gross  
 1302 salary in effect at the time of purchase for the period being  
 1303 claimed, plus interest thereon at the rate of 4 percent a year  
 1304 compounded annually from the date of such service until July 1,  
 1305 1975, and 6.5 percent a year thereafter until the date of  
 1306 payment. This past service may be purchased by the member or by  
 1307 the employer on behalf of the member.

1308 (7)~~(6)~~ CREDIT FOR PRIOR SERVICE.—A special risk member who  
 1309 has creditable service with an employer under chapter 122 or  
 1310 chapter 321, or was employed as a correctional counselor with  
 1311 the Department of Corrections between December 1, 1970, and  
 1312 September 30, 1979, in a position which satisfies the criteria  
 1313 provided for in subsection (3) ~~(2)~~ for special risk membership  
 1314 except the requirement for a certificate or waiver of  
 1315 certificate, shall have those years of service counted towards  
 1316 the attainment of the normal retirement date as a special risk

1317 member under this chapter. The percentage value of each such  
 1318 year of creditable service under chapter 122, chapter 321, or as  
 1319 a correctional counselor shall not change as a result of the  
 1320 application of this subsection. A special risk member who has  
 1321 taken a refund of contributions for such creditable service  
 1322 under chapter 122 or chapter 321 and has reclaimed it as prior  
 1323 service credit under this chapter shall be permitted to have  
 1324 such creditable service counted towards the attainment of the  
 1325 normal retirement date for the Special Risk Class of membership  
 1326 under this chapter.

1327 (8) ~~(7)~~ SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS RETENTION  
 1328 ~~OF SPECIAL RISK NORMAL RETIREMENT DATE.~~—

1329 (a) A special risk member who is moved or reassigned to a  
 1330 nonspecial risk law enforcement, firefighting, correctional, or  
 1331 emergency medical care administrative support position with the  
 1332 same agency, or who is subsequently employed in such a position  
 1333 with any law enforcement, firefighting, correctional, or  
 1334 emergency medical care agency under the Florida Retirement  
 1335 System, shall participate in the Special Risk Administrative  
 1336 Support Class and shall earn credit for such service at the same  
 1337 percentage rate as that earned by a regular member.

1338 Notwithstanding the provisions of subsection (5) ~~(4)~~, service in  
 1339 such an administrative support position shall, for purposes of  
 1340 s. 121.091, apply toward satisfaction of the special risk normal  
 1341 retirement date, as defined in s. 121.021(29)(b), provided that,  
 1342 while in such position, the member remains certified as a law  
 1343 enforcement officer, firefighter, correctional officer,  
 1344 emergency medical technician, or paramedic; remains subject to



1345 reassignment at any time to a position qualifying for special  
 1346 risk membership; and completes an aggregate of 6 or more years  
 1347 of service as a designated special risk member prior to  
 1348 retirement.

1349 (b) Upon application by a member, the provisions of this  
 1350 subsection shall apply, with respect to such member,  
 1351 retroactively to October 1, 1978, provided that the member was  
 1352 removed from the Special Risk Class effective October 1, 1978,  
 1353 due to a change in special risk criteria as a result of the  
 1354 enactment of chapter 78-308, Laws of Florida, or was reassigned  
 1355 or employed for training or career development or to fill a  
 1356 critical agency need.

1357 (c) The department shall adopt such rules as are required  
 1358 to administer this subsection.

1359 (d) Notwithstanding any provision of this subsection to  
 1360 the contrary, this subsection does not apply to any special risk  
 1361 member who qualifies for continued membership pursuant to the  
 1362 provisions of paragraph (3)~~(2)~~(k).

1363 (9)~~(8)~~ RESTORATION OF SPECIAL RISK CREDIT FOR SPECIFIED  
 1364 PERIOD OF EMPLOYMENT.—A special risk member who was removed from  
 1365 the Special Risk Class effective October 1978, for the sole  
 1366 reason that he or she did not possess the required certificate  
 1367 or temporary waiver of certificate, and who obtained  
 1368 certification and was approved for special risk membership on or  
 1369 before June 30, 1982, shall be permitted to have special risk  
 1370 credit restored for that period upon:

1371 (a) Certification by his or her employer that all  
 1372 requirements for special risk membership except the requirement

CS/HB 1405

2011

1373 for certification or temporary waiver of certification were met;  
 1374 and

1375 (b) Payment of contributions equal to the difference in  
 1376 the contributions that were paid during the period and the  
 1377 contributions required for special risk members during that  
 1378 period, plus 6.5 percent interest thereon, compounded each June  
 1379 30 from date of service until date of payment.

1380  
 1381 This credit may be purchased by the member or by the employer on  
 1382 behalf of the member.

1383 (10)~~(9)~~ CREDIT FOR UPGRADED SERVICE.-

1384 (a) Any member of the Special Risk Class who has earned  
 1385 creditable service through September 30, 1999, in another  
 1386 membership class of the Florida Retirement System as an  
 1387 emergency medical technician or paramedic, which service is  
 1388 within the purview of the Special Risk Class, may purchase  
 1389 additional retirement credit to upgrade such service to Special  
 1390 Risk Class service, to the extent of the percentages of the  
 1391 member's average final compensation provided in s.

1392 121.091(1)(a)2. Contributions for upgrading such service to  
 1393 Special Risk Class credit under this subsection shall be equal  
 1394 to the difference in the contributions paid and the Special Risk  
 1395 Class contribution rate as a percentage of gross salary in  
 1396 effect for the period being claimed, plus interest thereon at  
 1397 the rate of 6.5 percent a year, compounded annually until the  
 1398 date of payment. This service credit may be purchased by the  
 1399 employer on behalf of the member.

1400 (b) Any member of the Special Risk Class who has earned

1401 | creditable service through September 30, 2001, in another  
 1402 | membership class of the Florida Retirement System whose  
 1403 | responsibilities included fire prevention or firefighter  
 1404 | training, which service is within the purview of the Special  
 1405 | Risk Class, may purchase additional retirement credit to upgrade  
 1406 | such service to Special Risk Class service, to the extent of the  
 1407 | percentages of the member's average final compensation provided  
 1408 | in s. 121.091(1)(a)2. Contributions for upgrading such service  
 1409 | to Special Risk Class credit under this subsection shall be  
 1410 | equal to the difference in the contributions paid and the  
 1411 | Special Risk Class contribution rate as a percentage of gross  
 1412 | salary in effect for the period being claimed, plus interest  
 1413 | thereon at the rate of 6.5 percent a year, compounded annually  
 1414 | until the date of payment. This service credit may be purchased  
 1415 | by the employer on behalf of the member.

1416 |       (c) Any member of the Special Risk Class who has earned  
 1417 | creditable service through June 30, 2005, in another membership  
 1418 | class of the Florida Retirement System in a position with the  
 1419 | Department of Law Enforcement or the Division of State Fire  
 1420 | Marshal and became covered by the Special Risk Class as  
 1421 | described in paragraph (3)~~(2)~~(i), or with a local government law  
 1422 | enforcement agency or medical examiner's office and became  
 1423 | covered by the Special Risk Class as described in paragraph  
 1424 | (3)~~(2)~~(j), which service is within the purview of the Special  
 1425 | Risk Class, and is employed in such position on or after July 1,  
 1426 | 2008, may purchase additional retirement credit to upgrade such  
 1427 | service to Special Risk Class service, to the extent of the  
 1428 | percentages of the member's average final compensation provided

1429 in s. 121.091(1)(a)2. The cost for such credit shall be an  
 1430 amount representing the actuarial accrued liability for the  
 1431 difference in accrual value during the affected period of  
 1432 service. The cost shall be calculated using the discount rate  
 1433 and other relevant actuarial assumptions that were used to value  
 1434 the Florida Retirement System Pension ~~defined benefit~~ Plan  
 1435 liabilities in the most recent actuarial valuation. The division  
 1436 shall ensure that the transfer sum is prepared using a formula  
 1437 and methodology certified by an enrolled actuary. The cost must  
 1438 be paid immediately upon notification by the division. The local  
 1439 government employer may purchase the upgraded service credit on  
 1440 behalf of the member if the member has been employed by that  
 1441 employer for at least 3 years.

1442 Section 8. Paragraphs (a) and (d) of subsection (4),  
 1443 paragraph (b) of subsection (7), and subsection (10) of section  
 1444 121.052, Florida Statutes, are amended, present paragraph (c) of  
 1445 subsection (7) of that section is redesignated as paragraph (d),  
 1446 and a new paragraph (c) is added to that subsection, to read:

1447 121.052 Membership class of elected officers.—

1448 (4) PARTICIPATION BY ELECTED OFFICERS SERVING A SHORTENED  
 1449 TERM DUE TO APPORTIONMENT, FEDERAL INTERVENTION, ETC.—

1450 (a) Any duly elected officer whose term of office was  
 1451 shortened by legislative or judicial apportionment pursuant to  
 1452 the provisions of s. 16, Art. III of the State Constitution may,  
 1453 after the term of office to which he or she was elected is  
 1454 completed, pay into the System Trust Fund the amount of  
 1455 contributions that would have been made by the officer or the  
 1456 officer's employer on his or her behalf, plus 4 percent interest

CS/HB 1405

2011

1457 compounded annually from the date he or she left office until  
1458 July 1, 1975, and 6.5 percent interest compounded annually  
1459 thereafter, and may receive service credit for the length of  
1460 time the officer would have served if such term had not been  
1461 shortened by apportionment.

1462 (d)1. Any justice or judge, or any retired justice or  
1463 judge who retired before July 1, 1993, who has attained the age  
1464 of 70 years and who is prevented under s. 8, Art. V of the State  
1465 Constitution from completing his or her term of office because  
1466 of age may elect to purchase credit for all or a portion of the  
1467 months he or she would have served during the remainder of the  
1468 term of office, but he or she may claim those months only after  
1469 the date the service would have occurred. The justice or judge  
1470 must pay into the System Trust Fund the amount of contributions  
1471 that would have been made by the employer on his or her behalf  
1472 for the period of time being claimed, plus 6.5 percent interest  
1473 thereon compounded each June 30 from the date he or she left  
1474 office, in order to receive service credit in this class for the  
1475 period of time being claimed. After the date the service would  
1476 have occurred, and upon payment of the required contributions,  
1477 the retirement benefit of a retired justice or judge shall ~~will~~  
1478 be adjusted prospectively to include the ~~this~~ additional  
1479 creditable service; however, such adjustment may be made only  
1480 once.

1481 2. Any justice or judge who does not seek election to a  
1482 subsequent term of office because he or she would be prevented  
1483 under s. 8, Art. V of the State Constitution from completing  
1484 such term of office upon attaining the age of 70 years may elect

1485 to purchase service credit for service as a temporary judge as  
 1486 assigned by the court if the temporary assignment follows  
 1487 immediately the last full term of office served and the purchase  
 1488 is limited to the number of months of service needed to vest  
 1489 retirement benefits. To receive retirement credit for such  
 1490 temporary service beyond termination, the justice or judge must  
 1491 pay into the System Trust Fund the amount of contributions that  
 1492 would have been made by the justice or judge and the employer on  
 1493 his or her behalf had he or she continued in office for the  
 1494 period of time being claimed, plus 6.5 percent interest thereon  
 1495 compounded each June 30 from the date he or she left office.

1496 (7) CONTRIBUTIONS.—

1497 (b) The employer paying the salary of a member of the  
 1498 Elected Officers' Class shall contribute an amount as specified  
 1499 in this subsection or s. 121.71, as appropriate, which shall  
 1500 constitute the ~~entire~~ employer retirement contribution with  
 1501 respect to such member. The employer shall also withhold one-  
 1502 half of the entire contribution of the member required for  
 1503 social security coverage. Effective July 1, 2011, each member of  
 1504 the Elected Officers' Class shall pay employee contributions as  
 1505 specified in s. 121.71.

1506 (c) If a member of the Elected Officers' Class ceases to  
 1507 fill an office covered by this class for 3 calendar months for  
 1508 any reason other than retirement and has not been employed in  
 1509 any capacity with any participating employer for 3 calendar  
 1510 months, the member may receive a refund of all contributions he  
 1511 or she has made to the pension plan, subject to the restrictions  
 1512 otherwise provided in this chapter. Partial refunds are not

CS/HB 1405

2011

1513 permitted. The refund shall not include any interest earnings on  
 1514 the contributions for a member of the pension plan. Employer  
 1515 contributions made on behalf of the member are not refundable. A  
 1516 member may not receive a refund of employee contributions if a  
 1517 pending or an approved qualified domestic relations order is  
 1518 filed against the member's retirement account. By obtaining a  
 1519 refund of contributions, a member waives all rights under the  
 1520 Florida Retirement System and the health insurance subsidy  
 1521 provided under s. 112.363 to the service credit represented by  
 1522 the refunded contributions, except the right to purchase his or  
 1523 her prior service credit in accordance with s. 121.081(2).

1524 (10) ACCRUED SERVICE VALUE.—Prior to July 1, 2011, a  
 1525 member of the Elected Officers' Class who is a Supreme Court  
 1526 justice, district court of appeal judge, circuit judge, or  
 1527 county court judge shall receive judicial retirement credit of 3  
 1528 1/3 percent of average final compensation, and all other members  
 1529 shall receive elected officer accrual value ~~retirement credit~~ of  
 1530 3 percent of average final compensation, for each year of  
 1531 creditable service in such class. Effective on or after July 1,  
 1532 2011, a member of the Elected Officers' Class shall receive the  
 1533 accrual value specified in s. 121.091(1)(a)4., for each year of  
 1534 creditable service in such class.

1535 Section 9. Paragraph (a) of subsection (7) of section  
 1536 121.053, Florida Statutes, is amended to read:

1537 121.053 Participation in the Elected Officers' Class for  
 1538 retired members.—

1539 (7) A member who is elected or appointed to an elective  
 1540 office and who is participating in the Deferred Retirement

1541 Option Program is not subject to termination as defined in s.  
1542 121.021, or reemployment limitations as provided in s.  
1543 121.091(9), until the end of his or her current term of office  
1544 or, if the officer is consecutively elected or reelected to an  
1545 elective office eligible for coverage under the Florida  
1546 Retirement System, until he or she no longer holds an elective  
1547 office, as follows:

1548 (a) At the end of the 60-month DROP period:

1549 1. The officer's DROP account may not accrue additional  
1550 monthly benefits, but does continue to earn interest as provided  
1551 in s. 121.091(13). However, an officer whose DROP participation  
1552 begins on or after July 1, 2010, may not continue to earn such  
1553 interest.

1554 2. Retirement contributions, except for unfunded actuarial  
1555 liability and health insurance subsidy contributions required in  
1556 ss. 121.71(5) and 121.76, are not required of the employer of  
1557 the elected officer and additional retirement credit may not be  
1558 earned under the Florida Retirement System.

1559 Section 10. Paragraphs (b) and (j) of subsection (1),  
1560 paragraph (b) of subsection (3), paragraph (d) of subsection  
1561 (4), and paragraphs (d) and (e) of subsection (6) of section  
1562 121.055, Florida Statutes, are amended, present paragraph (c) of  
1563 subsection (3) of that section is redesignated as paragraph (d),  
1564 and a new paragraph (c) is added to that subsection, to read:

1565 121.055 Senior Management Service Class.—There is hereby  
1566 established a separate class of membership within the Florida  
1567 Retirement System to be known as the "Senior Management Service  
1568 Class," which shall become effective February 1, 1987.



1569 (1)

1570 (b)1. Except as provided in subparagraph 2., effective

1571 January 1, 1990, participation in the Senior Management Service

1572 Class is ~~shall be~~ compulsory for the president of each community

1573 college, the manager of each participating city or county, and

1574 all appointed district school superintendents. Effective January

1575 1, 1994, additional positions may be designated for inclusion in

1576 the Senior Management Service Class of the Florida Retirement

1577 System, provided that:

1578 a. Positions to be included in the class are ~~shall be~~

1579 designated by the local agency employer. Notice of intent to

1580 designate positions for inclusion in the class must ~~shall~~ be

1581 published once a week for 2 consecutive weeks in a newspaper of

1582 general circulation published in the county or counties

1583 affected, as provided in chapter 50.

1584 b. Up to 10 nonelective full-time positions may be

1585 designated for each local agency employer reporting to the

1586 department ~~of Management Services~~; for local agencies with 100

1587 or more regularly established positions, additional nonelective

1588 full-time positions may be designated, not to exceed 1 percent

1589 of the regularly established positions within the agency.

1590 c. Each position added to the class must be a managerial

1591 or policymaking position filled by an employee who is not

1592 subject to continuing contract and serves at the pleasure of the

1593 local agency employer without civil service protection, and who:

1594 (I) Heads an organizational unit; or

1595 (II) Has responsibility to effect or recommend personnel,

1596 budget, expenditure, or policy decisions in his or her areas of

1597 responsibility.

1598       2. In lieu of participation in the Senior Management  
 1599 Service Class, members of the Senior Management Service Class,  
 1600 pursuant to the provisions of subparagraph 1., may withdraw from  
 1601 the Florida Retirement System altogether. The decision to  
 1602 withdraw from the Florida Retirement System is ~~shall be~~  
 1603 irrevocable ~~for~~ as long as the employee holds the ~~such a~~  
 1604 position. Any service creditable under the Senior Management  
 1605 Service Class shall be retained after the member withdraws from  
 1606 the Florida Retirement System; however, additional service  
 1607 credit in the Senior Management Service Class may ~~shall~~ not be  
 1608 earned after such withdrawal. Such members are ~~shall not be~~  
 1609 eligible to participate in the Senior Management Service  
 1610 Optional Annuity Program.

1611       3. Effective January 1, 2006, through June 30, 2006, an  
 1612 employee who has withdrawn from the Florida Retirement System  
 1613 under subparagraph 2. has one opportunity to elect to  
 1614 participate in either the defined benefit program or the Public  
 1615 Employee Optional Retirement Program of the Florida Retirement  
 1616 System.

1617       a. If the employee elects to participate in the Public  
 1618 Employee Optional Retirement Program, membership shall be  
 1619 prospective, and the applicable provisions of s. 121.4501(4)  
 1620 shall govern the election.

1621       b. If the employee elects to participate in the defined  
 1622 benefit program of the Florida Retirement System, the employee  
 1623 shall, upon payment to the system trust fund of the amount  
 1624 calculated under sub-sub-subparagraph (I), receive service

CS/HB 1405

2011

1625 credit for prior service based upon the time during which the  
1626 employee had withdrawn from the system.

1627 (I) The cost for such credit shall be an amount  
1628 representing the actuarial accrued liability for the affected  
1629 period of service. The cost shall be calculated using the  
1630 discount rate and other relevant actuarial assumptions that were  
1631 used to value the Florida Retirement System defined benefit plan  
1632 liabilities in the most recent actuarial valuation. The  
1633 calculation must ~~shall~~ include any service already maintained  
1634 under the defined benefit plan in addition to the period of  
1635 withdrawal. The actuarial accrued liability attributable to any  
1636 service already maintained under the defined benefit plan shall  
1637 be applied as a credit to the total cost resulting from the  
1638 calculation. The division must ~~shall~~ ensure that the transfer  
1639 sum is prepared using a formula and methodology certified by an  
1640 actuary.

1641 (II) The employee must transfer a sum representing the net  
1642 cost owed for the actuarial accrued liability in sub-sub-  
1643 subparagraph (I) immediately following the time of such  
1644 movement, determined assuming that attained service equals the  
1645 sum of service in the defined benefit program and the period of  
1646 withdrawal.

1647 (j) Except as may otherwise be provided, a ~~any~~ member of  
1648 the Senior Management Service Class may purchase additional  
1649 retirement credit in such class for creditable service within  
1650 the purview of the Senior Management Service Class between  
1651 ~~retroactive to~~ February 1, 1987, and June 30, 2011, and may  
1652 upgrade retirement credit for such service, to the extent of 2

1653 percent of the member's average monthly compensation as  
 1654 specified in paragraph (4) (d) for such service. Contributions  
 1655 for upgrading the additional Senior Management Service credit  
 1656 pursuant to this paragraph shall be equal to the difference in  
 1657 the employer and, if applicable, employee contributions paid and  
 1658 the Senior Management Service Class contribution rate as a  
 1659 percentage of gross salary in effect for the period being  
 1660 claimed, plus interest thereon at the rate of 6.5 percent a  
 1661 year, compounded annually until the date of payment. This  
 1662 service credit may be purchased by the employer on behalf of the  
 1663 member.

1664 (3)

1665 (b) The employer paying the salary of a member of the  
 1666 Senior Management Service Class shall contribute an amount as  
 1667 specified in this section or s. 121.71, as appropriate, which  
 1668 shall constitute the entire employer retirement contribution  
 1669 with respect to such member. The employer shall also withhold  
 1670 one-half of the entire contribution of the member required for  
 1671 social security coverage. Effective July 1, 2011, each member  
 1672 shall pay employee contributions as specified in s. 121.71.

1673 (c) Upon termination of employment from all participating  
 1674 employers for 3 calendar months for any reason other than  
 1675 retirement pursuant to s. 121.021(39) (c), a member may receive a  
 1676 refund of all contributions he or she has made to the pension  
 1677 plan, subject to the restrictions otherwise provided in this  
 1678 chapter. Partial refunds are not permitted. The refund shall not  
 1679 include any interest earnings on the contributions for a member  
 1680 of the pension plan. Employer contributions made on behalf of

CS/HB 1405

2011

1681 the member are not refundable. A member may not receive a refund  
 1682 of employee contributions if a pending or an approved qualified  
 1683 domestic relations order is filed against the member's  
 1684 retirement account. By obtaining a refund of contributions, a  
 1685 member waives all rights under the Florida Retirement System and  
 1686 the health insurance subsidy provided under s. 112.363 to the  
 1687 service credit represented by the refunded contributions, except  
 1688 the right to purchase his or her prior service credit in  
 1689 accordance with s. 121.081(2).

1690 (4)

1691 (d)1. A member of the Senior Management Service Class  
 1692 shall receive retirement credit at the rate of 2 percent of  
 1693 average final compensation for each year of service in such  
 1694 class between February 1, 1987, and June 30, 2011 ~~after January~~  
 1695 ~~31, 1987.~~

1696 2. Effective on or after July 1, 2011, a member of the  
 1697 Senior Management Service Class shall receive the accrual value  
 1698 specified in s. 121.091(1)(a)3., for each year of creditable  
 1699 service in such class.

1700 (6)

1701 (d) Contributions.—

1702 1. Through June 30, 2001, each employer shall contribute  
 1703 on behalf of each participant in the Senior Management Service  
 1704 Optional Annuity Program an amount equal to the normal cost  
 1705 portion of the employer retirement contribution which would be  
 1706 required if the participant were a Senior Management Service  
 1707 Class member of the Florida Retirement System pension plan  
 1708 ~~defined benefit program~~, plus the portion of the contribution

CS/HB 1405

2011

1709 rate required in s. 112.363(8) that would otherwise be assigned  
1710 to the Retiree Health Insurance Subsidy Trust Fund. Effective  
1711 July 1, 2001, each employer shall contribute on behalf of each  
1712 participant in the optional program an amount equal to 12.49  
1713 percent of the participant's gross monthly compensation. The  
1714 department shall deduct an amount approved by the Legislature to  
1715 provide for the administration of this program. The payment of  
1716 the contributions to the optional program which is required by  
1717 this subparagraph for each participant shall be made by the  
1718 employer to the department, which shall forward the  
1719 contributions to the designated company or companies contracting  
1720 for payment of benefits for the participant under the program.

1721 2. Each employer shall contribute on behalf of each  
1722 participant in the Senior Management Service Optional Annuity  
1723 Program an amount equal to the unfunded actuarial accrued  
1724 liability portion of the employer contribution which would be  
1725 required for members of the Senior Management Service Class in  
1726 the Florida Retirement System. This contribution shall be paid  
1727 to the department for transfer to the Florida Retirement System  
1728 Trust Fund.

1729 3. An Optional Annuity Program Trust Fund shall be  
1730 established in the State Treasury and administered by the  
1731 department to make payments to provider companies on behalf of  
1732 the optional annuity program participants, and to transfer the  
1733 unfunded liability portion of the state optional annuity program  
1734 contributions to the Florida Retirement System Trust Fund.

1735 4. Contributions required for social security by each  
1736 employer and each participant, in the amount required for social

1737 security coverage as now or hereafter may be provided by the  
 1738 federal Social Security Act shall be maintained for each  
 1739 participant in the Senior Management Service retirement program  
 1740 and shall be in addition to the retirement contributions  
 1741 specified in this paragraph.

1742 5. Each participant in the Senior Management Service  
 1743 Optional Annuity Program may contribute by way of salary  
 1744 reduction or deduction a percentage amount of the participant's  
 1745 gross compensation not to exceed the percentage amount  
 1746 contributed by the employer to the optional annuity program.  
 1747 Payment of the participant's contributions shall be made by the  
 1748 employer to the department, which shall forward the  
 1749 contributions to the designated company or companies contracting  
 1750 for payment of benefits for the participant under the program.

1751 (e) Benefits.—

1752 1. Benefits under the Senior Management Service Optional  
 1753 Annuity Program are payable only to participants in the program,  
 1754 or their beneficiaries as designated by the participant in the  
 1755 contract with the provider company, and must be paid by the  
 1756 designated company in accordance with the terms of the annuity  
 1757 contract applicable to the participant. A participant must be  
 1758 terminated from all employment relationships with Florida  
 1759 Retirement System employers as provided in s. 121.021(39) to  
 1760 begin receiving the employee-funded and employer-funded benefit.  
 1761 Benefits funded by employee and employer contributions are  
 1762 payable under the terms of the contract to the participant, his  
 1763 or her beneficiary, or his or her estate, in addition to:

1764 a. A lump-sum payment to the beneficiary upon the death of

CS/HB 1405

2011

1765 the participant;

1766 b. A cash-out of a de minimis account upon the request of  
1767 a former participant who has been terminated for a minimum of 6  
1768 calendar months from the employment that entitled him or her to  
1769 optional annuity program participation. Such cash-out must be a  
1770 complete liquidation of the account balance with that company  
1771 and is subject to the Internal Revenue Code;

1772 c. A mandatory distribution of a de minimis account of a  
1773 former participant who has been terminated for a minimum of 6  
1774 calendar months from the employment that entitled him or her to  
1775 optional annuity program participation as authorized by the  
1776 department; or

1777 d. A lump-sum direct rollover distribution whereby all  
1778 accrued benefits, plus interest and investment earnings, are  
1779 paid from the participant's account directly to the custodian of  
1780 an eligible retirement plan, as defined in s. 402(c)(8)(B) of  
1781 the Internal Revenue Code, on behalf of the participant.

1782 2. Under the Senior Management Service Optional Annuity  
1783 Program, benefits are not payable for employee hardships,  
1784 unforeseeable emergencies, loans, medical expenses, educational  
1785 expenses, purchase of a principal residence, payments necessary  
1786 to prevent eviction or foreclosure on an employee's principal  
1787 residence, or any other reason prior to termination from all  
1788 employment relationships with participating employers, as  
1789 provided in s. 121.021(39).

1790 ~~3.2.~~ The benefits payable to any person under the Senior  
1791 Management Service Optional Annuity Program, and any  
1792 contribution accumulated under such program, are not subject to



1793 assignment, execution, or attachment or to any legal process  
 1794 whatsoever.

1795 ~~4.3.~~ Except as provided in subparagraph ~~5. 4.~~, a  
 1796 participant who terminates employment and receives a  
 1797 distribution, including a rollover or trustee-to-trustee  
 1798 transfer, funded by employer contributions shall be deemed to be  
 1799 retired from a state-administered retirement system if the  
 1800 participant is subsequently employed with an employer that  
 1801 participates in the Florida Retirement System.

1802 ~~5.4.~~ A participant who receives optional annuity program  
 1803 benefits funded by employee and employer contributions as a  
 1804 mandatory distribution of a de minimis account authorized by the  
 1805 department is not considered a retiree.

1806  
 1807 As used in this paragraph, a "de minimis account" means an  
 1808 account with a provider company containing employee and employer  
 1809 contributions and accumulated earnings of not more than \$5,000  
 1810 made under this chapter.

1811 Section 11. Subsections (2) and (5) and paragraph (c) of  
 1812 subsection (6) of section 121.071, Florida Statutes, are  
 1813 amended, present paragraph (d) of subsection (6) is redesignated  
 1814 as paragraph (e), and a new paragraph (d) is added to that  
 1815 subsection, to read:

1816 121.071 Contributions.—Contributions to the system shall  
 1817 be made as follows:

1818 (2) (a) Effective January 1, 1975, or October 1, 1975, as  
 1819 applicable, and through June 30, 2011, each employer shall  
 1820 accomplish the contribution required by subsection (1) by a

1821 procedure in which no employee's gross salary shall be reduced.  
 1822 Effective July 1, 2011, each employee and employer shall pay  
 1823 retirement contributions as specified in s. 121.71.

1824 (b) Upon termination of employment from all participating  
 1825 employers for 3 calendar months for any reason other than  
 1826 retirement pursuant to s. 121.021(39) (c), a member may receive  
 1827 ~~shall be entitled to a full refund of all the~~ contributions he  
 1828 or she has made to the pension ~~prior or subsequent to~~  
 1829 ~~participation in the noncontributory~~ plan, subject to the  
 1830 restrictions otherwise provided in this chapter. Partial refunds  
 1831 are not permitted. The refund shall not include any interest  
 1832 earnings on the contributions for a member of the pension plan.  
 1833 Employer contributions made on behalf of the member are not  
 1834 refundable. A member may not receive a refund of employee  
 1835 contributions if a pending or an approved qualified domestic  
 1836 relations order is filed against his or her retirement account.  
 1837 By obtaining a refund of contributions, a member waives all  
 1838 rights under the Florida Retirement System and the health  
 1839 insurance subsidy to the service credit represented by the  
 1840 refunded contributions, except the right to purchase his or her  
 1841 prior service credit in accordance with s. 121.081(2).

1842 (5) Contributions made in accordance with subsections (1),  
 1843 (2), (3), and (4), and s. 121.71 shall be paid ~~by the employer~~  
 1844 into the system trust funds in accordance with rules adopted by  
 1845 the administrator pursuant to chapter 120, except as may be  
 1846 otherwise specified herein. Effective July 1, 2002,  
 1847 contributions paid under subsections (1) and (4) and  
 1848 accompanying payroll data are due and payable no later than the

CS/HB 1405

2011

1849 5th working day of the month immediately following the month  
 1850 during which the payroll period ended.

1851 (6)

1852 (c) By obtaining a refund of contributions, a member  
 1853 waives all rights under the Florida Retirement System and the  
 1854 health insurance subsidy as provided in s. 112.363 to the  
 1855 service credit represented by the refunded contributions, except  
 1856 the right to purchase his or her prior service credit in  
 1857 accordance with s. 121.081(2).

1858 (d) If a member or former member of the pension plan  
 1859 receives an invalid refund from the Florida Retirement System  
 1860 Trust Fund, such person must repay the full amount of the  
 1861 invalid refund, plus interest at 6.5 percent compounded annually  
 1862 on each June 30 from the date of refund until full payment is  
 1863 made to the trust fund. The invalid refund must be repaid before  
 1864 the member retires or, if applicable, transfers to the  
 1865 investment plan.

1866 Section 12. Paragraphs (b) and (c) of subsection (1) and  
 1867 subsection (2) of section 121.081, Florida Statutes, are amended  
 1868 to read:

1869 121.081 Past service; prior service; contributions.—  
 1870 Conditions under which past service or prior service may be  
 1871 claimed and credited are:

1872 (1)

1873 (b) Past service earned after January 1, 1975, may be  
 1874 claimed by officers or employees of a municipality, metropolitan  
 1875 planning organization, charter school, charter technical career  
 1876 center, or special district who become a covered group under

CS/HB 1405

2011

1877 | this system. The governing body of a covered group may elect to  
1878 | provide benefits for past service earned after January 1, 1975,  
1879 | in accordance with this chapter, and the cost for such past  
1880 | service is established by applying the following formula: The  
1881 | employer shall contribute an amount equal to the employer  
1882 | contribution rate in effect at the time the service was earned  
1883 | and, if applicable, the employee contribution rate, multiplied  
1884 | by the employee's gross salary for each year of past service  
1885 | claimed, plus 6.5-percent interest thereon, compounded annually,  
1886 | figured on each year of past service, with interest compounded  
1887 | from date of annual salary earned until date of payment.

1888 |       (c) If an employer joins the Florida Retirement System  
1889 | prior to July 1, 2011, and does ~~Should the employer~~ not elect to  
1890 | provide past service for the member at the time of joining, ~~then~~  
1891 | the member may claim and pay for the service as provided in  
1892 | ~~same, based on~~ paragraphs (a) and (b).

1893 |       (2) Prior service, as defined in s. 121.021(19), may be  
1894 | claimed as creditable service under the Florida Retirement  
1895 | System after a member has been reemployed for 1 complete year of  
1896 | creditable service ~~within a period of 12 consecutive months,~~  
1897 | except as provided in paragraph (c). Service performed as a  
1898 | participant of the optional retirement program for the State  
1899 | University System under s. 121.35 or the Senior Management  
1900 | Service Optional Annuity Program under s. 121.055 may be used to  
1901 | satisfy the reemployment requirement of 1 complete year of  
1902 | creditable service. The member shall not be permitted to make  
1903 | any contributions for prior service until after completion of  
1904 | the 1 year of creditable service. If a member does not wish to

1905 claim credit for all of his or her prior service, the service  
 1906 the member claims must be the most recent period of service. The  
 1907 required contributions for claiming the various types of prior  
 1908 service are:

1909 (a) For prior service performed prior to the date the  
 1910 system becomes noncontributory for the member and for which the  
 1911 member had credit under one of the existing retirement systems  
 1912 and received a refund of contributions upon termination of  
 1913 employment, the member shall contribute 4 percent of all salary  
 1914 received during the period being claimed, plus 4-percent  
 1915 interest compounded annually from date of refund until July 1,  
 1916 1975, and 6.5-percent interest compounded annually thereafter,  
 1917 until full payment is made to the Retirement Trust Fund, and  
 1918 shall receive credit in the Regular Class. A member who elected  
 1919 to transfer to the Florida Retirement System from an existing  
 1920 system may receive credit for prior service under the existing  
 1921 system if he or she was eligible under the existing system to  
 1922 claim the prior service at the time of the transfer.

1923 Contributions for such prior service shall be determined by the  
 1924 applicable provisions of the system under which the prior  
 1925 service is claimed and shall be paid by the member, with  
 1926 matching contributions paid by the employer at the time the  
 1927 service was performed. Effective July 1, 1978, the account of a  
 1928 person who terminated under s. 238.05(3) may not be charged  
 1929 interest for contributions that remained on deposit in the  
 1930 Annuity Savings Trust Fund established under chapter 238, upon  
 1931 retirement under this chapter or chapter 238.

1932 (b) For prior service performed prior to the date the

1933 system becomes noncontributory for the member and for which the  
 1934 member had credit under the Florida Retirement System and  
 1935 received a refund of contributions upon termination of  
 1936 employment, the member shall contribute at the rate that was  
 1937 required of him or her during the period of service being  
 1938 claimed, on all salary received during such period, plus 4-  
 1939 percent interest compounded annually from date of refund until  
 1940 July 1, 1975, and 6.5-percent interest compounded annually  
 1941 thereafter, until the full payment is made to the Retirement  
 1942 Trust Fund, and shall receive credit in the membership class in  
 1943 which the member participated during the period claimed.

1944 (c) For prior service as defined in s. 121.021(19)(b) and  
 1945 (c) during which no contributions were made because the member  
 1946 did not participate in a retirement system, the member shall  
 1947 contribute 14.38 percent of all salary received during such  
 1948 period or 14.38 percent of \$100 per month during such period,  
 1949 whichever is greater, plus 4-percent interest compounded  
 1950 annually from the first year of service claimed until July 1,  
 1951 1975, and 6.5-percent interest compounded annually thereafter,  
 1952 until full payment is made to the Retirement Trust Fund, and  
 1953 shall receive credit in the Regular Class.

1954 (d) In order to claim credit for prior service as defined  
 1955 in s. 121.021(19)(d) for which no retirement contributions were  
 1956 paid during the period of such service, the member shall  
 1957 contribute the total employee and employer contributions which  
 1958 were required to be made to the Highway Patrol Pension Trust  
 1959 Fund, as provided in chapter 321, during the period claimed,  
 1960 plus 4-percent interest compounded annually from the first year

CS/HB 1405

2011

1961 of service until July 1, 1975, and 6.5-percent interest  
 1962 compounded annually thereafter, until full payment is made to  
 1963 the Retirement Trust Fund. However, any governmental entity that  
 1964 ~~which~~ employed such member may elect to pay up to 50 percent of  
 1965 the contributions and interest required to purchase the ~~this~~  
 1966 prior service credit. The service shall be credited in  
 1967 accordance with the provisions of the Highway Patrol Pension  
 1968 Plan in effect during the period claimed unless the member  
 1969 terminated and withdrew his or her retirement contributions and  
 1970 was thereafter enrolled in the State and County Officers and  
 1971 Employees' Retirement System or the Florida Retirement System,  
 1972 in which case the service shall be credited as Regular Class  
 1973 service.

1974 (e) For service performed under the Florida Retirement  
 1975 System after December 1, 1970, that was never reported to the  
 1976 division or the department due to error, retirement credit may  
 1977 be claimed by a member of the Florida Retirement System. The  
 1978 department shall adopt rules establishing criteria for claiming  
 1979 such credit and detailing the documentation required to  
 1980 substantiate the error.

1981 (f) For prior service performed on or after July 1, 2011,  
 1982 for which the member had credit under the Florida Retirement  
 1983 System and received a refund of contributions upon termination  
 1984 of employment for 3 calendar months, the member shall contribute  
 1985 at the rate that was required of him or her during the period of  
 1986 service being claimed, plus 6.5 percent interest, compounded  
 1987 annually on each June 30 from date of refund until the full  
 1988 payment is made to the Florida Retirement System Trust Fund, and

1989 shall receive credit in the membership class in which the member  
 1990 participated during the period claimed.

1991 (g)~~(f)~~ The employer may not ~~be required to~~ make  
 1992 contributions for prior service credit for any member, except  
 1993 that the employer shall pay the employer portion of  
 1994 contributions for any legislator who elects to withdraw from the  
 1995 Florida Retirement System and later rejoins the system and pays  
 1996 any employee contributions required in accordance with s.  
 1997 121.052(3)(d).

1998 Section 13. Subsection (1), paragraph (a) of subsection  
 1999 (3), paragraphs (a) and (c) of subsection (5), paragraph (d) of  
 2000 subsection (9), and paragraph (a) of subsection (13) of section  
 2001 121.091, Florida Statutes, are amended, and paragraph (1) is  
 2002 added to subsection (13) of that section, to read:

2003 121.091 Benefits payable under the system.—Benefits may  
 2004 not be paid under this section unless the member has terminated  
 2005 employment as provided in s. 121.021(39)(a) or begun  
 2006 participation in the Deferred Retirement Option Program as  
 2007 provided in subsection (13), and a proper application has been  
 2008 filed in the manner prescribed by the department. The department  
 2009 may cancel an application for retirement benefits when the  
 2010 member or beneficiary fails to timely provide the information  
 2011 and documents required by this chapter and the department's  
 2012 rules. The department shall adopt rules establishing procedures  
 2013 for application for retirement benefits and for the cancellation  
 2014 of such application when the required information or documents  
 2015 are not received.

2016 (1) NORMAL RETIREMENT BENEFIT.—Upon attaining his or her



2017 normal retirement date, the member, upon application to the  
 2018 administrator, shall receive a monthly benefit which shall begin  
 2019 to accrue on the first day of the month of retirement and be  
 2020 payable on the last day of that month and each month thereafter  
 2021 during his or her lifetime. The normal retirement benefit,  
 2022 including any past or additional retirement credit, may not  
 2023 exceed 100 percent of the average final compensation. The amount  
 2024 of monthly benefit shall be calculated as the product of A and  
 2025 B, subject to the adjustment of C, if applicable, as set forth  
 2026 below:

2027 (a)1. For creditable years of Regular Class service, A is  
 2028 1.60 percent of the member's average final compensation, up to  
 2029 the member's normal retirement date. Upon completion of the  
 2030 first year after the normal retirement date, A is 1.63 percent  
 2031 of the member's average final compensation. Following the second  
 2032 year after the normal retirement date, A is 1.65 percent of the  
 2033 member's average final compensation. Following the third year  
 2034 after the normal retirement date, and for subsequent years, A is  
 2035 1.68 percent of the member's average final compensation.

2036 2. For creditable years of special risk service, A is:

2037 a. Two percent of the member's average final compensation  
 2038 for all creditable years prior to October 1, 1974.†

2039 b. Three percent of the member's average final  
 2040 compensation for all creditable years after September 30, 1974,  
 2041 and before October 1, 1978.†

2042 c. Two percent of the member's average final compensation  
 2043 for all creditable years after September 30, 1978, and before  
 2044 January 1, 1989.†

CS/HB 1405

2011

2045 d. Two and two-tenths percent of the member's final  
 2046 monthly compensation for all creditable years after December 31,  
 2047 1988, and before January 1, 1990.~~†~~

2048 e. Two and four-tenths percent of the member's average  
 2049 final compensation for all creditable years after December 31,  
 2050 1989, and before January 1, 1991.~~†~~

2051 f. Two and six-tenths percent of the member's average  
 2052 final compensation for all creditable years after December 31,  
 2053 1990, and before January 1, 1992.~~†~~

2054 g. Two and eight-tenths percent of the member's average  
 2055 final compensation for all creditable years after December 31,  
 2056 1991, and before January 1, 1993.~~†~~

2057 h. Three percent of the member's average final  
 2058 compensation for all creditable years after December 31, 1992.~~†~~  
 2059 and

2060 i. Three percent of the member's average final  
 2061 compensation for all creditable years of service after September  
 2062 30, 1978, and before January 1, 1993, for any special risk  
 2063 member who retires after July 1, 2000, or any member of the  
 2064 Special Risk Administrative Support Class entitled to retain the  
 2065 special risk normal retirement date who was a member of the  
 2066 Special Risk Class during the time period and who retires after  
 2067 July 1, 2000.

2068 3.a. For creditable years of Senior Management Service  
 2069 Class service after January 31, 1987, and before July 1, 2011, A  
 2070 is 2 percent.

2071 b. For creditable years of Senior Management Service Class  
 2072 service after June 30, 2011, A is equal to the percentage

2073 provided in subparagraph 1. of the member's average final  
 2074 compensation.~~‡~~

2075 4.a. For creditable years of Elected Officers' Class  
 2076 service before July 1, 2011, as a Supreme Court Justice,  
 2077 district court of appeal judge, circuit judge, or county court  
 2078 judge, A is 3 1/3 percent of the member's average final  
 2079 compensation, and for all other creditable service before July  
 2080 1, 2011, in such class, A is 3 percent of average final  
 2081 compensation.

2082 b. For creditable years of Elected Officers' Class service  
 2083 after June 30, 2011, A is equal to the percentage provided in  
 2084 subparagraph 1. of the member's average final compensation.~~‡~~

2085 (b) B is the number of the member's years and any  
 2086 fractional part of a year of creditable service earned  
 2087 subsequent to November 30, 1970.~~‡~~ and

2088 (c) C is the normal retirement benefit credit brought  
 2089 forward as of November 30, 1970, by a former member of an  
 2090 existing system. Such normal retirement benefit credit shall be  
 2091 determined as the product of X and Y when X is the percentage of  
 2092 average final compensation which the member would have been  
 2093 eligible to receive if the member had attained his or her normal  
 2094 retirement date as of November 30, 1970, all in accordance with  
 2095 the existing system under which the member is covered on  
 2096 November 30, 1970, and Y is average final compensation as  
 2097 defined in s. 121.021(24). However, any member of an existing  
 2098 retirement system who is eligible to retire and who does retire,  
 2099 become disabled, or die prior to April 15, 1971, may have his or  
 2100 her retirement benefits calculated on the basis of the best 5 of

CS/HB 1405

2011

2101 the last 10 years of service.

2102 (d) A member's average final compensation shall be  
 2103 determined by formula to obtain the coverage for the 5 highest  
 2104 fiscal years' salaries, calculated as provided by rule.

2105 (3) EARLY RETIREMENT BENEFIT.—Upon retirement on his or  
 2106 her early retirement date, the member shall receive an immediate  
 2107 monthly benefit that shall begin to accrue on the first day of  
 2108 the month of the retirement date and be payable on the last day  
 2109 of that month and each month thereafter during his or her  
 2110 lifetime. Such benefit shall be calculated as follows:

2111 (a) 1. For a member initially enrolled before July 1, 2011,  
 2112 the amount of each monthly payment shall be computed in the same  
 2113 manner as for a normal retirement benefit, in accordance with  
 2114 subsection (1), but shall be based on the member's average  
 2115 monthly compensation and creditable service as of the member's  
 2116 early retirement date. The benefit so computed shall be reduced  
 2117 by five-twelfths of 1 percent for each complete month by which  
 2118 the early retirement date precedes the normal retirement date of  
 2119 age 62 for a member of the Regular Class, Senior Management  
 2120 Service Class, or the Elected Officers' Class, and age 55 for a  
 2121 member of the Special Risk Class, or age 52 if a Special Risk  
 2122 member has completed 25 years of creditable service in  
 2123 accordance with s. 121.021(29)(b)1.c. ~~121.021(29)(b)3.~~

2124 2. For a member initially enrolled on or after July 1,  
 2125 2011, the amount of each monthly payment shall be computed in  
 2126 the same manner as for a normal retirement benefit, in  
 2127 accordance with subsection (1), but shall be based on the  
 2128 member's average monthly compensation and creditable service as

2129 of the member's early retirement date. The benefit so computed  
 2130 shall be reduced by five-twelfths of 1 percent for each complete  
 2131 month by which the early retirement date precedes the normal  
 2132 retirement date of age 65 for a member of the Regular Class,  
 2133 Senior Management Service Class, or the Elected Officers' Class,  
 2134 and age 60 for a member of the Special Risk Class, or age 57 if  
 2135 a Special Risk member has completed 30 years of creditable  
 2136 service in accordance with s. 121.021(29)(b)2.c.

2137 (5) TERMINATION BENEFITS.—A member whose employment is  
 2138 terminated prior to retirement retains membership rights to  
 2139 previously earned member-noncontributory service credit, and to  
 2140 member-contributory service credit, if the member leaves the  
 2141 member contributions on deposit in his or her retirement  
 2142 account. If a terminated member receives a refund of member  
 2143 contributions, such member may reinstate membership rights to  
 2144 the previously earned service credit represented by the refund  
 2145 by completing 1 year of creditable service and repaying the  
 2146 refunded member contributions, plus interest.

2147 (a) A member whose employment is terminated for any reason  
 2148 other than death or retirement prior to becoming vested is  
 2149 entitled to the return of his or her accumulated contributions  
 2150 as of the date of termination. Effective July 1, 2011, upon  
 2151 termination of employment from all participating employers for 3  
 2152 calendar months for any reason other than retirement pursuant to  
 2153 s. 121.021(39)(c), a member may receive a refund of all  
 2154 contributions he or she has made to the pension plan, subject to  
 2155 the restrictions otherwise provided in this chapter. Partial  
 2156 refunds are not permitted. The refund shall not include any

CS/HB 1405

2011

2157 interest earnings on the contributions for a member of the  
2158 pension plan. Employer contributions made on behalf of the  
2159 member are not refundable. A member may not receive a refund of  
2160 employee contributions if a pending or an approved qualified  
2161 domestic relations order is filed against his or her retirement  
2162 account. By obtaining a refund of contributions, a member waives  
2163 all rights under the Florida Retirement System and the health  
2164 insurance subsidy to the service credit represented by the  
2165 refunded contributions, except the right to purchase his or her  
2166 prior service credit in accordance with s. 121.081(2).

2167 (c) In lieu of the deferred monthly benefit provided in  
2168 paragraph (b), the terminated member may elect to receive a  
2169 lump-sum amount equal to his or her accumulated contributions as  
2170 of the date of termination. Effective July 1, 2011, upon  
2171 termination of employment from all participating employers for 3  
2172 calendar months for any reason other than retirement pursuant to  
2173 s. 121.021(39)(c), a member may receive a refund of all  
2174 contributions he or she has made to the pension plan, subject to  
2175 the restrictions otherwise provided in this chapter. Partial  
2176 refunds are not permitted. The refund shall not include any  
2177 interest earnings on the contributions for a member of the  
2178 pension plan. Employer contributions made on behalf of the  
2179 member are not refundable. A member may not receive a refund of  
2180 employee contributions if a pending or an approved qualified  
2181 domestic relations order is filed against his or her retirement  
2182 account. By obtaining a refund of contributions, a member waives  
2183 all rights under the Florida Retirement System and the health  
2184 insurance subsidy to the service credit represented by the

2185 refunded contributions, except the right to purchase his or her  
 2186 prior service credit in accordance with s. 121.081(2).

2187 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

2188 (d) The provisions of this subsection apply to retirees,  
 2189 as defined in s. 121.4501(2), of the investment plan ~~Public~~  
 2190 ~~Employee Optional Retirement Program~~, subject to the following  
 2191 conditions:

2192 1. A retiree ~~The retirees~~ may not be reemployed with an  
 2193 employer participating in the Florida Retirement System until  
 2194 such person has been retired for 6 calendar months.

2195 2. A retiree employed in violation of this subsection and  
 2196 an employer that employs or appoints such person are jointly and  
 2197 severally liable for reimbursement of any benefits paid to the  
 2198 retirement trust fund from which the benefits were paid,  
 2199 including the Florida Retirement System Trust Fund and the  
 2200 Florida Retirement System Investment Plan ~~Public Employee~~  
 2201 ~~Optional Retirement Program~~ Trust Fund, as appropriate. The  
 2202 employer must have a written statement from the retiree that he  
 2203 or she is not retired from a state-administered retirement  
 2204 system.

2205 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and  
 2206 subject to this section, the Deferred Retirement Option Program,  
 2207 hereinafter referred to as DROP, is a program under which an  
 2208 eligible member of the Florida Retirement System may elect to  
 2209 participate, deferring receipt of retirement benefits while  
 2210 continuing employment with his or her Florida Retirement System  
 2211 employer. The deferred monthly benefits shall accrue in the  
 2212 Florida Retirement System on behalf of the participant, plus

2213 interest compounded monthly, for the specified period of the  
 2214 DROP participation, as provided in paragraph (c). Upon  
 2215 termination of employment, the participant shall receive the  
 2216 total DROP benefits and begin to receive the previously  
 2217 determined normal retirement benefits. Participation in the DROP  
 2218 does not guarantee employment for the specified period of DROP.  
 2219 Participation in DROP by an eligible member beyond the initial  
 2220 60-month period as authorized in this subsection shall be on an  
 2221 annual contractual basis for all participants.

2222 (a) Eligibility of member to participate in DROP.—All  
 2223 active Florida Retirement System members in a regularly  
 2224 established position, and all active members of the Teachers'  
 2225 Retirement System established in chapter 238 or the State and  
 2226 County Officers' and Employees' Retirement System established in  
 2227 chapter 122, which are consolidated within the Florida  
 2228 Retirement System under s. 121.011, are eligible to elect  
 2229 participation in DROP if:

2230 1. The member is not a renewed member under s. 121.122 or  
 2231 a member of the State Community College System Optional  
 2232 Retirement Program under s. 121.051, the Senior Management  
 2233 Service Optional Annuity Program under s. 121.055, or the  
 2234 optional retirement program for the State University System  
 2235 under s. 121.35.

2236 2. Except as provided in subparagraph 6., election to  
 2237 participate is made within 12 months immediately following the  
 2238 date on which the member first reaches normal retirement date,  
 2239 or, for a member who reaches normal retirement date based on  
 2240 service before he or she reaches age 62, or age 55 for Special



CS/HB 1405

2011

2241 Risk Class members, election to participate may be deferred to  
2242 the 12 months immediately following the date the member attains  
2243 age 57, or age 52 for Special Risk Class members. A member who  
2244 delays DROP participation during the 12-month period immediately  
2245 following his or her maximum DROP deferral date, except as  
2246 provided in subparagraph 6., loses a month of DROP participation  
2247 for each month delayed. A member who fails to make an election  
2248 within the 12-month limitation period forfeits all rights to  
2249 participate in DROP. The member shall advise his or her employer  
2250 and the division in writing of the date DROP begins. The  
2251 beginning date may be subsequent to the 12-month election period  
2252 but must be within the original 60-month participation period  
2253 provided in subparagraph (b)1. When establishing eligibility of  
2254 the member to participate in DROP, the member may elect to  
2255 include or exclude any optional service credit purchased by the  
2256 member from the total service used to establish the normal  
2257 retirement date. A member who has dual normal retirement dates  
2258 is eligible to elect to participate in DROP after attaining  
2259 normal retirement date in either class.

2260 3. The employer of a member electing to participate in  
2261 DROP, or employers if dually employed, shall acknowledge in  
2262 writing to the division the date the member's participation in  
2263 DROP begins and the date the member's employment and DROP  
2264 participation will terminate.

2265 4. Simultaneous employment of a participant by additional  
2266 Florida Retirement System employers subsequent to the  
2267 commencement of participation in DROP is permissible if such  
2268 employers acknowledge in writing a DROP termination date no

CS/HB 1405

2011

2269 later than the participant's existing termination date or the  
2270 maximum participation period provided in subparagraph (b)1.

2271 5. A DROP participant may change employers while  
2272 participating in DROP, subject to the following:

2273 a. A change of employment must take place without a break  
2274 in service so that the member receives salary for each month of  
2275 continuous DROP participation. If a member receives no salary  
2276 during a month, DROP participation shall cease unless the  
2277 employer verifies a continuation of the employment relationship  
2278 for such participant pursuant to s. 121.021(39)(b).

2279 b. Such participant and new employer shall notify the  
2280 division of the identity of the new employer on forms required  
2281 by the division.

2282 c. The new employer shall acknowledge, in writing, the  
2283 participant's DROP termination date, which may be extended but  
2284 not beyond the maximum participation period provided in  
2285 subparagraph (b)1., shall acknowledge liability for any  
2286 additional retirement contributions and interest required if the  
2287 participant fails to timely terminate employment, and is subject  
2288 to the adjustment required in sub-subparagraph (c)5.d.

2289 6. Effective July 1, 2001, for instructional personnel as  
2290 defined in s. 1012.01(2), election to participate in DROP may be  
2291 made at any time following the date on which the member first  
2292 reaches normal retirement date. The member shall advise his or  
2293 her employer and the division in writing of the date on which  
2294 DROP begins. When establishing eligibility of the member to  
2295 participate in DROP for the 60-month participation period  
2296 provided in subparagraph (b)1., the member may elect to include

CS/HB 1405

2011

2297 or exclude any optional service credit purchased by the member  
 2298 from the total service used to establish the normal retirement  
 2299 date. A member who has dual normal retirement dates is eligible  
 2300 to elect to participate in either class.

2301 7. The effective date of DROP participation of a DROP  
 2302 participant is prior to July 1, 2011.

2303 (1) Closure of program to new participants.-Effective July  
 2304 1, 2011, DROP is closed to new participants. Only members whose  
 2305 DROP effective date is prior to July 1, 2011, may participate in  
 2306 DROP.

2307 Section 14. Subsection (1) of section 121.121, Florida  
 2308 Statutes, is amended to read:

2309 121.121 Authorized leaves of absence.-

2310 (1) A member may purchase creditable service for up to 2  
 2311 work years of authorized leaves of absence, including any leaves  
 2312 of absence covered under the Family Medical Leave Act, if:

2313 (a) The member has completed a minimum of 6 years of  
 2314 creditable service, excluding periods for which a leave of  
 2315 absence was authorized;

2316 (b) The leave of absence is authorized in writing by the  
 2317 employer of the member and approved by the administrator;

2318 (c) The member returns to active employment performing  
 2319 service with a Florida Retirement System employer in a regularly  
 2320 established position immediately upon termination of the leave  
 2321 of absence and remains on the employer's payroll for 1 calendar  
 2322 month, except that a member who retires on disability while on a  
 2323 medical leave of absence may ~~shall~~ not be required to return to  
 2324 employment. A member whose work year is less than 12 months and

CS/HB 1405

2011

2325 whose leave of absence terminates between school years is  
 2326 eligible to receive credit for the leave of absence if ~~as long~~  
 2327 ~~as~~ he or she returns to the employment of his or her employer at  
 2328 the beginning of the next school year and remains on the  
 2329 employer's payroll for 1 calendar month; and

2330 (d) The member makes the required contributions for  
 2331 service credit during the leave of absence, which shall be 8  
 2332 percent until January 1, 1975, and 9 percent thereafter of his  
 2333 or her rate of monthly compensation in effect immediately prior  
 2334 to the commencement of such leave for each month of such period,  
 2335 plus 4 percent interest until July 1, 1975, and 6.5 percent  
 2336 interest thereafter on such contributions, compounded annually  
 2337 each June 30 from the due date of the contribution to date of  
 2338 payment. Effective July 1, 1980, any leave of absence purchased  
 2339 pursuant to this section shall be at the contribution rates  
 2340 specified in s. 121.071 or s. 121.71 in effect at the time the  
 2341 leave is granted for the class of membership from which the  
 2342 leave of absence was granted; however, any member who purchased  
 2343 leave-of-absence credit prior to July 1, 1980, for a leave of  
 2344 absence from a position in a class other than the regular  
 2345 membership class, may pay the appropriate additional  
 2346 contributions plus compound interest thereon and receive  
 2347 creditable service for such leave of absence in the membership  
 2348 class from which the member was granted the leave of absence.

2349  
 2350 Effective July 1, 2011, any leave of absence purchased by the  
 2351 member pursuant to this section shall be at the employee and  
 2352 employer contribution rates specified in s. 121.71 in effect

2353 during the leave for the class of membership from which the  
 2354 leave of absence was granted.

2355 Section 15. Section 121.125, Florida Statutes, is amended  
 2356 to read:

2357 121.125 Credit for workers' compensation payment periods.—

2358 A member of the retirement system created by this chapter who  
 2359 has been eligible or becomes eligible to receive workers'  
 2360 compensation payments for an injury or illness occurring during  
 2361 his or her employment while a member of any state retirement  
 2362 system shall, upon return to active employment with a covered  
 2363 employer for 1 calendar month or upon approval for disability  
 2364 retirement in accordance with s. 121.091(4), receive full  
 2365 retirement credit for the period prior to such return to active  
 2366 employment or disability retirement for which the workers'  
 2367 compensation payments were received. However, a ~~no~~ member may  
 2368 not receive retirement credit for any such period occurring  
 2369 after the earlier of the date of maximum medical improvement as  
 2370 defined in s. 440.02 or the date termination has occurred as  
 2371 defined in s. 121.021(39). The employer of record at the time of  
 2372 the worker's compensation injury or illness shall make the  
 2373 required employee and employer retirement contributions based on  
 2374 the member's rate of monthly compensation immediately prior to  
 2375 his or her receiving workers' compensation payments for  
 2376 retirement credit received by the member. The employer of record  
 2377 at the time of the workers' compensation injury or illness shall  
 2378 be assessed by the division a penalty of 1 percent of the  
 2379 contributions on all contributions not paid on the first payroll  
 2380 report after the member becomes eligible to receive credit. This

2381 delinquent assessment may not be waived.

2382 Section 16. Section 121.161, Florida Statutes, is  
 2383 reenacted to read:

2384 121.161 References to other laws include amendments.—  
 2385 References in this chapter to state or federal laws or  
 2386 agreements are intended to include such laws as they now exist  
 2387 or may hereafter be amended.

2388 Section 17. Paragraphs (g) and (i) of subsection (3),  
 2389 paragraph (a) of subsection (4), and subsection (5) of section  
 2390 121.35, Florida Statutes, are amended to read:

2391 121.35 Optional retirement program for the State  
 2392 University System.—

2393 (3) ELECTION OF OPTIONAL PROGRAM.—

2394 (g) An eligible employee who is a member of the Florida  
 2395 Retirement System at the time of election to participate in the  
 2396 optional retirement program shall retain all retirement service  
 2397 credit earned under the Florida Retirement System, ~~at~~ at the rate  
 2398 earned. ~~No~~ Additional service credit in the Florida Retirement  
 2399 System may not ~~shall~~ be earned while the employee participates  
 2400 in the optional program, and ~~nor shall~~ the employee is not ~~be~~  
 2401 eligible for disability retirement under the Florida Retirement  
 2402 System. An eligible employee may transfer from the Florida  
 2403 Retirement System to his or her accounts under the State  
 2404 University System Optional Retirement Program a sum representing  
 2405 the present value of the employee's accumulated benefit  
 2406 obligation under ~~the defined benefit program of~~ the Florida  
 2407 Retirement System pension plan for any service credit accrued  
 2408 from the employee's first eligible transfer date to the optional

CS/HB 1405

2011

2409 retirement program through the actual date of such transfer, if  
 2410 such service credit was earned ~~in the period~~ from July 1, 1984,  
 2411 through December 31, 1992. The present value of the employee's  
 2412 accumulated benefit obligation shall be calculated as described  
 2413 in s. 121.4501(3)~~(e)~~2. Upon ~~such~~ transfer, all ~~such~~ service  
 2414 credit ~~previously~~ earned under the ~~defined benefit program of~~  
 2415 ~~the~~ Florida Retirement System pension plan during this period is  
 2416 ~~shall be~~ nullified for purposes of entitlement to a future  
 2417 benefit under the ~~defined benefit program of the~~ Florida  
 2418 Retirement System pension plan.

2419 (i) Effective January 1, 2008, through December 31, 2008,  
 2420 except for an employee who is a mandatory participant of the  
 2421 State University System Optional Retirement Program, an employee  
 2422 who has elected to participate in the State University System  
 2423 Optional Retirement Program shall have one opportunity, at the  
 2424 employee's discretion, to choose to transfer from this program  
 2425 to the ~~defined benefit program of the~~ Florida Retirement System  
 2426 pension plan or to the investment plan ~~Public Employee Optional~~  
 2427 ~~Retirement Program~~, subject to the terms of the applicable  
 2428 contracts of the State University System Optional Retirement  
 2429 Program.

2430 1. If the employee chooses to move to the investment plan  
 2431 ~~Public Employee Optional Retirement Program~~, any contributions,  
 2432 interest, and earnings creditable to the employee under the  
 2433 State University System Optional Retirement Program must ~~shall~~  
 2434 be retained by the employee in the State University System  
 2435 Optional Retirement Program, and the applicable provisions of s.  
 2436 121.4501(4) shall govern the election.

2437           2. If the employee chooses to move to the pension plan  
 2438 ~~defined benefit program~~ of the Florida Retirement System, the  
 2439 employee shall receive service credit equal to his or her years  
 2440 of service under the State University System Optional Retirement  
 2441 Program.

2442           a. The cost for such credit must be in ~~shall be~~ an amount  
 2443 representing the actuarial accrued liability for the affected  
 2444 period of service. The cost must ~~shall~~ be calculated using the  
 2445 discount rate and other relevant actuarial assumptions that were  
 2446 used to value the Florida Retirement System pension ~~defined~~  
 2447 ~~benefit~~ plan liabilities in the most recent actuarial valuation.  
 2448 The calculation must ~~shall~~ include any service already  
 2449 maintained under the pension ~~defined benefit~~ plan in addition to  
 2450 the years under the State University System Optional Retirement  
 2451 Program. The actuarial accrued liability of any service already  
 2452 maintained under the pension ~~defined benefit~~ plan must ~~shall~~ be  
 2453 applied as a credit to total cost resulting from the  
 2454 calculation. The division must ~~shall~~ ensure that the transfer  
 2455 sum is prepared using a formula and methodology certified by an  
 2456 enrolled actuary.

2457           b. The employee must transfer from his or her State  
 2458 University System Optional Retirement Program account, and from  
 2459 other employee moneys as necessary, a sum representing the  
 2460 actuarial accrued liability immediately following the time of  
 2461 such movement, determined assuming that attained service equals  
 2462 the sum of service in the pension plan ~~defined benefit program~~  
 2463 and service in the State University System Optional Retirement  
 2464 Program.



2465 (4) CONTRIBUTIONS.—  
 2466 (a) Through June 30, 2001, each employer shall contribute  
 2467 on behalf of each participant in the optional retirement program  
 2468 an amount equal to the normal cost portion of the employer  
 2469 retirement contribution which would be required if the  
 2470 participant were a regular member of the Florida Retirement  
 2471 System pension plan ~~defined benefit program~~, plus the portion of  
 2472 the contribution rate required in s. 112.363(8) that would  
 2473 otherwise be assigned to the Retiree Health Insurance Subsidy  
 2474 Trust Fund. Effective July 1, 2001, each employer shall  
 2475 contribute on behalf of each participant in the optional program  
 2476 an amount equal to 10.43 percent of the participant's gross  
 2477 monthly compensation. The department shall deduct an amount  
 2478 approved by the Legislature to provide for the administration of  
 2479 this program. The payment of the contributions to the optional  
 2480 program which is required by this paragraph for each participant  
 2481 shall be made by the employer to the department, which shall  
 2482 forward the contributions to the designated company or companies  
 2483 contracting for payment of benefits for the participant under  
 2484 the program. However, such contributions paid on behalf of an  
 2485 employee described in paragraph (3)(c) shall not be forwarded to  
 2486 a company and shall not begin to accrue interest until the  
 2487 employee has executed a contract and notified the department.

2488 (5) BENEFITS.—  
 2489 (a) Benefits are payable under the optional retirement  
 2490 program only to vested participants in the program, or their  
 2491 beneficiaries as designated by the participant in the contract  
 2492 with a provider company, and such benefits shall be paid only by

CS/HB 1405

2011

2493 the designated company in accordance with s. 403(b) of the  
2494 Internal Revenue Code and the terms of the annuity contract or  
2495 contracts applicable to the participant. Benefits accrue in  
2496 individual accounts that are participant-directed, portable, and  
2497 funded by employer contributions and the earnings thereon. The  
2498 participant must be terminated for 3 calendar months from all  
2499 employment relationships with all Florida Retirement System  
2500 employers, as provided in s. 121.021(39), to begin receiving the  
2501 employer-funded benefit. Benefits funded by employer  
2502 contributions are payable in accordance with the following terms  
2503 and conditions:

2504 1. Benefits shall be paid only to a participant, to his or  
2505 her beneficiaries, or to his or her estate, as designated by the  
2506 participant.

2507 2. Benefits shall be paid by the provider company or  
2508 companies in accordance with the law, the provisions of the  
2509 contract, and any applicable department rule or policy.

2510 3. In the event of a participant's death, moneys  
2511 accumulated by, or on behalf of, the participant, less  
2512 withholding taxes remitted to the Internal Revenue Service, if  
2513 any, shall be distributed to the participant's designated  
2514 beneficiary or beneficiaries, or to the participant's estate, as  
2515 if the participant retired on the date of death, as provided in  
2516 paragraph (d) ~~(e)~~. No other death benefits are available to  
2517 survivors of participants under the optional retirement program  
2518 except for such benefits, or coverage for such benefits, as are  
2519 separately afforded by the employer, at the employer's  
2520 discretion.

2521        (b) Under the optional retirement program, benefits are  
 2522 not payable for employee hardships, unforeseeable emergencies,  
 2523 loans, medical expenses, educational expenses, purchase of a  
 2524 principal residence, payments necessary to prevent eviction or  
 2525 foreclosure on an employee's principal residence, or any other  
 2526 reason prior to termination from all employment relationships  
 2527 with participating employers, as provided in s. 121.021(39).

2528        (c)~~(b)~~ Upon receipt by the provider company of a properly  
 2529 executed application for distribution of benefits, the total  
 2530 accumulated benefit shall be payable to the participant, as:

- 2531            1. A lump-sum distribution to the participant;
- 2532            2. A lump-sum direct rollover distribution whereby all  
 2533 accrued benefits, plus interest and investment earnings, are  
 2534 paid from the participant's account directly to an eligible  
 2535 retirement plan, as defined in s. 402(c)(8)(B) of the Internal  
 2536 Revenue Code, on behalf of the participant;
- 2537            3. Periodic distributions;
- 2538            4. A partial lump-sum payment whereby a portion of the  
 2539 accrued benefit is paid to the participant and the remaining  
 2540 amount is transferred to an eligible retirement plan, as defined  
 2541 in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of  
 2542 the participant; or
- 2543            5. Such other distribution options as are provided for in  
 2544 the participant's optional retirement program contract.

2545        (d)~~(e)~~ Survivor benefits shall be payable as:

- 2546            1. A lump-sum distribution payable to the beneficiaries or  
 2547 to the deceased participant's estate;
- 2548            2. An eligible rollover distribution on behalf of the

CS/HB 1405

2011

2549 surviving spouse of a deceased participant, whereby all accrued  
 2550 benefits, plus interest and investment earnings, are paid from  
 2551 the deceased participant's account directly to an eligible  
 2552 retirement plan, as described in s. 402(c)(8)(B) of the Internal  
 2553 Revenue Code, on behalf of the surviving spouse;

2554 3. Such other distribution options as are provided for in  
 2555 the participant's optional retirement program contract; or

2556 4. A partial lump-sum payment whereby a portion of the  
 2557 accrued benefit is paid to the deceased participant's surviving  
 2558 spouse or other designated beneficiaries, less withholding taxes  
 2559 remitted to the Internal Revenue Service, if any, and the  
 2560 remaining amount is transferred directly to an eligible  
 2561 retirement plan, as described in s. 402(c)(8)(B) of the Internal  
 2562 Revenue Code, on behalf of the surviving spouse. The proportions  
 2563 must be specified by the participant or the surviving  
 2564 beneficiary.

2565  
 2566 This paragraph does not abrogate other applicable provisions of  
 2567 state or federal law providing payment of death benefits.

2568 (e)~~(d)~~ The benefits payable to any person under the  
 2569 optional retirement program, and any contribution accumulated  
 2570 under such program, shall not be subject to assignment,  
 2571 execution, or attachment or to any legal process whatsoever.

2572 (f)~~(e)~~ A participant who chooses to receive his or her  
 2573 benefits must be terminated for 3 calendar months to be eligible  
 2574 to receive benefits funded by employer contributions. A  
 2575 participant upon termination as defined in s. 121.021 must  
 2576 notify the provider company of the date he or she wishes

CS/HB 1405

2011

2577 benefits funded by required employee and employer contributions  
 2578 to begin and must meet termination as defined in s. 121.021  
 2579 after the initial benefit payment or distribution. Benefits may  
 2580 be deferred until the participant chooses to make such  
 2581 application.

2582 (g)~~(f)~~ Benefits funded by the participant's voluntary  
 2583 personal contributions may be paid out at any time and in any  
 2584 form within the limits provided in the contract between the  
 2585 participant and his or her provider company. The participant  
 2586 shall notify the provider company regarding the date and  
 2587 provisions under which he or she wants to receive the employee-  
 2588 funded portion of the plan.

2589 (h)~~(g)~~ For purposes of this section, "retiree" means a  
 2590 former participant of the optional retirement program who has  
 2591 terminated employment and has taken a distribution as provided  
 2592 in this subsection, except for a mandatory distribution of a de  
 2593 minimis account authorized by the department.

2594 Section 18. Section 121.4501, Florida Statutes, is amended  
 2595 to read:

2596 121.4501 Florida Retirement System Investment Plan ~~Public~~  
 2597 ~~Employee Optional Retirement Program.~~

2598 (1) The Trustees of the State Board of Administration  
 2599 shall establish a ~~an optional~~ defined contribution ~~retirement~~  
 2600 program called the "Florida Retirement System Investment Plan"  
 2601 or "investment plan" for members of the Florida Retirement  
 2602 System under which retirement benefits will be provided for  
 2603 eligible employees who elect to participate in the program. The  
 2604 retirement benefits ~~to be provided for or on behalf of~~

2605 ~~participants in such optional retirement program~~ shall be  
 2606 provided through member-directed ~~employee-directed~~ investments,  
 2607 in accordance with s. 401(a) of the Internal Revenue Code and  
 2608 ~~its~~ related regulations. The employer and members ~~employers~~  
 2609 shall make contributions ~~contribute~~, as provided in this section  
 2610 and, ss. 121.571~~7~~ and 121.71~~7~~, to the Florida Retirement System  
 2611 Investment Plan ~~Public Employee Optional Retirement Program~~  
 2612 Trust Fund toward the funding of ~~such optional~~ benefits.

2613 (2) DEFINITIONS.—As used in this part, the term:

2614 (a) "Approved provider" or "provider" means a private  
 2615 sector company that is selected and approved by the state board  
 2616 to offer one or more investment products or services to the  
 2617 investment plan ~~optional retirement program~~. The term includes a  
 2618 bundled provider that offers members ~~participants~~ a range of  
 2619 individually allocated or unallocated investment products and  
 2620 may offer a range of administrative and customer services, which  
 2621 may include accounting and administration of individual member  
 2622 ~~participant~~ benefits and contributions; individual member  
 2623 ~~participant~~ recordkeeping; asset purchase, control, and  
 2624 safekeeping; direct execution of the member's ~~participant's~~  
 2625 instructions as to asset and contribution allocation;  
 2626 calculation of daily net asset values; direct access to member  
 2627 ~~participant~~ account information; periodic reporting to members  
 2628 ~~participants~~, at least quarterly, on account balances and  
 2629 transactions; guidance, advice, and allocation services directly  
 2630 relating to the provider's own investment options or products,  
 2631 but only if the bundled provider complies with the standard of  
 2632 care of s. 404(a)(1)(A-B) of the Employee Retirement Income

2633 Security Act of 1974 (ERISA), and if providing such guidance,  
 2634 advice, or allocation services does not constitute a prohibited  
 2635 transaction under s. 4975(c)(1) of the Internal Revenue Code or  
 2636 s. 406 of ERISA, notwithstanding that such prohibited  
 2637 transaction provisions do not apply to the ~~optional~~ retirement  
 2638 program; a broad array of distribution options; asset  
 2639 allocation; and retirement counseling and education. Private  
 2640 sector companies include investment management companies,  
 2641 insurance companies, depositories, and mutual fund companies.

2642 (b) "Average monthly compensation" means one-twelfth of  
 2643 average final compensation as defined in s. 121.021.

2644 (c) "Covered employment" means employment in a regularly  
 2645 established position as defined in s. 121.021.

2646 (d)~~(e)~~ "Division" means the Division of Retirement within  
 2647 the department.

2648 (e)~~(f)~~ "Electronic means" means by telephone, if the  
 2649 required information is received on a recorded line, or through  
 2650 Internet access, if the required information is captured online.

2651 (f)~~(g)~~ "Eligible employee" means an officer or employee,  
 2652 as defined in s. 121.021, who:

2653 1. Is a member of, or is eligible for membership in, the  
 2654 Florida Retirement System, including any renewed member of the  
 2655 Florida Retirement System initially enrolled before July 1,  
 2656 2010; or

2657 2. Participates in, or is eligible to participate in, the  
 2658 Senior Management Service Optional Annuity Program as  
 2659 established under s. 121.055(6), the State Community College  
 2660 System Optional Retirement Program as established under s.

2661 121.051(2)(c), or the State University System Optional  
 2662 Retirement Program established under s. 121.35.

2663  
 2664 The term does not include any member participating in the  
 2665 Deferred Retirement Option Program established under s.  
 2666 121.091(13), a retiree of a state-administered retirement system  
 2667 initially reemployed on or after July 1, 2010, or a mandatory  
 2668 participant of the State University System Optional Retirement  
 2669 Program established under s. 121.35.

2670 (g)~~(h)~~ "Employer" means an employer, as defined in s.  
 2671 121.021, of an eligible employee.

2672 (h)~~(i)~~ "Florida Retirement System Investment Plan" or  
 2673 "investment plan" "Optional retirement program" or "optional  
 2674 program" means the defined contribution program ~~Public Employee~~  
 2675 ~~Optional Retirement Program~~ established under this part.

2676 (i)~~(d)~~ "Florida Retirement System Pension Plan" or  
 2677 "pension plan" means the defined benefit program of the Florida  
 2678 Retirement System administered under part I of this chapter.  
 2679 ~~"Defined benefit program" means the defined benefit program of~~  
 2680 ~~the Florida Retirement System administered under part I of this~~  
 2681 ~~chapter.~~

2682 (j) "Participant," "member," or "employee" means an  
 2683 eligible employee who enrolls in the investment plan ~~optional~~  
 2684 ~~program~~ as provided in subsection (4), ~~or~~ a terminated Deferred  
 2685 Retirement Option Program member ~~participant~~ as described in  
 2686 subsection (21), or a beneficiary or alternate payee.

2687 (k) "Participant contributions," "member contributions,"  
 2688 or "employee contributions" mean the sum of all amounts deducted



2689 from the salary of a member by his or her employer in accordance  
 2690 with s. 121.71(2) and credited to his or her individual account  
 2691 in the investment plan, plus any earnings on such amounts and  
 2692 any contributions specified in paragraph (5) (e).

2693 (1)(k) "Retiree" means a former member participant of the  
 2694 investment plan optional retirement program who has terminated  
 2695 employment and ~~has~~ taken any a distribution of vested employee  
 2696 or employer contributions as provided in s. 121.591, except for  
 2697 a mandatory distribution of a de minimis account authorized by  
 2698 the state board or a minimum required distribution provided by  
 2699 s. 401(a) (9) of the Internal Revenue Code.

2700 (m)(l) "Vested" or "vesting" means the guarantee that a  
 2701 member participant is eligible to receive a retirement benefit  
 2702 upon completion of the required years of service under the  
 2703 investment plan optional retirement program.

2704 (3) ~~ELIGIBILITY; RETIREMENT SERVICE CREDIT; TRANSFER OF~~  
 2705 BENEFITS.—

2706 ~~(a) Participation in the Public Employee Optional~~  
 2707 ~~Retirement Program is limited to eligible employees.~~  
 2708 ~~Participation in the optional retirement program is in lieu of~~  
 2709 ~~participation in the defined benefit program of the Florida~~  
 2710 ~~Retirement System.~~

2711 (a)(b) An eligible employee who is employed in a regularly  
 2712 established position by a state employer on June 1, 2002; by a  
 2713 district school board employer on September 1, 2002; or by a  
 2714 local employer on December 1, 2002, and who is a member of the  
 2715 pension plan defined benefit retirement program of the Florida  
 2716 Retirement System at the time of his or her election to

CS/HB 1405

2011

2717 participate in the investment plan ~~Public Employee Optional~~  
2718 ~~Retirement Program~~ shall retain all retirement service credit  
2719 earned under the pension plan ~~defined benefit retirement program~~  
2720 ~~of the Florida Retirement System~~ as credited under the system  
2721 and is ~~shall be~~ entitled to a deferred benefit upon termination,  
2722 ~~if eligible under the system.~~ However, election to participate  
2723 in the investment plan ~~Public Employee Optional Retirement~~  
2724 ~~Program~~ terminates the active membership of the employee in the  
2725 pension plan ~~defined benefit program of the Florida Retirement~~  
2726 ~~System,~~ and the service of a member participant in the  
2727 investment plan ~~is Public Employee Optional Retirement Program~~  
2728 ~~shall not be~~ creditable under the pension plan ~~defined benefit~~  
2729 ~~retirement program of the Florida Retirement System~~ for purposes  
2730 of benefit accrual but is creditable ~~shall be credited~~ for  
2731 purposes of vesting.

2732 (b)(c)1. Notwithstanding paragraph (a), ~~an (b),~~ each  
2733 eligible employee who elects to participate in the investment  
2734 plan ~~Public Employee Optional Retirement Program~~ and establishes  
2735 one or more individual member participant accounts ~~under the~~  
2736 ~~optional program~~ may elect to transfer to the investment plan  
2737 ~~optional program~~ a sum representing the present value of the  
2738 employee's accumulated benefit obligation under the pension plan  
2739 ~~defined benefit retirement program of the Florida Retirement~~  
2740 ~~System.~~ Upon ~~such~~ transfer, all service credit ~~previously~~ earned  
2741 under the pension plan ~~is defined benefit program of the Florida~~  
2742 ~~Retirement System shall be~~ nullified for purposes of entitlement  
2743 to a future benefit under the pension plan ~~defined benefit~~  
2744 ~~program of the Florida Retirement System.~~ A member may not

2745 ~~transfer participant is precluded from transferring the~~  
 2746 accumulated benefit obligation balance from the pension plan  
 2747 ~~after the time defined benefit program upon the expiration of~~  
 2748 ~~the period for enrolling afforded to enroll in the investment~~  
 2749 plan has expired optional program.

2750 ~~1.2.~~ For purposes of this subsection, the present value of  
 2751 the member's accumulated benefit obligation is based upon the  
 2752 member's estimated creditable service and estimated average  
 2753 final compensation under the pension plan ~~defined benefit~~  
 2754 ~~program~~, subject to recomputation under subparagraph ~~2. 3.~~ For  
 2755 state employees ~~enrolling under subparagraph (4)(a)1.~~, initial  
 2756 estimates shall ~~will~~ be based upon creditable service and  
 2757 average final compensation as of midnight on June 30, 2002; for  
 2758 district school board employees ~~enrolling under subparagraph~~  
 2759 ~~(4)(b)1.~~, initial estimates shall ~~will~~ be based upon creditable  
 2760 service and average final compensation as of midnight on  
 2761 September 30, 2002; and for local government employees ~~enrolling~~  
 2762 ~~under subparagraph (4)(c)1.~~, initial estimates shall ~~will~~ be  
 2763 based upon creditable service and average final compensation as  
 2764 of midnight on December 31, 2002. The dates ~~respectively~~  
 2765 specified are above ~~shall be construed as~~ the "estimate date"  
 2766 for these employees. The actuarial present value of the  
 2767 employee's accumulated benefit obligation shall be based on the  
 2768 following:

2769 a. The discount rate and other relevant actuarial  
 2770 assumptions used to value the Florida Retirement System Trust  
 2771 Fund at the time the amount to be transferred is determined,  
 2772 consistent with the factors provided in sub-subparagraphs b. and

CS/HB 1405

2011

2773 c.

2774 b. A benefit commencement age, based on the member's

2775 estimated creditable service as of the estimate date.

2776 (I) For a member initially enrolled before July 1, 2011,

2777 the benefit commencement age is ~~shall be~~ the younger of the

2778 following, but may ~~shall~~ not be younger than the member's age as

2779 of the estimate date:

2780 (A) ~~(I)~~ Age 62; or

2781 (B) ~~(II)~~ The age the member would attain if the member

2782 completed 30 years of service with an employer, assuming the

2783 member worked continuously from the estimate date, and

2784 disregarding any vesting requirement that would otherwise apply

2785 under the pension plan defined benefit program of the Florida

2786 Retirement System.

2787 (II) For a member initially enrolled on or after July 1,

2788 2011, the benefit commencement age is the younger of the

2789 following, but may not be younger than the member's age as of

2790 the estimate date:

2791 (A) Age 65; or

2792 (B) The age the member would attain if the member

2793 completed 33 years of service with an employer, assuming the

2794 member worked continuously from the estimate date, and

2795 disregarding any vesting requirement that would otherwise apply

2796 under the pension plan.

2797 c. (I) For members of the Special Risk Class and for

2798 members of the Special Risk Administrative Support Class

2799 entitled to retain the special risk normal retirement date,

2800 initially enrolled before July 1, 2011, the benefit commencement

CS/HB 1405

2011

2801 age is ~~shall be~~ the younger of the following, but may ~~shall~~ not  
 2802 be younger than the member's age as of the estimate date:

2803 (A) ~~(I)~~ Age 55; or

2804 (B) ~~(II)~~ The age the member would attain if the member  
 2805 completed 25 years of service with an employer, assuming the  
 2806 member worked continuously from the estimate date, and  
 2807 disregarding any vesting requirement that would otherwise apply  
 2808 under the pension plan ~~defined benefit program of the Florida~~  
 2809 ~~Retirement System.~~

2810 (II) For members of the Special Risk Class and for members  
 2811 of the Special Risk Administrative Support Class entitled to  
 2812 retain the special risk normal retirement date, initially  
 2813 enrolled on or after July 1, 2011, the benefit commencement age  
 2814 is the younger of the following, but may not be younger than the  
 2815 member's age as of the estimate date:

2816 (A) Age 60; or

2817 (B) The age the member would attain if the member  
 2818 completed 30 years of service with an employer, assuming the  
 2819 member worked continuously from the estimate date, and  
 2820 disregarding any vesting requirement that would otherwise apply  
 2821 under the pension plan.

2822 d. The calculation must ~~shall~~ disregard vesting  
 2823 requirements and early retirement reduction factors that would  
 2824 otherwise apply under the pension plan ~~defined benefit~~  
 2825 ~~retirement program.~~

2826 2.3. For each member participant who elects to transfer  
 2827 moneys from the pension plan ~~defined benefit program~~ to his or  
 2828 her account in the investment plan ~~optional program~~, the

2829 division shall recompute the amount transferred under  
 2830 subparagraph 1. within 2. not later than 60 days after the  
 2831 actual transfer of funds based upon the member's participant's  
 2832 actual creditable service and actual final average compensation  
 2833 as of the initial date of participation in the investment plan  
 2834 ~~optional program~~. If the recomputed amount differs from the  
 2835 amount transferred ~~under subparagraph 2.~~ by \$10 or more, the  
 2836 division shall:

2837       a. Transfer, or cause to be transferred, from the Florida  
 2838 Retirement System Trust Fund to the member's participant's  
 2839 account ~~in the optional program~~ the excess, if any, of the  
 2840 recomputed amount over the previously transferred amount  
 2841 together with interest from the initial date of transfer to the  
 2842 date of transfer under this subparagraph, based upon the  
 2843 effective annual interest equal to the assumed return on the  
 2844 actuarial investment which was used in the most recent actuarial  
 2845 valuation of the system, compounded annually.

2846       b. Transfer, or cause to be transferred, from the member's  
 2847 ~~participant's~~ account to the Florida Retirement System Trust  
 2848 Fund the excess, if any, of the previously transferred amount  
 2849 over the recomputed amount, together with interest from the  
 2850 initial date of transfer to the date of transfer under this  
 2851 subparagraph, based upon 6 percent effective annual interest,  
 2852 compounded annually, pro rata based on the member's  
 2853 ~~participant's~~ allocation plan.

2854       3. If contribution adjustments are made as a result of  
 2855 employer errors or corrections, including plan corrections,  
 2856 following recomputation of the amount transferred under

2857 subparagraph 1., the member is entitled to the additional  
 2858 contributions or is responsible for returning any excess  
 2859 contributions resulting from the correction. However, any return  
 2860 of such erroneous excess pretax contribution by the plan must be  
 2861 made within the period allowed by the Internal Revenue Service.  
 2862 The present value of the member's accumulated benefit obligation  
 2863 shall not be recalculated.

2864 4. As directed by the member participant, the state board  
 2865 shall transfer or cause to be transferred the appropriate  
 2866 amounts to the designated accounts within. ~~The board shall~~  
 2867 ~~establish transfer procedures by rule, but the actual transfer~~  
 2868 ~~shall not be later than 30 days after the effective date of the~~  
 2869 ~~member's participation in the investment plan optional program~~  
 2870 unless the major financial markets for securities available for  
 2871 a transfer are seriously disrupted by an unforeseen event that  
 2872 ~~which also~~ causes the suspension of trading on any national  
 2873 securities exchange in the country where the securities were  
 2874 issued. In that event, the ~~such~~ 30-day period ~~of time~~ may be  
 2875 extended by a resolution of the state board ~~trustees~~. Transfers  
 2876 are not commissionable or subject to other fees and may be in  
 2877 the form of securities or cash, as determined by the state  
 2878 board. Such securities are ~~shall be~~ valued as of the date of  
 2879 receipt in the member's ~~participant's~~ account.

2880 5. If the state board or the division receives  
 2881 notification from the United States Internal Revenue Service  
 2882 that this paragraph or any portion of this paragraph will cause  
 2883 the retirement system, or a portion thereof, to be disqualified  
 2884 for tax purposes under the Internal Revenue Code, ~~then~~ the

2885 | portion that will cause the disqualification does not apply.  
 2886 | Upon such notice, the state board and the division shall notify  
 2887 | the presiding officers of the Legislature.

2888 | (4) PARTICIPATION; ENROLLMENT.—

2889 | (a)1. With respect to an eligible employee who is employed  
 2890 | in a regularly established position on June 1, 2002, by a state  
 2891 | employer:

2892 | a. Any such employee may elect to participate in the  
 2893 | investment plan ~~Public Employee Optional Retirement Program~~ in  
 2894 | lieu of retaining his or her membership in the pension plan  
 2895 | ~~defined benefit program of the Florida Retirement System~~. The  
 2896 | election must be made in writing or by electronic means and must  
 2897 | be filed with the third-party administrator by August 31, 2002,  
 2898 | or, in the case of an active employee who is on a leave of  
 2899 | absence on April 1, 2002, by the last business day of the 5th  
 2900 | month following the month the leave of absence concludes. This  
 2901 | election is irrevocable, except as provided in paragraph (g)  
 2902 | ~~(e)~~. Upon making such election, the employee shall be enrolled  
 2903 | as a member participant of the investment plan ~~Public Employee~~  
 2904 | ~~Optional Retirement Program~~, the employee's membership in the  
 2905 | Florida Retirement System shall be governed by the provisions of  
 2906 | this part, and the employee's membership in the pension plan  
 2907 | ~~defined benefit program of the Florida Retirement System~~ shall  
 2908 | terminate. The employee's enrollment in the investment plan  
 2909 | ~~Public Employee Optional Retirement Program~~ shall be effective  
 2910 | the first day of the month for which a full month's employer  
 2911 | contribution is made to the investment plan ~~optional program~~.

2912 | b. Any such employee who fails to elect to participate in



2913 the investment plan ~~Public Employee Optional Retirement Program~~  
 2914 within the prescribed time period is deemed to have elected to  
 2915 retain membership in the pension plan ~~defined benefit program of~~  
 2916 ~~the Florida Retirement System~~, and the employee's option to  
 2917 elect to participate in the investment plan ~~optional program~~ is  
 2918 forfeited.

2919 2. With respect to employees who become eligible to  
 2920 participate in the investment plan ~~Public Employee Optional~~  
 2921 ~~Retirement Program~~ by reason of employment in a regularly  
 2922 established position with a state employer commencing after  
 2923 April 1, 2002:

2924 a. Any such employee shall, by default, be enrolled in the  
 2925 pension plan ~~defined benefit retirement program of the Florida~~  
 2926 ~~Retirement System~~ at the commencement of employment, and may, by  
 2927 the last business day of the 5th month following the employee's  
 2928 month of hire, elect to participate in the investment plan  
 2929 ~~Public Employee Optional Retirement Program~~. The employee's  
 2930 election must be made in writing or by electronic means and must  
 2931 be filed with the third-party administrator. The election to  
 2932 participate in the investment plan ~~optional program~~ is  
 2933 irrevocable, except as provided in paragraph (g) ~~(e)~~.

2934 b. If the employee files such election within the  
 2935 prescribed time period, enrollment in the investment plan is  
 2936 ~~optional program shall be~~ effective on the first day of  
 2937 employment. The ~~employer~~ retirement contributions paid through  
 2938 the month of the employee plan change shall be transferred to  
 2939 the investment ~~optional~~ program, and, effective the first day of  
 2940 the next month, the employer and participant must ~~shall~~ pay the

2941 applicable contributions based on the employee membership class  
 2942 in the ~~optional~~ program.

2943 c. An ~~Any such~~ employee who fails to elect to participate  
 2944 in the investment plan ~~Public Employee Optional Retirement~~  
 2945 ~~Program~~ within the prescribed time period is deemed to have  
 2946 elected to retain membership in the pension plan ~~defined benefit~~  
 2947 ~~program of the Florida Retirement System~~, and the employee's  
 2948 option to elect to participate in the investment plan ~~optional~~  
 2949 ~~program~~ is forfeited.

2950 3. With respect to employees who become eligible to  
 2951 participate in the investment plan ~~Public Employee Optional~~  
 2952 ~~Retirement Program~~ pursuant to s. 121.051(2)(c)3. or s.  
 2953 121.35(3)(i), the any such employee may elect to participate in  
 2954 the investment plan ~~Public Employee Optional Retirement Program~~  
 2955 in lieu of retaining his or her membership ~~participation~~ in the  
 2956 State Community College System Optional Retirement Program or  
 2957 the State University System Optional Retirement Program. The  
 2958 election must be made in writing or by electronic means and must  
 2959 be filed with the third-party administrator. This election is  
 2960 irrevocable, except as provided in paragraph (g) ~~(e)~~. Upon  
 2961 making such election, the employee shall be enrolled as a member  
 2962 ~~in participant of~~ the investment plan ~~Public Employee Optional~~  
 2963 ~~Retirement Program~~, the employee's membership in the Florida  
 2964 Retirement System shall be governed by the provisions of this  
 2965 part, and the employee's participation in the State Community  
 2966 College System Optional Retirement Program or the State  
 2967 University System Optional Retirement Program shall terminate.  
 2968 The employee's enrollment in the investment plan ~~is Public~~

2969 ~~Employee Optional Retirement Program shall be effective on the~~  
 2970 first day of the month for which a full month's employer and  
 2971 employee contribution is made to the investment plan ~~optional~~  
 2972 ~~program.~~

2973 4. For purposes of this paragraph, "state employer" means  
 2974 any agency, board, branch, commission, community college,  
 2975 department, institution, institution of higher education, or  
 2976 water management district of the state, which participates in  
 2977 the Florida Retirement System for the benefit of certain  
 2978 employees.

2979 (b)1. With respect to an eligible employee who is employed  
 2980 in a regularly established position on September 1, 2002, by a  
 2981 district school board employer:

2982 a. Any such employee may elect to participate in the  
 2983 investment plan ~~Public Employee Optional Retirement Program~~ in  
 2984 lieu of retaining his or her membership in the pension plan  
 2985 ~~defined benefit program of the Florida Retirement System~~. The  
 2986 election must be made in writing or by electronic means and must  
 2987 be filed with the third-party administrator by November 30, or,  
 2988 in the case of an active employee who is on a leave of absence  
 2989 on July 1, 2002, by the last business day of the 5th month  
 2990 following the month the leave of absence concludes. This  
 2991 election is irrevocable, except as provided in paragraph (g)  
 2992 ~~(e)~~. Upon making such election, the employee shall be enrolled  
 2993 as a member ~~participant~~ of the investment plan ~~Public Employee~~  
 2994 ~~Optional Retirement Program~~, the employee's membership in the  
 2995 Florida Retirement System shall be governed by the provisions of  
 2996 this part, and the employee's membership in the pension plan

2997 ~~defined benefit program of the Florida Retirement System~~ shall  
 2998 terminate. The employee's enrollment in the investment plan  
 2999 ~~Public Employee Optional Retirement Program~~ shall be effective  
 3000 the first day of the month for which a full month's employer  
 3001 contribution is made to the investment ~~optional~~ program.

3002 b. Any such employee who fails to elect to participate in  
 3003 the investment plan ~~Public Employee Optional Retirement Program~~  
 3004 within the prescribed time period is deemed to have elected to  
 3005 retain membership in the pension plan ~~defined benefit program of~~  
 3006 ~~the Florida Retirement System~~, and the employee's option to  
 3007 elect to participate in the investment plan ~~optional program~~ is  
 3008 forfeited.

3009 2. With respect to employees who become eligible to  
 3010 participate in the investment plan ~~Public Employee Optional~~  
 3011 ~~Retirement Program~~ by reason of employment in a regularly  
 3012 established position with a district school board employer  
 3013 commencing after July 1, 2002:

3014 a. Any such employee shall, by default, be enrolled in the  
 3015 pension plan ~~defined benefit retirement program of the Florida~~  
 3016 ~~Retirement System~~ at the commencement of employment, and may, by  
 3017 the last business day of the 5th month following the employee's  
 3018 month of hire, elect to participate in the investment plan  
 3019 ~~Public Employee Optional Retirement Program~~. The employee's  
 3020 election must be made in writing or by electronic means and must  
 3021 be filed with the third-party administrator. The election to  
 3022 participate in the investment plan ~~optional program~~ is  
 3023 irrevocable, except as provided in paragraph (g) ~~(e)~~.

3024 b. If the employee files such election within the

3025 prescribed time period, enrollment in the investment plan  
 3026 ~~optional program~~ shall be effective on the first day of  
 3027 employment. The employer retirement contributions paid through  
 3028 the month of the employee plan change shall be transferred to  
 3029 the investment plan ~~optional program~~, and, effective the first  
 3030 day of the next month, the employer shall pay the applicable  
 3031 contributions based on the employee membership class in the  
 3032 investment plan ~~optional program~~.

3033 c. Any such employee who fails to elect to participate in  
 3034 the investment plan ~~Public Employee Optional Retirement Program~~  
 3035 within the prescribed time period is deemed to have elected to  
 3036 retain membership in the pension plan ~~defined benefit program of~~  
 3037 ~~the Florida Retirement System~~, and the employee's option to  
 3038 elect to participate in the investment plan ~~optional program~~ is  
 3039 forfeited.

3040 3. For purposes of this paragraph, "district school board  
 3041 employer" means any district school board that participates in  
 3042 the Florida Retirement System for the benefit of certain  
 3043 employees, or a charter school or charter technical career  
 3044 center that participates in the Florida Retirement System as  
 3045 provided in s. 121.051(2)(d).

3046 (c)1. With respect to an eligible employee who is employed  
 3047 in a regularly established position on December 1, 2002, by a  
 3048 local employer:

3049 a. Any such employee may elect to participate in the  
 3050 investment plan ~~Public Employee Optional Retirement Program~~ in  
 3051 lieu of retaining his or her membership in the pension plan  
 3052 ~~defined benefit program of the Florida Retirement System~~. The

CS/HB 1405

2011

3053 election must be made in writing or by electronic means and must  
3054 be filed with the third-party administrator by February 28,  
3055 2003, or, in the case of an active employee who is on a leave of  
3056 absence on October 1, 2002, by the last business day of the 5th  
3057 month following the month the leave of absence concludes. This  
3058 election is irrevocable, except as provided in paragraph (g)  
3059 ~~(e)~~. Upon making such election, the employee shall be enrolled  
3060 as a participant of the investment plan ~~Public Employee Optional~~  
3061 ~~Retirement Program~~, the employee's membership in the Florida  
3062 Retirement System shall be governed by the provisions of this  
3063 part, and the employee's membership in the pension plan ~~defined~~  
3064 ~~benefit program of the Florida Retirement System~~ shall  
3065 terminate. The employee's enrollment in the investment plan  
3066 ~~Public Employee Optional Retirement Program~~ shall be effective  
3067 the first day of the month for which a full month's employer  
3068 contribution is made to the investment plan ~~optional program~~.

3069 b. Any such employee who fails to elect to participate in  
3070 the investment plan ~~Public Employee Optional Retirement Program~~  
3071 within the prescribed time period is deemed to have elected to  
3072 retain membership in the pension plan ~~defined benefit program of~~  
3073 ~~the Florida Retirement System~~, and the employee's option to  
3074 elect to participate in the investment plan ~~optional program~~ is  
3075 forfeited.

3076 2. With respect to employees who become eligible to  
3077 participate in the investment plan ~~Public Employee Optional~~  
3078 ~~Retirement Program~~ by reason of employment in a regularly  
3079 established position with a local employer commencing after  
3080 October 1, 2002:

CS/HB 1405

2011

3081           a. Any such employee shall, by default, be enrolled in the  
 3082 pension plan ~~defined benefit retirement program of the Florida~~  
 3083 ~~Retirement System~~ at the commencement of employment, and may, by  
 3084 the last business day of the 5th month following the employee's  
 3085 month of hire, elect to participate in the investment plan  
 3086 ~~Public Employee Optional Retirement Program~~. The employee's  
 3087 election must be made in writing or by electronic means and must  
 3088 be filed with the third-party administrator. The election to  
 3089 participate in the investment plan ~~optional program~~ is  
 3090 irrevocable, except as provided in paragraph (g) ~~(e)~~.

3091           b. If the employee files such election within the  
 3092 prescribed time period, enrollment in the investment plan  
 3093 ~~optional program~~ shall be effective on the first day of  
 3094 employment. The employer retirement contributions paid through  
 3095 the month of the employee plan change shall be transferred to  
 3096 the investment plan ~~optional program~~, and, effective the first  
 3097 day of the next month, the employer shall pay the applicable  
 3098 contributions based on the employee membership class in the  
 3099 investment plan ~~optional program~~.

3100           c. Any such employee who fails to elect to participate in  
 3101 the investment plan ~~Public Employee Optional Retirement Program~~  
 3102 within the prescribed time period is deemed to have elected to  
 3103 retain membership in the pension plan ~~defined benefit program of~~  
 3104 ~~the Florida Retirement System~~, and the employee's option to  
 3105 elect to participate in the investment plan ~~optional program~~ is  
 3106 forfeited.

3107           3. For purposes of this paragraph, "local employer" means  
 3108 any employer not included in paragraph (a) or paragraph (b).

CS/HB 1405

2011

3109           (d) Contributions available for self-direction by a member  
3110 ~~participant~~ who has not selected one or more specific investment  
3111 products shall be allocated as prescribed by the state board.  
3112 The third-party administrator shall notify the member ~~any such~~  
3113 ~~participant~~ at least quarterly that the member ~~participant~~  
3114 should take an affirmative action to make an asset allocation  
3115 among the investment ~~optional program~~ products.

3116           (e) On or after July 1, 2011, a member of the pension plan  
3117 who obtains a refund of employee contributions retains his or  
3118 her prior plan choice upon return to employment in a regularly  
3119 established position with a participating employer.

3120           (f) A member of the investment plan who takes a  
3121 distribution of any contributions from his or her investment  
3122 plan account is considered a retiree. Upon reemployment in a  
3123 regularly established position with a participating employer,  
3124 the member returns as a new hire. A retiree who is initially  
3125 reemployed on or after July 1, 2010, is not eligible for renewed  
3126 membership.

3127           (g) ~~(e)~~ After the period during which an eligible employee  
3128 had the choice to elect the pension plan ~~defined benefit program~~  
3129 or the investment plan ~~optional retirement program~~, or the month  
3130 following the receipt of the eligible employee's plan election,  
3131 if sooner, the employee shall have one opportunity, at the  
3132 employee's discretion, to choose to move from the pension plan  
3133 ~~defined benefit program~~ to the investment plan ~~optional~~  
3134 ~~retirement program~~ or from the investment plan ~~optional~~  
3135 ~~retirement program~~ to the pension plan ~~defined benefit program~~.  
3136 Eligible employees may elect to move between Florida Retirement



3137 System programs only if they are earning service credit in an  
 3138 employer-employee relationship consistent with s.  
 3139 121.021(17)(b), excluding leaves of absence without pay.  
 3140 Effective July 1, 2005, such elections are effective on the  
 3141 first day of the month following the receipt of the election by  
 3142 the third-party administrator and are not subject to the  
 3143 requirements regarding an employer-employee relationship or  
 3144 receipt of contributions for the eligible employee in the  
 3145 effective month, except when the election is received by the  
 3146 third-party administrator. This paragraph is contingent upon  
 3147 approval by ~~from~~ the Internal Revenue Service ~~for including the~~  
 3148 ~~choice described herein within the programs offered by the~~  
 3149 ~~Florida Retirement System.~~

3150 1. If the employee chooses to move to the investment plan  
 3151 ~~optional retirement program~~, the applicable provisions of  
 3152 subsection (3) this section shall govern the transfer.

3153 2. If the employee chooses to move to the pension plan  
 3154 ~~defined benefit program~~, the employee must transfer from his or  
 3155 her investment plan ~~optional retirement program~~ account, and  
 3156 from other employee moneys as necessary, a sum representing the  
 3157 present value of that employee's accumulated benefit obligation  
 3158 immediately following the time of such movement, determined  
 3159 assuming that attained service equals the sum of service in the  
 3160 pension plan ~~defined benefit program~~ and service in the  
 3161 investment plan ~~optional retirement program~~. Benefit  
 3162 commencement occurs on the first date the employee is eligible  
 3163 for unreduced benefits, using the discount rate and other  
 3164 relevant actuarial assumptions that were used to value the

CS/HB 1405

2011

3165 pension ~~defined benefit~~ plan liabilities in the most recent  
3166 actuarial valuation. For any employee who, at the time of the  
3167 second election, already maintains an accrued benefit amount in  
3168 the pension plan ~~defined benefit program~~, the then-present value  
3169 of the accrued benefit shall be deemed part of the required  
3170 transfer amount. The division shall ensure that the transfer sum  
3171 is prepared using a formula and methodology certified by an  
3172 enrolled actuary. A refund of any employee contributions or  
3173 additional member payments made which exceed the employee  
3174 contributions that would have accrued had the member remained in  
3175 the pension plan and not transferred to the investment plan is  
3176 not permitted.

3177 3. Notwithstanding subparagraph 2., an employee who  
3178 chooses to move to the pension plan ~~defined benefit program~~ and  
3179 who became eligible to participate in the investment plan  
3180 ~~optional retirement program~~ by reason of employment in a  
3181 regularly established position with a state employer after June  
3182 1, 2002; a district school board employer after September 1,  
3183 2002; or a local employer after December 1, 2002, must transfer  
3184 from his or her investment plan ~~optional retirement program~~  
3185 account, and from other employee moneys as necessary, a sum  
3186 representing the employee's actuarial accrued liability. A  
3187 refund of any employee contributions or additional participant  
3188 payments made which exceed the employee contributions that would  
3189 have accrued had the member remained in the pension plan and not  
3190 transferred to the investment plan is not permitted.

3191 4. An employee's ability to transfer from the pension plan  
3192 ~~defined benefit program~~ to the investment plan ~~optional~~

3193 ~~retirement program~~ pursuant to paragraphs (a)-(d), and the  
 3194 ability of a current employee to have an option to later  
 3195 transfer back into the pension plan ~~defined benefit program~~  
 3196 under subparagraph 2., shall be deemed a significant system  
 3197 amendment. Pursuant to s. 121.031(4), any resulting unfunded  
 3198 liability arising from actual original transfers from the  
 3199 pension plan ~~defined benefit program~~ to the investment plan  
 3200 ~~optional program~~ must be amortized within 30 plan years as a  
 3201 separate unfunded actuarial base independent of the reserve  
 3202 stabilization mechanism defined in s. 121.031(3)(f). For the  
 3203 first 25 years, a direct amortization payment may not be  
 3204 calculated for this base. During this 25-year period, the  
 3205 separate base shall be used to offset the impact of employees  
 3206 exercising their second program election under this paragraph.  
 3207 ~~It is the intent of the Legislature that~~ The actuarial funded  
 3208 status of the pension plan will ~~defined benefit program~~ not be  
 3209 affected by such second program elections in any significant  
 3210 manner, after due recognition of the separate unfunded actuarial  
 3211 base. Following the initial 25-year period, any remaining  
 3212 balance of the original separate base shall be amortized over  
 3213 the remaining 5 years of the required 30-year amortization  
 3214 period.

3215         5. If the employee chooses to transfer from the investment  
 3216 plan ~~optional retirement program~~ to the pension plan ~~defined~~  
 3217 ~~benefit program~~ and retains an excess account balance in the  
 3218 investment plan ~~optional program~~ after satisfying the buy-in  
 3219 requirements under this paragraph, the excess may not be  
 3220 distributed until the member retires from the pension plan

CS/HB 1405

2011

3221 ~~defined benefit program.~~ The excess account balance may be  
 3222 rolled over to the pension plan ~~defined benefit program~~ and used  
 3223 to purchase service credit or upgrade creditable service in the  
 3224 pension plan ~~that program.~~

3225 (5) CONTRIBUTIONS.—

3226 (a) The employee and ~~Each~~ employer shall make the required  
 3227 contributions to ~~contribute on behalf of each participant in the~~  
 3228 investment plan based on a percentage of the employee's gross  
 3229 monthly compensation ~~Public Employee Optional Retirement~~  
 3230 ~~Program,~~ as provided in part III of this chapter.

3231 (b) Employee contributions shall be paid as provided in s.  
 3232 121.72(2).

3233 (c) The state board, acting as plan fiduciary, shall  
 3234 ensure that all plan assets are held in a trust, pursuant to s.  
 3235 401 of the Internal Revenue Code. The fiduciary shall ensure  
 3236 that such ~~said~~ contributions are allocated as follows:

3237 1. The employer and employee contribution portion  
 3238 earmarked for member ~~participant~~ accounts shall be used to  
 3239 purchase interests in the appropriate investment vehicles ~~for~~  
 3240 ~~the accounts of each participant~~ as specified by the member  
 3241 ~~participant,~~ or in accordance with paragraph (4) (d).

3242 2. The employer contribution portion earmarked for  
 3243 administrative and educational expenses shall be transferred to  
 3244 the Florida Retirement System Investment Plan Trust Fund ~~board.~~

3245 3. The employer contribution portion earmarked for  
 3246 disability benefits shall be transferred to the Florida  
 3247 Retirement System Trust Fund ~~department.~~

3248 (d) ~~(b)~~ The third-party administrator is ~~Employers are~~

3249 responsible for monitoring and notifying employers of the  
3250 ~~participants regarding~~ maximum contribution levels allowed for  
3251 members permitted under the Internal Revenue Code. If a member  
3252 ~~participant~~ contributes to any other tax-deferred plan, the  
3253 member ~~he or she~~ is responsible for ensuring that total  
3254 contributions made to the investment plan ~~optional program~~ and  
3255 to any other such plan do not exceed federally permitted  
3256 maximums.

3257 ~~(e)~~ (e) The investment plan ~~Public Employee Optional~~  
3258 ~~Retirement Program~~ may accept for deposit into member  
3259 ~~participant~~ accounts contributions in the form of rollovers or  
3260 direct trustee-to-trustee transfers by or on behalf of members  
3261 ~~participants~~, reasonably determined by the state board to be  
3262 eligible for rollover or transfer to the investment plan  
3263 ~~optional retirement program~~ pursuant to the Internal Revenue  
3264 Code, if such contributions are made in accordance with rules ~~as~~  
3265 ~~may be~~ adopted by the board. Such contributions must ~~shall~~ be  
3266 accounted for in accordance with ~~any~~ applicable Internal Revenue  
3267 Code requirements and rules of the state board.

3268 (6) VESTING REQUIREMENTS.—

3269 (a) A member is fully and immediately vested in all  
3270 employee contributions paid to the investment plan as provided  
3271 in s. 121.72(2), plus interest and earnings thereon and less  
3272 investment fees and administrative charges.

3273 (b) ~~(a)~~1. With respect to employer contributions paid on  
3274 behalf of the member ~~participant~~ to the investment plan ~~optional~~  
3275 ~~retirement program~~, plus interest and earnings thereon and less  
3276 investment fees and administrative charges, a member ~~participant~~

3277 is vested after completing 1 work year with an employer,  
 3278 including any service while the member ~~participant~~ was a member  
 3279 of the pension plan ~~defined benefit program~~ or an optional  
 3280 retirement program authorized under s. 121.051(2)(c) or s.  
 3281 121.055(6).

3282 2. If the member ~~participant~~ terminates employment before  
 3283 satisfying the vesting requirements, the nonvested accumulation  
 3284 must be transferred from the member's ~~participant's~~ accounts to  
 3285 the state board for deposit and investment by the state board in  
 3286 its ~~the~~ suspense account created within the Florida Retirement  
 3287 System Investment Plan ~~Public Employee Optional Retirement~~  
 3288 ~~Program~~ Trust Fund. If the terminated member ~~participant~~ is  
 3289 reemployed as an eligible employee within 5 years, the state  
 3290 board shall transfer to the member's ~~participant's~~ account any  
 3291 amount previously transferred from the member's ~~participant's~~  
 3292 accounts to the suspense account, plus actual earnings on such  
 3293 amount while in the suspense account.

3294 ~~(c)(b)~~1. With respect to amounts contributed by an  
 3295 employer and transferred from the pension plan ~~defined benefit~~  
 3296 ~~program~~ to the investment plan ~~program~~, plus interest and  
 3297 earnings, and less investment fees and administrative charges, a  
 3298 member ~~participant~~ shall be vested in the amount transferred  
 3299 upon meeting the service requirements for the member's  
 3300 ~~participant's~~ membership class as set forth in s. 121.021(29).  
 3301 The third-party administrator shall account for such amounts for  
 3302 each member ~~participant~~. The division shall notify the member  
 3303 ~~participant~~ and the third-party administrator when the member  
 3304 ~~participant~~ has satisfied the vesting period for Florida

CS/HB 1405

2011

3305 Retirement System purposes.

3306       2. If the member ~~participant~~ terminates employment before  
3307 satisfying the vesting requirements, the nonvested accumulation  
3308 must be transferred from the member's ~~participant's~~ accounts to  
3309 the state board for deposit and investment by the state board in  
3310 the suspense account created within the Florida Retirement  
3311 System Investment Plan ~~Public Employee Optional Retirement~~  
3312 ~~Program~~ Trust Fund. If the terminated member ~~participant~~ is  
3313 reemployed as an eligible employee within 5 years, the state  
3314 board shall transfer to the member's accounts ~~participant's~~  
3315 ~~account~~ any amount previously transferred from the member's  
3316 ~~participant's~~ accounts to the suspense account, plus the actual  
3317 earnings on such amount while in the suspense account.

3318       (d) ~~(e)~~ Any nonvested accumulations transferred from a  
3319 member's ~~participant's~~ account to the state board's suspense  
3320 account shall be forfeited, including accompanying service  
3321 credit, by the member ~~participant~~ if the member ~~participant~~ is  
3322 not reemployed as an eligible employee within 5 years after  
3323 termination.

3324       (e) If the member elects to receive any of his or her  
3325 vested employee or employer contributions upon termination of  
3326 employment as provided in s. 121.021(39) (a), except for a  
3327 mandatory distribution of a de minimis account authorized by the  
3328 state board or a minimum required distribution provided by s.  
3329 401(a) (9) of the Internal Revenue Code, the member shall forfeit  
3330 all nonvested employer contributions, and accompanying service  
3331 credit, paid on behalf of the member to the investment plan.

3332       (7) BENEFITS.—Under the investment plan, benefits must

3333 ~~Public Employee Optional Retirement Program:~~

3334 (a) ~~Benefits shall~~ Be provided in accordance with s.  
3335 401(a) of the Internal Revenue Code.

3336 (b) ~~Benefits shall~~ Accrue in individual accounts that are  
3337 member-directed ~~participant-directed~~, portable, and funded by  
3338 employer and employee contributions and earnings thereon.

3339 (c) ~~Benefits shall~~ Be payable in accordance with ~~the~~  
3340 ~~provisions of~~ s. 121.591.

3341 (8) INVESTMENT PLAN ADMINISTRATION OF PROGRAM.-

3342 (a) The investment plan ~~optional retirement program~~ shall  
3343 be administered by the state board and affected employers. The  
3344 state board may require oaths, by affidavit or otherwise, and  
3345 acknowledgments from persons in connection with the  
3346 administration of its statutory duties and responsibilities for  
3347 the investment plan ~~this program~~. An oath, by affidavit or  
3348 otherwise, may not be required of a member ~~an employee~~  
3349 ~~participant~~ at the time of enrollment. Acknowledgment of an  
3350 employee's election to participate in the program shall be no  
3351 greater than necessary to confirm the employee's election. The  
3352 state board shall adopt rules to carry out its statutory duties  
3353 with respect to administering the investment plan ~~optional~~  
3354 ~~retirement program~~, including establishing the roles and  
3355 responsibilities of affected state, local government, and  
3356 education-related employers, the state board, the department,  
3357 and third-party contractors. The department shall adopt rules  
3358 necessary to administer the investment plan ~~optional program~~ in  
3359 coordination with the pension plan ~~defined benefit program~~ and  
3360 the disability benefits available under the investment plan



3361 ~~optional program.~~

3362       (a) ~~(b)~~1. The state board shall select and contract with a  
 3363 ~~one~~ third-party administrator to provide administrative services  
 3364 if those services cannot be competitively and contractually  
 3365 provided by the division ~~of Retirement within the Department of~~  
 3366 ~~Management Services~~. With the approval of the state board, the  
 3367 third-party administrator may subcontract ~~with other~~  
 3368 ~~organizations or individuals~~ to provide components of the  
 3369 administrative services. As a cost of administration, the state  
 3370 board may compensate any such contractor for its services, in  
 3371 accordance with the terms of the contract, as is deemed  
 3372 necessary or proper by the board. The third-party administrator  
 3373 may not be an approved provider or be affiliated with an  
 3374 approved provider.

3375       2. These administrative services may include, but are not  
 3376 limited to, enrollment of eligible employees, collection of  
 3377 employer and employee contributions, disbursement of ~~such~~  
 3378 contributions to approved providers in accordance with the  
 3379 allocation directions of members ~~participants~~; services relating  
 3380 to consolidated billing; individual and collective recordkeeping  
 3381 and accounting; asset purchase, control, and safekeeping; and  
 3382 direct disbursement of funds to and from the third-party  
 3383 administrator, the division, the state board, employers, members  
 3384 ~~participants~~, approved providers, and beneficiaries. This  
 3385 section does not prevent or prohibit a bundled provider from  
 3386 providing any administrative or customer service, including  
 3387 accounting and administration of individual member ~~participant~~  
 3388 benefits and contributions; individual member ~~participant~~

CS/HB 1405

2011

3389 recordkeeping; asset purchase, control, and safekeeping; direct  
 3390 execution of the member's ~~participant's~~ instructions as to asset  
 3391 and contribution allocation; calculation of daily net asset  
 3392 values; direct access to member ~~participant~~ account information;  
 3393 or periodic reporting to members ~~participants~~, at least  
 3394 quarterly, on account balances and transactions, if these  
 3395 services are authorized by the state board as part of the  
 3396 contract.

3397 (b)1.3. The state board shall select and contract with one  
 3398 or more organizations to provide educational services. With  
 3399 approval of the state board, the organizations may subcontract  
 3400 ~~with other organizations or individuals~~ to provide components of  
 3401 the educational services. As a cost of administration, the state  
 3402 board may compensate any such contractor for its services in  
 3403 accordance with the terms of the contract, as is deemed  
 3404 necessary or proper by the board. The education organization may  
 3405 not be an approved provider or be affiliated with an approved  
 3406 provider.

3407 2.4. Educational services shall be designed by the state  
 3408 board and department to assist employers, eligible employees,  
 3409 members ~~participants~~, and beneficiaries in order to maintain  
 3410 compliance with United States Department of Labor regulations  
 3411 under s. 404(c) of the Employee Retirement Income Security Act  
 3412 of 1974 and to assist employees in their choice of pension plan  
 3413 ~~defined benefit~~ or investment plan ~~defined contribution~~  
 3414 retirement alternatives. Educational services include, but are  
 3415 not limited to, disseminating educational materials; providing  
 3416 retirement planning education; explaining the pension

CS/HB 1405

2011

3417 ~~differences between the defined benefit retirement~~ plan and the  
3418 investment ~~defined contribution retirement~~ plan; and offering  
3419 financial planning guidance on matters such as investment  
3420 diversification, investment risks, investment costs, and asset  
3421 allocation. An approved provider may also provide educational  
3422 information, including retirement planning and investment  
3423 allocation information concerning its products and services.

3424 (c)1. In evaluating and selecting a third-party  
3425 administrator, the state board shall establish criteria for  
3426 evaluating ~~under which it shall consider~~ the relative  
3427 capabilities and qualifications of each proposed administrator.  
3428 In developing such criteria, the state board shall consider:

3429 a. The administrator's demonstrated experience in  
3430 providing administrative services to public or private sector  
3431 retirement systems.

3432 b. The administrator's demonstrated experience in  
3433 providing daily valued recordkeeping to defined contribution  
3434 programs ~~plans~~.

3435 c. The administrator's ability and willingness to  
3436 coordinate its activities with ~~the Florida Retirement System~~  
3437 employers, the state board, and the division, and to supply to  
3438 such employers, the board, and the division the information and  
3439 data they require, including, but not limited to, monthly  
3440 management reports, quarterly member ~~participant~~ reports, and ad  
3441 hoc reports requested by the department or state board.

3442 d. The cost-effectiveness and levels of the administrative  
3443 services provided.

3444 e. The administrator's ability to interact with the

CS/HB 1405

2011

3445 members ~~participants~~, the employers, the state board, the  
 3446 division, and the providers; the means by which members  
 3447 ~~participants~~ may access account information, direct investment  
 3448 of contributions, make changes to their accounts, transfer  
 3449 moneys between available investment vehicles, and transfer  
 3450 moneys between investment products; and any fees that apply to  
 3451 such activities.

3452 f. Any other factor deemed necessary by the ~~Trustees of~~  
 3453 ~~the state board of Administration.~~

3454 2. In evaluating and selecting an educational provider,  
 3455 the state board shall establish criteria under which it shall  
 3456 consider the relative capabilities and qualifications of each  
 3457 proposed educational provider. In developing such criteria, the  
 3458 state board shall consider:

3459 a. Demonstrated experience in providing educational  
 3460 services to public or private sector retirement systems.

3461 b. Ability and willingness to coordinate its activities  
 3462 with the ~~Florida Retirement System~~ employers, the state board,  
 3463 and the division, and to supply to such employers, the board,  
 3464 and the division the information and data they require,  
 3465 including, but not limited to, reports on educational contacts.

3466 c. The cost-effectiveness and levels of the educational  
 3467 services provided.

3468 d. Ability to provide educational services via different  
 3469 media, including, but not limited to, the Internet, personal  
 3470 contact, seminars, brochures, and newsletters.

3471 e. Any other factor deemed necessary by the ~~Trustees of~~  
 3472 ~~the state board of Administration.~~

3473           3. The establishment of the criteria shall be solely  
3474 within the discretion of the state board.

3475           (d) The state board shall develop the form and content of  
3476 any contracts to be offered under the investment plan ~~Public~~  
3477 ~~Employee Optional Retirement Program~~. In developing the ~~its~~  
3478 contracts, the board shall ~~must~~ consider:

3479           1. The nature and extent of the rights and benefits to be  
3480 afforded in relation to the ~~required~~ contributions required  
3481 under the plan ~~program~~.

3482           2. The suitability of the rights and benefits provided ~~to~~  
3483 ~~be afforded~~ and the interests of employers in the recruitment  
3484 and retention of eligible employees.

3485           (e)1. The state board may contract ~~with any consultant~~ for  
3486 professional services, including legal, consulting, accounting,  
3487 and actuarial services, deemed necessary to implement and  
3488 administer the investment plan ~~optional program by the Trustees~~  
3489 ~~of the State Board of Administration~~. The state board may enter  
3490 into a contract with one or more vendors to provide low-cost  
3491 investment advice to members ~~participants~~, supplemental to  
3492 education provided by the third-party administrator. All fees  
3493 under any such contract shall be paid by those members  
3494 ~~participants~~ who choose to use the services of the vendor.

3495           2. The department may contract ~~with consultants~~ for  
3496 professional services, including legal, consulting, accounting,  
3497 and actuarial services, deemed necessary to implement and  
3498 administer the investment plan ~~optional program~~ in coordination  
3499 with the pension plan ~~defined benefit program of the Florida~~  
3500 ~~Retirement System~~. The department, in coordination with the

3501 state board, may enter into a contract with the third-party  
 3502 administrator in order to coordinate services common to the  
 3503 various programs within the Florida Retirement System.

3504 (f) The third-party administrator may ~~shall~~ not receive  
 3505 direct or indirect compensation from an approved provider,  
 3506 except as specifically provided for in the contract with the  
 3507 state board.

3508 (g) The state board shall receive and resolve member  
 3509 ~~participant~~ complaints against the program, the third-party  
 3510 administrator, or any program vendor or provider; shall resolve  
 3511 any conflict between the third-party administrator and an  
 3512 approved provider if such conflict threatens the implementation  
 3513 or administration of the program or the quality of services to  
 3514 employees; and may resolve any other conflicts. The third-party  
 3515 administrator shall retain all member ~~participant~~ records for at  
 3516 least 5 years for use in resolving any member ~~participant~~  
 3517 conflicts. The state board, the third-party administrator, or a  
 3518 provider is not required to produce documentation or an audio  
 3519 recording to justify action taken with regard to a member  
 3520 ~~participant~~ if the action occurred 5 or more years before the  
 3521 complaint is submitted to the state board. It is presumed that  
 3522 all action taken 5 or more years before the complaint is  
 3523 submitted was taken at the request of the member ~~participant~~ and  
 3524 with the member's ~~participant's~~ full knowledge and consent. To  
 3525 overcome this presumption, the member ~~participant~~ must present  
 3526 documentary evidence or an audio recording demonstrating  
 3527 otherwise.

3528 (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE REVIEW.—

3529           (a) The state board shall develop policy and procedures  
 3530 for selecting, evaluating, and monitoring the performance of  
 3531 approved providers and investment products ~~to which employees~~  
 3532 ~~may direct retirement contributions~~ under the investment plan  
 3533 ~~program~~. In accordance with such policy and procedures, the  
 3534 state board shall designate and contract for a number of  
 3535 investment products as determined by the board. The board shall  
 3536 also select one or more bundled providers, each of which ~~whom~~  
 3537 may offer multiple investment options and related services, if  
 3538 ~~when~~ such ~~an~~ approach is determined by the board to provide  
 3539 ~~afford~~ value to the members ~~participants~~ otherwise not available  
 3540 through individual investment products. Each approved bundled  
 3541 provider may offer investment options that provide members  
 3542 ~~participants~~ with the opportunity to invest in each of the  
 3543 following asset classes, to be composed of individual options  
 3544 that represent ~~either~~ a single asset class or a combination  
 3545 thereof: money markets, United States fixed income, United  
 3546 States equities, and foreign stock. The state board shall review  
 3547 and manage all educational materials, contract terms, fee  
 3548 schedules, and other aspects of the approved provider  
 3549 relationships to ensure that no provider is unduly favored or  
 3550 penalized by virtue of its status within the investment plan.

3551           (b) The state board shall consider investment options or  
 3552 products it considers appropriate to give members ~~participants~~  
 3553 the opportunity to accumulate retirement benefits, subject to  
 3554 the following:

3555           1. The investment plan ~~Public Employee Optional Retirement~~  
 3556 ~~Program~~ must offer a diversified mix of low-cost investment

3557 products that span the risk-return spectrum and may include a  
 3558 guaranteed account as well as investment products, such as  
 3559 individually allocated guaranteed and variable annuities, which  
 3560 meet the requirements of this subsection and combine the ability  
 3561 to accumulate investment returns with the option of receiving  
 3562 lifetime income consistent with the long-term retirement  
 3563 security of a pension plan and similar to the lifetime-income  
 3564 benefit provided by the Florida Retirement System.

3565 2. Investment options or products offered by ~~the group of~~  
 3566 approved providers may include mutual funds, group annuity  
 3567 contracts, individual retirement annuities, interests in trusts,  
 3568 collective trusts, separate accounts, and other such financial  
 3569 instruments, and ~~may include~~ products that give members  
 3570 ~~participants~~ the option of committing their contributions for an  
 3571 extended time period in an effort to obtain returns higher than  
 3572 those that could be obtained from investment products offering  
 3573 full liquidity.

3574 3. The state board may ~~shall~~ not contract with a ~~any~~  
 3575 provider that imposes a front-end, back-end, contingent, or  
 3576 deferred sales charge, or any other fee that limits or restricts  
 3577 the ability of members ~~participants~~ to select any investment  
 3578 product available in the investment plan ~~optional program~~. This  
 3579 prohibition does not apply to fees or charges that are imposed  
 3580 on withdrawals from products that give members ~~participants~~ the  
 3581 option of committing ~~their~~ contributions for an extended time  
 3582 period in an effort to obtain returns higher than those that  
 3583 could be obtained from investment products offering full  
 3584 liquidity, if ~~provided that~~ the product ~~in question~~, net of all



3585 fees and charges, produces material benefits relative to other  
 3586 comparable products in the investment plan ~~program~~ offering full  
 3587 liquidity.

3588 4. Fees or charges for insurance features, such as  
 3589 mortality and expense-risk charges, must be reasonable relative  
 3590 to the benefits provided.

3591 (c) In evaluating and selecting approved providers and  
 3592 products, the state board shall establish criteria for  
 3593 evaluating ~~under which it shall consider~~ the relative  
 3594 capabilities and qualifications of each proposed provider  
 3595 company and product. In developing such criteria, the board  
 3596 shall consider the following to the extent such factors may be  
 3597 applied in connection with investment products, services, or  
 3598 providers:

3599 1. Experience in the United States providing retirement  
 3600 products and related financial services under defined  
 3601 contribution retirement programs ~~plans~~.

3602 2. Financial strength and stability as ~~which shall be~~  
 3603 evidenced by the highest ratings assigned by nationally  
 3604 recognized rating services when comparing proposed providers  
 3605 that are so rated.

3606 3. Intrastate and interstate portability of the product  
 3607 offered, including early withdrawal options.

3608 4. Compliance with the Internal Revenue Code.

3609 5. The cost-effectiveness of the product provided and the  
 3610 levels of service supporting the product relative to its  
 3611 benefits and its characteristics, including, ~~without limitation,~~  
 3612 the level of risk borne by the provider.

3613           6. The provider company's ability and willingness to  
3614 coordinate its activities with Florida Retirement System  
3615 employers, the department, and the state board, and to supply  
3616 the ~~to such~~ employers, the department, and the board with the  
3617 information and data they require.

3618           7. The methods available to members ~~participants~~ to  
3619 interact with the provider company; the means by which members  
3620 ~~participants~~ may access account information, direct investment  
3621 of contributions, make changes to their accounts, transfer  
3622 moneys between available investment vehicles, and transfer  
3623 moneys between provider companies; and any fees that apply to  
3624 such activities.

3625           8. The provider company's policies with respect to the  
3626 transfer of individual account balances, contributions, and  
3627 earnings thereon, both internally among investment products  
3628 offered by the provider company and externally between approved  
3629 providers, as well as any fees, charges, reductions, or  
3630 penalties that may be applied.

3631           9. An evaluation of specific investment products, taking  
3632 into account each product's experience in meeting its investment  
3633 return objectives net of all related fees, expenses, and  
3634 charges, including, but not limited to, investment management  
3635 fees, loads, distribution and marketing fees, custody fees,  
3636 recordkeeping fees, education fees, annuity expenses, and  
3637 consulting fees.

3638           10. Organizational factors, including, but not limited to,  
3639 financial solvency, organizational depth, and experience in  
3640 providing institutional and retail investment services.

CS/HB 1405

2011

3641 (d) By March 1, 2010, the state board shall identify and  
3642 offer at least one terror-free investment product that allocates  
3643 its funds among securities not subject to divestiture as  
3644 provided in s. 215.473 if the investment product is deemed by  
3645 the state board to be consistent with prudent investor  
3646 standards. A ~~No~~ person may not bring a civil, criminal, or  
3647 administrative action against an approved provider; the state  
3648 board; or any employee, officer, director, or trustee of such  
3649 provider based upon the divestiture of any security or the  
3650 offering of a terror-free investment product as specified in  
3651 this paragraph.

3652 (e) As a condition of offering an ~~any~~ investment option or  
3653 product in the investment plan ~~optional retirement program~~, the  
3654 approved provider must agree to make the investment product or  
3655 service available under the most beneficial terms offered to any  
3656 other customer, subject to approval by the ~~Trustees of the state~~  
3657 board ~~of Administration~~.

3658 (f) The state board shall regularly review the performance  
3659 of each approved provider and product and related organizational  
3660 factors to ensure continued compliance with established  
3661 selection criteria and with board policy and procedures.  
3662 Providers and products may be terminated subject to contract  
3663 provisions. The state board shall adopt procedures to transfer  
3664 account balances from terminated products or providers to other  
3665 products or providers in the investment plan ~~optional program~~.

3666 (g)1. An approved provider shall comply with all  
3667 applicable federal and state securities and insurance laws and  
3668 regulations ~~applicable to the provider~~, as well as with the

3669 applicable rules and guidelines of the National Association of  
 3670 Securities Dealers which govern the ethical marketing of  
 3671 investment products. In furtherance of this mandate, an approved  
 3672 provider must agree in its contract with the state board to  
 3673 establish and maintain a compliance education and monitoring  
 3674 system to supervise the activities of all personnel who directly  
 3675 communicate with individual members ~~participants~~ and recommend  
 3676 investment products, which system is consistent with rules of  
 3677 the National Association of Securities Dealers.

3678 2. Approved provider personnel who directly communicate  
 3679 with individual members ~~participants~~ and who recommend  
 3680 investment products shall make an independent and unbiased  
 3681 determination as to whether an investment product is suitable  
 3682 for a particular member ~~participant~~.

3683 3. The state board shall develop procedures to receive and  
 3684 resolve member ~~participant~~ complaints against a provider or  
 3685 approved provider personnel, and, if ~~when~~ appropriate, refer  
 3686 such complaints to the appropriate agency.

3687 4. Approved providers may not sell or in any way  
 3688 distribute any customer list or member ~~participant~~  
 3689 identification information generated through their offering of  
 3690 products or services through the investment plan ~~optional~~  
 3691 ~~retirement program~~.

3692 (10) EDUCATION COMPONENT.—

3693 (a) The state board, in coordination with the department,  
 3694 shall provide for an education component for system members in a  
 3695 manner consistent with the provisions of this section. The  
 3696 education component must be available to eligible employees at

3697 | least 90 days prior to the beginning date of the election period  
 3698 | for the employees of the respective types of employers.

3699 |       (b) The education component must provide system members  
 3700 | with impartial and balanced information about plan choices. The  
 3701 | education component must involve multimedia formats. Program  
 3702 | comparisons must, to the greatest extent possible, be based upon  
 3703 | the retirement income that different retirement programs may  
 3704 | provide to the member ~~participant~~. The state board shall monitor  
 3705 | the performance of the contract to ensure that the program is  
 3706 | conducted in accordance with the contract, applicable law, and  
 3707 | the rules of the state board.

3708 |       (c) The state board, in coordination with the department,  
 3709 | shall provide for an initial and ongoing transfer education  
 3710 | component to provide system members with information necessary  
 3711 | to make informed plan choice decisions. The transfer education  
 3712 | component must include, but is not limited to, information on:

3713 |           1. The amount of money available to a member to transfer  
 3714 | to the defined contribution program.

3715 |           2. The features of and differences between the pension  
 3716 | plan ~~defined benefit program~~ and the defined contribution  
 3717 | program, both generally and specifically, as those differences  
 3718 | may affect the member.

3719 |           3. The expected benefit available if the member were to  
 3720 | retire under each of the retirement programs, based on  
 3721 | appropriate alternative sets of assumptions.

3722 |           4. The rate of return from investments in the defined  
 3723 | contribution program and the period of time over which such rate  
 3724 | of return must be achieved to equal or exceed the expected

3725 monthly benefit payable to the member under the pension plan  
 3726 ~~defined benefit program.~~

3727 5. The historical rates of return for the investment  
 3728 alternatives available in the defined contribution programs.

3729 6. The benefits and historical rates of return on  
 3730 investments available in a typical deferred compensation plan or  
 3731 a typical plan under s. 403(b) of the Internal Revenue Code for  
 3732 which the employee may be eligible.

3733 7. The program choices available to employees of the State  
 3734 University System and the comparative benefits of each available  
 3735 program, if applicable.

3736 8. Payout options available in each of the retirement  
 3737 programs.

3738 (d) An ongoing education and communication component must  
 3739 provide eligible employees ~~system members~~ with information  
 3740 necessary to make informed decisions about choices within their  
 3741 retirement system ~~program of membership~~ and in preparation for  
 3742 retirement. The component must include, but is not limited to,  
 3743 information concerning:

3744 1. Rights and conditions of membership.

3745 2. Benefit features within the program, options, and  
 3746 effects of certain decisions.

3747 3. Coordination of contributions and benefits with a  
 3748 deferred compensation plan under s. 457 or a plan under s.  
 3749 403(b) of the Internal Revenue Code.

3750 4. Significant program changes.

3751 5. Contribution rates and program funding status.

3752 6. Planning for retirement.

3753 (e) Descriptive materials must be prepared under the  
 3754 assumption that the employee is an unsophisticated investor, and  
 3755 all materials used in the education component must be approved  
 3756 by the state board prior to dissemination.

3757 (f) The state board and the department shall also  
 3758 establish a communication component to provide program  
 3759 information to participating employers and the employers'  
 3760 personnel and payroll officers and to explain their respective  
 3761 responsibilities in conjunction with the retirement programs.

3762 (g) Funding for education of new employees may reflect  
 3763 administrative costs to the investment plan ~~optional program~~ and  
 3764 the pension plan ~~defined benefit program~~.

3765 (h) Pursuant to subsection ~~paragraph~~ (8) ~~(a)~~, all Florida  
 3766 Retirement System employers have an obligation to regularly  
 3767 communicate the existence of the two Florida Retirement System  
 3768 plans and the plan choice in the natural course of administering  
 3769 their personnel functions, using the educational materials  
 3770 supplied by the state board and the Department of Management  
 3771 Services.

3772 (11) MEMBER PARTICIPANT INFORMATION REQUIREMENTS.—The  
 3773 state board shall ensure that each member ~~participant~~ is  
 3774 provided a quarterly statement that accounts for the  
 3775 contributions made on behalf of the member ~~such participant~~; the  
 3776 interest and investment earnings thereon; and any fees,  
 3777 penalties, or other deductions that apply ~~thereto~~. At a minimum,  
 3778 such statements must:

3779 (a) Indicate the member's ~~participant's~~ investment  
 3780 options.

CS/HB 1405

2011

3781 (b) State the market value of the account at the close of  
 3782 the current quarter and previous quarter.

3783 (c) Show account gains and losses ~~for the period~~ and  
 3784 changes in account accumulation unit values for the quarter  
 3785 ~~period~~.

3786 (d) Itemize account contributions for the quarter.

3787 (e) Indicate any account changes due to adjustment of  
 3788 contribution levels, reallocation of contributions, balance  
 3789 transfers, or withdrawals.

3790 (f) Set forth any fees, charges, penalties, and deductions  
 3791 that apply to the account.

3792 (g) Indicate the amount of the account in which the member  
 3793 ~~participant~~ is fully vested and the amount of the account in  
 3794 which the member ~~participant~~ is not vested.

3795 (h) Indicate each investment product's performance  
 3796 relative to an appropriate market benchmark.

3797  
 3798 The third-party administrator shall provide quarterly and annual  
 3799 summary reports to the state board and any other reports  
 3800 requested by the department or the state board. In any  
 3801 solicitation or offer of coverage under the investment plan ~~an~~  
 3802 ~~optional retirement program~~, a provider company shall be  
 3803 governed by the contract readability provisions of s. 627.4145,  
 3804 notwithstanding s. 627.4145(6)(c). In addition, all descriptive  
 3805 materials must be prepared under the assumption that the member  
 3806 ~~participant~~ is an unsophisticated investor. Provider companies  
 3807 must maintain an internal system of quality assurance, have  
 3808 proven functional systems that are date-calculation compliant,



CS/HB 1405

2011

3809 and be subject to a due-diligence inquiry that proves their  
 3810 capacity and fitness to undertake service responsibilities.

3811 (12) ADVISORY COUNCIL TO PROVIDE ADVICE AND ASSISTANCE.—

3812 The Investment Advisory Council, created pursuant to s. 215.444,  
 3813 shall assist the state board in implementing and administering  
 3814 the investment plan ~~Public Employee Optional Retirement Program.~~

3815 ~~The Investment Advisory council, created pursuant to s. 215.444,~~  
 3816 shall review the state board's initial recommendations regarding  
 3817 the criteria to be used in selecting and evaluating approved  
 3818 providers and investment products. The council may provide  
 3819 comments on the recommendations to the state board within 45  
 3820 days after receiving the initial recommendations. The state  
 3821 board shall make the final determination as to whether any  
 3822 investment provider or product, any contractor, or any and all  
 3823 contract provisions are ~~shall be~~ approved for the investment  
 3824 plan ~~program.~~

3825 (13) FEDERAL REQUIREMENTS.—

3826 (a) ~~Provisions of~~ This section shall be construed, and the  
 3827 investment plan ~~Public Employee Optional Retirement Program~~  
 3828 shall be administered, so as to comply with the Internal Revenue  
 3829 Code, 26 U.S.C., and specifically with plan qualification  
 3830 requirements imposed on governmental plans under s. 401(a) of  
 3831 the Internal Revenue Code. The state board may ~~shall have the~~  
 3832 ~~power and authority to~~ adopt rules reasonably necessary to  
 3833 establish or maintain the qualified status of the investment  
 3834 plan ~~Optional Retirement Program~~ under the Internal Revenue Code  
 3835 and to implement and administer the investment plan ~~Optional~~  
 3836 ~~Retirement Program~~ in compliance with the Internal Revenue Code

3837 and as designated under this part; provided however, that the  
 3838 board shall not have the authority to adopt any rule which makes  
 3839 a substantive change to the investment plan ~~Optional Retirement~~  
 3840 ~~Program~~ as designed by this part.

3841 (b) Any section or provision of this chapter which is  
 3842 susceptible to more than one construction shall ~~must~~ be  
 3843 interpreted in favor of the construction most likely to satisfy  
 3844 requirements imposed by s. 401(a) of the Internal Revenue Code.

3845 (c) Contributions payable under this section for any  
 3846 limitation year may not exceed the maximum amount allowable for  
 3847 qualified defined contribution pension plans under applicable  
 3848 provisions of the Internal Revenue Code. If an employee who is  
 3849 enrolled ~~has elected to participate~~ in the investment plan  
 3850 ~~Public Employee Optional Retirement Program~~ participates in any  
 3851 other plan that is maintained by the participating employer,  
 3852 benefits that accrue under the investment plan ~~Public Employee~~  
 3853 ~~Optional Retirement Program~~ shall be considered primary for any  
 3854 aggregate limitation applicable under s. 415 of the Internal  
 3855 Revenue Code.

3856 (14) INVESTMENT POLICY STATEMENT.—

3857 (a) Investment products and approved providers selected  
 3858 for the investment plan ~~must~~ ~~Public Employee Optional Retirement~~  
 3859 ~~Program shall~~ conform with the Florida Retirement System  
 3860 Investment Plan ~~Public Employee Optional Retirement Program~~  
 3861 Investment Policy Statement, herein referred to as the  
 3862 "statement," as developed and approved by the trustees of the  
 3863 state board ~~of Administration~~. The statement must include, among  
 3864 other items, the investment objectives of the investment plan

CS/HB 1405

2011

3865 ~~Public Employee Optional Retirement Program~~, manager selection  
 3866 and monitoring guidelines, and performance measurement criteria.  
 3867 As required from time to time, the executive director of the  
 3868 state board may present recommended changes in the statement to  
 3869 the board for approval.

3870 (b) Prior to presenting the statement, or any recommended  
 3871 changes ~~thereto~~, to the state board, the executive director of  
 3872 the board shall present such statement or changes to the  
 3873 Investment Advisory Council for review. The council shall  
 3874 present the results of its review to the board prior to the  
 3875 board's final approval of the statement or changes in the  
 3876 statement.

3877 (15) STATEMENT OF FIDUCIARY STANDARDS AND  
 3878 RESPONSIBILITIES.—

3879 (a) Investment of ~~optional~~ defined contribution ~~retirement~~  
 3880 plan assets shall be made for the sole interest and exclusive  
 3881 purpose of providing benefits to members ~~plan participants~~ and  
 3882 beneficiaries and defraying reasonable expenses of administering  
 3883 the plan. The program's assets shall ~~are to~~ be invested, on  
 3884 behalf of the program members ~~participants~~, with the care,  
 3885 skill, and diligence that a prudent person acting in a like  
 3886 manner would undertake. The performance of the investment duties  
 3887 set forth in this paragraph shall comply with the fiduciary  
 3888 standards set forth in the Employee Retirement Income Security  
 3889 Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of  
 3890 conflict with other provisions of law authorizing investments,  
 3891 the investment and fiduciary standards set forth in this  
 3892 subsection shall prevail.

3893 (b) If a member participant or beneficiary of the  
 3894 investment plan ~~Public Employee Optional Retirement Program~~  
 3895 exercises control over the assets in his or her account, as  
 3896 determined by reference to regulations of the United States  
 3897 Department of Labor under s. 404(c) of the Employee Retirement  
 3898 Income Security Act of 1974 and all applicable laws governing  
 3899 the operation of the program, a ~~no~~ program fiduciary is not  
 3900 ~~shall be~~ liable for any loss to a member's participant's or  
 3901 beneficiary's account which results from the member's such  
 3902 ~~participant's~~ or beneficiary's exercise of control.

3903 (c) Subparagraph (8) (b) 2.4. ~~and~~ paragraph ~~(15)~~ (b)  
 3904 incorporate the federal law concept of participant control,  
 3905 established by regulations of the United States Department of  
 3906 Labor under s. 404(c) of the Employee Retirement Income Security  
 3907 Act of 1974 (ERISA). The purpose of this paragraph is to assist  
 3908 employers and the state board ~~of Administration~~ in maintaining  
 3909 compliance with s. 404(c), while avoiding unnecessary costs and  
 3910 eroding member participant benefits under the investment plan  
 3911 ~~Public Employee Optional Retirement Program~~. Pursuant to 29  
 3912 C.F.R. s. 2550.404c-1(b) (2) (i) (B) (1) (viii), the state board ~~of~~  
 3913 ~~Administration~~ or its designated agents shall deliver to members  
 3914 ~~participants~~ of the investment plan ~~Public Employee Optional~~  
 3915 ~~Retirement Program~~ a copy of the prospectus most recently  
 3916 provided to the plan, and, pursuant to 29 C.F.R. s. 2550.404c-  
 3917 1(b) (2) (i) (B) (2) (ii), shall provide such members ~~participants~~ an  
 3918 opportunity to obtain this information, except that:

- 3919 1. The requirement to deliver a prospectus shall be ~~deemed~~  
 3920 ~~to be~~ satisfied by delivery of a fund profile or summary profile

3921 that contains the information that would be included in a  
 3922 summary prospectus as described by Rule 498 under the Securities  
 3923 Act of 1933, 17 C.F.R. s. 230.498. If ~~When~~ the transaction fees,  
 3924 expense information or other information provided by a mutual  
 3925 fund in the prospectus does not reflect terms negotiated by the  
 3926 state board ~~of Administration~~ or its designated agents, the  
 3927 ~~aforementioned~~ requirement is ~~deemed to be~~ satisfied by delivery  
 3928 of a separate document described by Rule 498 substituting  
 3929 accurate information; and

3930 2. Delivery shall be ~~deemed to have been~~ effected if  
 3931 delivery is through electronic means and the following standards  
 3932 are satisfied:

3933 a. Electronically-delivered documents are prepared and  
 3934 provided consistent with style, format, and content requirements  
 3935 applicable to printed documents;

3936 b. Each member participant is provided timely and adequate  
 3937 notice of the documents that are to be delivered, and their  
 3938 significance thereof, and of the member's participant's right to  
 3939 obtain a paper copy of such documents free of charge;

3940 c. ~~(I)~~ Members Participants have adequate access to the  
 3941 electronic documents, at locations such as their worksites or  
 3942 public facilities, and have the ability to convert the documents  
 3943 to paper free of charge by the state board ~~of Administration~~,  
 3944 and the board or its designated agents take appropriate and  
 3945 reasonable measures to ensure that the system for furnishing  
 3946 electronic documents results in actual receipt. ~~or~~

3947 ~~(II)~~ Members Participants have provided consent to receive  
 3948 information in electronic format, which consent may be revoked;

3949 and  
 3950 d. The state board ~~of Administration~~, or its designated  
 3951 agent, actually provides paper copies of the documents free of  
 3952 charge, upon request.

3953 (16) DISABILITY BENEFITS.—For any member ~~participant~~ of  
 3954 the investment plan ~~optional retirement program~~ who becomes  
 3955 totally and permanently disabled, benefits must ~~shall~~ be paid in  
 3956 accordance with the provisions of s. 121.591.

3957 (17) SOCIAL SECURITY COVERAGE.—Social security coverage  
 3958 shall be provided for all officers and employees who become  
 3959 members ~~participants~~ of the investment plan ~~optional program~~.  
 3960 Any modification of the present agreement with the Social  
 3961 Security Administration, or referendum required under the Social  
 3962 Security Act, for the purpose of providing social security  
 3963 coverage for any member shall be requested by the state agency  
 3964 in compliance with the applicable provisions of the Social  
 3965 Security Act governing such coverage. However, retroactive  
 3966 social security coverage for service prior to December 1, 1970,  
 3967 with the employer may ~~shall~~ not be provided for any member who  
 3968 was not covered under the agreement as of November 30, 1970.

3969 (18) RETIREE HEALTH INSURANCE SUBSIDY.—All officers and  
 3970 employees who are members ~~participants~~ of the investment plan  
 3971 are ~~optional program~~ shall be eligible to receive the retiree  
 3972 health insurance subsidy, subject to the provisions of s.  
 3973 112.363.

3974 (19) MEMBER PARTICIPANT RECORDS.—Personal identifying  
 3975 information of a member ~~participant~~ in the investment plan  
 3976 ~~Public Employee Optional Retirement Program~~ contained in Florida

3977 Retirement System records held by the state board of  
 3978 ~~Administration~~ or the department of ~~Management Services~~ is  
 3979 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 3980 Constitution.

3981 (20) DESIGNATION OF BENEFICIARIES.—

3982 (a) Each member participant may, by electronic means or on  
 3983 a form provided for that purpose, signed and filed with the  
 3984 third-party administrator, designate a choice of one or more  
 3985 persons, named sequentially or jointly, as his or her  
 3986 beneficiary for receiving ~~who shall receive~~ the benefits, if  
 3987 any, which may be payable pursuant to this chapter in the event  
 3988 of the member's participant's death. If no beneficiary is named  
 3989 in this manner, or if no beneficiary designated by the member  
 3990 ~~participant~~ survives the member participant, the beneficiary  
 3991 shall be the spouse of the deceased, if living. If the member's  
 3992 ~~participant's~~ spouse is not alive at the time of the  
 3993 beneficiary's his or her death, the beneficiary shall be the  
 3994 living children of the member participant. If no children  
 3995 survive, the beneficiary shall be the member's participant's  
 3996 father or mother, if living; otherwise, the beneficiary shall be  
 3997 the member's participant's estate. The beneficiary most recently  
 3998 designated by a member participant ~~on a form or letter filed~~  
 3999 ~~with the third party administrator~~ shall be the beneficiary  
 4000 entitled to any benefits payable at the time of the member's  
 4001 ~~participant's~~ death. However ~~Notwithstanding any other provision~~  
 4002 ~~in this subsection to the contrary~~, for a member participant who  
 4003 dies prior to his or her effective date of retirement, the  
 4004 spouse at the time of death shall be the member's participant's

4005 beneficiary unless the member ~~such participant~~ designates a  
 4006 different beneficiary ~~as provided in this subsection~~ subsequent  
 4007 to the member's ~~participant's~~ most recent marriage.

4008 (b) If a member ~~participant~~ designates a primary  
 4009 beneficiary other than the member's ~~participant's~~ spouse, the  
 4010 member's ~~participant's~~ spouse must sign the beneficiary  
 4011 designation form to acknowledge the designation. This  
 4012 requirement does not apply to the designation of one or more  
 4013 contingent beneficiaries to receive benefits remaining upon the  
 4014 death of the primary beneficiary or beneficiaries.

4015 (c) Notwithstanding the member's ~~participant's~~ designation  
 4016 of benefits to be paid through a trust to a beneficiary that is  
 4017 a natural person, ~~and notwithstanding the provisions of the~~  
 4018 trust, benefits must ~~shall~~ be paid directly to the beneficiary  
 4019 if the person is no longer a minor or an incapacitated person as  
 4020 defined in s. 744.102.

4021 (21) PARTICIPATION BY TERMINATED DEFERRED RETIREMENT  
 4022 OPTION PROGRAM MEMBERS ~~PARTICIPANTS~~.—Notwithstanding any other  
 4023 provision of law ~~to the contrary~~, members ~~participants~~ in the  
 4024 Deferred Retirement Option Program offered under part I may,  
 4025 after conclusion of their participation in the program, elect to  
 4026 roll over or authorize a direct trustee-to-trustee transfer to  
 4027 an account under the investment plan ~~Public Employee Optional~~  
 4028 ~~Retirement Program~~ of their Deferred Retirement Option Program  
 4029 proceeds distributed as provided under s. 121.091(13)(c)5. The  
 4030 transaction must constitute an "eligible rollover distribution"  
 4031 within the meaning of s. 402(c)(4) of the Internal Revenue Code.

4032 (a) The investment plan ~~Public Employee Optional~~



4033 ~~Retirement Program~~ may accept such amounts for deposit into  
 4034 member ~~participant~~ accounts as provided in paragraph (5) ~~(e)-(e)~~.

4035 (b) The affected member ~~participant~~ shall direct the  
 4036 investment of his or her investment account; however, unless he  
 4037 or she becomes a renewed member of the Florida Retirement System  
 4038 under s. 121.122 and elects to participate in the investment  
 4039 plan ~~Public Employee Optional Retirement Program~~, no ~~employer~~  
 4040 contributions may ~~not~~ be made to the member's ~~participant's~~  
 4041 account as provided under paragraph (5) (a).

4042 (c) The state board or the department is not responsible  
 4043 for locating those persons who may be eligible to participate in  
 4044 the investment plan ~~Public Employee Optional Retirement Program~~  
 4045 under this subsection.

4046 (22) CREDIT FOR MILITARY SERVICE.—Creditable service of  
 4047 any member of the investment plan includes ~~Public Employee~~  
 4048 ~~Optional Retirement Program shall include~~ military service in  
 4049 the Armed Forces of the United States as provided in ~~the~~  
 4050 ~~conditions outlined in~~ s. 121.111(1).

4051 Section 19. Section 121.4502, Florida Statutes, is amended  
 4052 to read:

4053 121.4502 Florida Retirement System Investment Plan ~~Public~~  
 4054 ~~Employee Optional Retirement Program~~ Trust Fund.—

4055 (1) The Florida Retirement System Investment Plan ~~Public~~  
 4056 ~~Employee Optional Retirement Program~~ Trust Fund is created to  
 4057 hold the assets of the Florida Retirement System Investment Plan  
 4058 ~~Public Employee Optional Retirement Program~~ in trust for the  
 4059 exclusive benefit of such program's members ~~participants~~ and  
 4060 beneficiaries, and for the payment of reasonable administrative

4061 expenses of the program, in accordance with s. 401 of the  
 4062 Internal Revenue Code, and shall be administered by the state  
 4063 board ~~of Administration~~ as trustee. Funds shall be credited to  
 4064 the trust fund as provided in this part, to be used for the  
 4065 purposes of this part. The trust fund is exempt from the service  
 4066 charges imposed by s. 215.20.

4067 (2) The Florida Retirement System Investment Plan ~~Public~~  
 4068 ~~Employee Optional Retirement Program~~ Trust Fund is a retirement  
 4069 trust fund of the Florida Retirement System that accounts for  
 4070 retirement plan assets held by the state in a trustee capacity  
 4071 as a fiduciary for individual participants in the Florida  
 4072 Retirement System Investment Plan ~~Public Employee Optional~~  
 4073 ~~Retirement Program~~ and, pursuant to s. 19(f), Art. III of the  
 4074 State Constitution, is not subject to termination.

4075 (3) A forfeiture account shall be created within the  
 4076 Florida Retirement System Investment Plan ~~Public Employee~~  
 4077 ~~Optional Retirement Program~~ Trust Fund to hold the assets  
 4078 derived from the forfeiture of benefits by participants.  
 4079 Pursuant to a private letter ruling from the Internal Revenue  
 4080 Service, the forfeiture account may be used only for paying  
 4081 expenses of the Florida Retirement System Investment Plan ~~Public~~  
 4082 ~~Employee Optional Retirement Program~~ and reducing future  
 4083 employer contributions to the program. Consistent with Rulings  
 4084 80-155 and 74-340 of the Internal Revenue Service, unallocated  
 4085 reserves within the forfeiture account must be used as quickly  
 4086 and as prudently as possible considering the state board's  
 4087 fiduciary duty. Expected withdrawals from the account must  
 4088 endeavor to reduce the account to zero each fiscal year.

CS/HB 1405

2011

4089 Section 20. Subsections (1) and (3) of section 121.4503,  
 4090 Florida Statutes, are amended to read:

4091 121.4503 Florida Retirement System Contributions Clearing  
 4092 Trust Fund.—

4093 (1) The Florida Retirement System Contributions Clearing  
 4094 Trust Fund is created as a clearing fund for disbursing employee  
 4095 and employer contributions to the component plans of the Florida  
 4096 Retirement System and shall be administered by the Department of  
 4097 Management Services. Funds shall be credited to the trust fund  
 4098 as provided in this chapter and shall be held in trust for the  
 4099 contributing members and employers until such time as the assets  
 4100 are transferred by the department to the Florida Retirement  
 4101 System Trust Fund, the Florida Retirement System Investment Plan  
 4102 ~~Public Employee Optional Retirement Program~~ Trust Fund, or other  
 4103 trust funds as authorized by law, to be used for the purposes of  
 4104 this chapter. The trust fund is exempt from the service charges  
 4105 imposed by s. 215.20.

4106 (3) The Department of Management Services may adopt rules  
 4107 governing the receipt and disbursement of amounts received by  
 4108 the Florida Retirement System Contributions Clearing Trust Fund  
 4109 from employees and employers contributing to the component plans  
 4110 of the Florida Retirement System.

4111 Section 21. Section 121.571, Florida Statutes, is amended  
 4112 to read:

4113 121.571 Contributions.—Contributions to the investment  
 4114 plan ~~Public Employee Optional Retirement Program~~ shall be made  
 4115 as follows:

4116 (1) CONTRIBUTORY ~~NONCONTRIBUTORY~~ PLAN.—Each member and

CS/HB 1405

2011

4117 employer shall submit ~~accomplish the~~ contributions as required  
 4118 by s. 121.71 ~~by a procedure in which no employee's gross salary~~  
 4119 ~~shall be reduced.~~

4120 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund  
 4121 the retirement and disability benefits provided under this part  
 4122 must ~~shall~~ be based on the uniform contribution rates  
 4123 established by s. 121.71 and on the membership class or subclass  
 4124 of the member participant. Such contributions must ~~shall~~ be  
 4125 allocated as provided in ss. 121.72 and 121.73.

4126 (3) CONTRIBUTIONS FOR SOCIAL SECURITY COVERAGE AND FOR  
 4127 RETIREE HEALTH INSURANCE SUBSIDY.—Contributions required under  
 4128 s. 121.71 ~~are this section shall be~~ in addition to employer and  
 4129 member contributions ~~required~~ for social security and the  
 4130 Retiree Health Insurance Subsidy Trust Fund as required under  
 4131 ~~provided in~~ ss. 112.363, 121.052, 121.055, and 121.071, as  
 4132 appropriate.

4133 Section 22. Section 121.591, Florida Statutes, is amended  
 4134 to read:

4135 121.591 Payment of benefits payable under the Public  
 4136 ~~Employee Optional Retirement Program of the Florida Retirement~~  
 4137 ~~System.~~—Benefits may not be paid under the Florida Retirement  
 4138 System Investment Plan ~~this section~~ unless the member has  
 4139 terminated employment as provided in s. 121.021(39) (a) or is  
 4140 deceased and a proper application has been filed as ~~in the~~  
 4141 ~~manner~~ prescribed by the state board or the department. Benefits  
 4142 are not payable under the investment plan before termination of  
 4143 employment as provided in s. 121.021(39) (a) for employee  
 4144 hardships, unforeseeable emergencies, loans, medical expenses,

4145 educational expenses, purchase of a principal residence,  
 4146 payments necessary to prevent eviction or foreclosure on an  
 4147 employee's principal residence, or any other reason prior to  
 4148 termination from all employment relationships with participating  
 4149 employers. The state board or department, as appropriate, may  
 4150 cancel an application for retirement benefits if ~~when~~ the member  
 4151 or beneficiary fails to timely provide the information and  
 4152 documents required by this chapter and the rules of the state  
 4153 board and department. In accordance with their respective  
 4154 responsibilities ~~as provided herein,~~ the state board ~~of~~  
 4155 ~~Administration~~ and the department ~~of Management Services~~ shall  
 4156 adopt rules establishing procedures for application for  
 4157 retirement benefits and for the cancellation of such application  
 4158 if ~~when~~ the required information or documents are not received.  
 4159 The state board ~~of Administration~~ and the department ~~of~~  
 4160 ~~Management Services,~~ as appropriate, are authorized to cash out  
 4161 a de minimis account of a member participant who has been  
 4162 terminated from Florida Retirement System covered employment for  
 4163 a minimum of 6 calendar months. A de minimis account is an  
 4164 account containing member and employer contributions and  
 4165 accumulated earnings of not more than \$5,000 made under the  
 4166 provisions of this chapter. Such cash-out must either be a  
 4167 complete lump-sum liquidation of the account balance, subject to  
 4168 the provisions of the Internal Revenue Code, or a lump-sum  
 4169 direct rollover distribution paid directly to the custodian of  
 4170 an eligible retirement plan, as defined by the Internal Revenue  
 4171 Code, on behalf of the member participant. Any nonvested  
 4172 accumulations and associated service credit, including amounts

4173 | transferred to the suspense account of the Florida Retirement  
 4174 | System Investment Plan Trust Fund authorized under s.  
 4175 | 121.4501(6), shall be forfeited upon payment of any vested  
 4176 | benefit to a member or beneficiary, except for de minimis  
 4177 | distributions or minimum required distributions as provided  
 4178 | under this section. If any financial instrument issued for the  
 4179 | payment of retirement benefits under this section is not  
 4180 | presented for payment within 180 days after the last day of the  
 4181 | month in which it was originally issued, the third-party  
 4182 | administrator or other duly authorized agent of the state board  
 4183 | ~~of Administration~~ shall cancel the instrument and credit the  
 4184 | amount of the instrument to the suspense account of the Florida  
 4185 | Retirement System Investment Plan ~~Public Employee Optional~~  
 4186 | ~~Retirement Program~~ Trust Fund authorized under s. 121.4501(6).  
 4187 | Any such amounts transferred to the suspense account are payable  
 4188 | upon a proper application, not to include earnings thereon, as  
 4189 | provided in this section, within 10 years after the last day of  
 4190 | the month in which the instrument was originally issued, after  
 4191 | which time such amounts and any earnings attributable to  
 4192 | employer contributions ~~thereon~~ shall be forfeited. Any such  
 4193 | forfeited amounts are assets of the Florida Retirement System  
 4194 | Investment Plan ~~Public Employee Optional Retirement Program~~  
 4195 | Trust Fund and are not subject to the provisions of chapter 717.  
 4196 | (1) NORMAL BENEFITS.—Under the investment plan ~~Public~~  
 4197 | ~~Employee Optional Retirement Program~~:  
 4198 | (a) Benefits in the form of vested accumulations as  
 4199 | described in s. 121.4501(6) are payable under this subsection in  
 4200 | accordance with the following terms and conditions:

4201 1. ~~To the extent vested,~~ Benefits are payable only to a  
 4202 member, an alternate payee of a qualified domestic relations  
 4203 order, or a beneficiary participant.

4204 2. Benefits shall be paid by the third-party administrator  
 4205 or designated approved providers in accordance with the law, the  
 4206 contracts, and any applicable board rule or policy.

4207 3. ~~To receive benefits,~~ The member participant must be  
 4208 terminated from all employment with all Florida Retirement  
 4209 System employers, as provided in s. 121.021(39).

4210 4. Benefit payments may not be made until the member  
 4211 ~~participant~~ has been terminated for 3 calendar months, except  
 4212 that the state board may authorize by rule for the distribution  
 4213 of up to 10 percent of the member's participant's account after  
 4214 being terminated for 1 calendar month if the member participant  
 4215 has reached the normal retirement date as defined in s. 121.021  
 4216 ~~of the defined benefit plan.~~

4217 5. If a member or former member of the Florida Retirement  
 4218 System receives an invalid distribution ~~from the Public Employee~~  
 4219 ~~Optional Retirement Program Trust Fund,~~ such person must either  
 4220 repay the full amount ~~invalid distribution to the trust fund~~  
 4221 within 90 days after receipt of final notification by the state  
 4222 board or the third-party administrator that the distribution was  
 4223 invalid, or, in lieu of repayment, the member must terminate  
 4224 employment from all participating employers. If such person  
 4225 fails to repay the full invalid distribution within 90 days  
 4226 after receipt of final notification, the person may be deemed  
 4227 retired from the investment plan ~~optional retirement program~~ by  
 4228 the state board, ~~as provided pursuant to s. 121.4501(2)(k),~~ and

4229 is subject to s. 121.122. If such person is deemed retired ~~by~~  
 4230 ~~the state board~~, any joint and several liability set out in s.  
 4231 121.091(9)(d)2. is ~~becomes null and~~ void, and the state board,  
 4232 the department, or the employing agency is not liable for gains  
 4233 on payroll contributions that have not been deposited to the  
 4234 person's account in the investment plan ~~retirement program~~,  
 4235 pending resolution of the invalid distribution. The member or  
 4236 former member who has been deemed retired or who has been  
 4237 determined by the state board to have taken an invalid  
 4238 distribution may appeal the agency decision through the  
 4239 complaint process as provided under s. 121.4501(9)(g)3. As used  
 4240 in this subparagraph, the term "invalid distribution" means any  
 4241 distribution from an account in the investment plan ~~optional~~  
 4242 ~~retirement program~~ which is taken in violation of this section,  
 4243 s. 121.091(9), or s. 121.4501.

4244 (b) If a member participant elects to receive his or her  
 4245 benefits upon termination of employment as defined in s.  
 4246 121.021, the member participant must submit a written  
 4247 application or an application by electronic means to the third-  
 4248 party administrator indicating his or her preferred distribution  
 4249 date and selecting an authorized method of distribution as  
 4250 provided in paragraph (c). The member participant may defer  
 4251 receipt of benefits until he or she chooses to make such  
 4252 application, subject to federal requirements.

4253 (c) Upon receipt by the third-party administrator of a  
 4254 properly executed application for distribution of benefits, the  
 4255 total accumulated benefit is ~~shall be~~ payable to the member pro  
 4256 rata across all Florida Retirement System benefit sources



4257 ~~participant~~, as:

4258 1. A lump-sum or partial distribution to the member  
 4259 ~~participant~~;

4260 2. A lump-sum direct rollover distribution whereby all  
 4261 accrued benefits, plus interest and investment earnings, are  
 4262 paid from the member's ~~participant's~~ account directly to the  
 4263 custodian of an eligible retirement plan, as defined in s.  
 4264 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
 4265 member ~~participant~~; or

4266 3. Periodic distributions, as authorized by the state  
 4267 board.

4268 (d) The distribution payment method selected by the member  
 4269 or beneficiary, and the retirement of the member or beneficiary,  
 4270 shall be final and irrevocable at the time a benefit  
 4271 distribution payment is cashed, deposited, or transferred to  
 4272 another financial institution. Any additional service that  
 4273 remains unclaimed at retirement may not be claimed or purchased,  
 4274 and the type of retirement may not be changed, except that if a  
 4275 member recovers from a disability, the member may subsequently  
 4276 request benefits under subsection (2).

4277 (e) A member may not receive a distribution of employee  
 4278 contributions if a pending qualified domestic relations order is  
 4279 filed against the member's investment plan account.

4280 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided  
 4281 under this subsection are payable in lieu of the benefits that  
 4282 ~~which~~ would otherwise be payable under the provisions of  
 4283 subsection (1). Such benefits must ~~shall~~ be funded ~~entirely~~ from  
 4284 employer contributions made under s. 121.571, transferred

CS/HB 1405

2011

4285 employee contributions and ~~participant~~ funds accumulated  
 4286 pursuant to paragraph (a), and interest and earnings thereon.  
 4287 Pursuant thereto:

4288 (a) Transfer of funds.—To qualify to receive monthly  
 4289 disability benefits under this subsection:

4290 1. All moneys accumulated in the member's ~~participant's~~  
 4291 ~~Public Employee Optional Retirement Program~~ accounts, including  
 4292 vested and nonvested accumulations as described in s.  
 4293 121.4501(6), must ~~shall~~ be transferred from such individual  
 4294 accounts to the division ~~of Retirement~~ for deposit in the  
 4295 disability account of the Florida Retirement System Trust Fund.  
 4296 Such moneys must ~~shall~~ be ~~separately~~ accounted for separately.  
 4297 Earnings must ~~shall~~ be credited on an annual basis for amounts  
 4298 held in the disability accounts of the Florida Retirement System  
 4299 Trust Fund based on actual earnings of the ~~Florida Retirement~~  
 4300 ~~System~~ trust fund.

4301 2. If the member ~~participant~~ has retained retirement  
 4302 credit ~~he or she had~~ earned under the pension plan ~~defined~~  
 4303 ~~benefit program of the Florida Retirement System~~ as provided in  
 4304 s. 121.4501(3) ~~(b)~~, a sum representing the actuarial present  
 4305 value of such credit within the Florida Retirement System Trust  
 4306 Fund shall be reassigned by the division ~~of Retirement~~ from the  
 4307 pension plan ~~defined benefit program~~ to the disability program  
 4308 as implemented under this subsection and shall be deposited in  
 4309 the disability account of the ~~Florida Retirement System~~ trust  
 4310 fund. Such moneys must ~~shall~~ be ~~separately~~ accounted for  
 4311 separately.

4312 (b) Disability retirement; entitlement.—

4313 1. A member participant of the investment plan ~~Public~~  
 4314 ~~Employee Optional Retirement Program~~ who becomes totally and  
 4315 permanently disabled, as defined in paragraph (d) s.  
 4316 ~~121.091(4)(b)~~, after completing 8 years of creditable service,  
 4317 or a member participant who becomes totally and permanently  
 4318 disabled in the line of duty regardless of ~~his or her~~ length of  
 4319 service, is ~~shall be~~ entitled to a monthly disability benefit ~~as~~  
 4320 ~~provided herein~~.

4321 2. In order for service to apply toward the 8 years of  
 4322 creditable service required ~~to vest~~ for regular disability  
 4323 benefits, or toward the creditable service used in calculating a  
 4324 service-based benefit as provided ~~for~~ under paragraph (g), the  
 4325 service must be creditable service as described below:

4326 a. The member's participant's period of service under the  
 4327 investment plan shall ~~Public Employee Optional Retirement~~  
 4328 ~~Program will~~ be considered creditable service, except as  
 4329 provided in subparagraph d.

4330 b. If the member participant has elected to retain credit  
 4331 for ~~his or her~~ service under the pension plan defined benefit  
 4332 ~~program of the Florida Retirement System~~ as provided under s.  
 4333 121.4501(3) ~~(b)~~, all such service shall ~~will~~ be considered  
 4334 creditable service.

4335 c. If the member elects participant ~~has elected~~ to  
 4336 transfer to his or her member participant accounts a sum  
 4337 representing the present value of his or her retirement credit  
 4338 under the pension plan defined benefit program as provided under  
 4339 s. 121.4501(3) ~~(e)~~, the period of service under the pension plan  
 4340 ~~defined benefit program~~ represented in the present value amounts

CS/HB 1405

2011

4341 transferred shall ~~will~~ be considered creditable service ~~for~~  
 4342 ~~purposes of vesting for disability benefits~~, except as provided  
 4343 in subparagraph d.

4344 d. Whenever a member ~~participant~~ has terminated employment  
 4345 and has taken distribution of his or her funds as provided in  
 4346 subsection (1), all creditable service represented by such  
 4347 distributed funds is forfeited for purposes of this subsection.

4348 (c) Disability retirement effective date.—The effective  
 4349 retirement date for a member ~~participant~~ who applies and is  
 4350 approved for disability retirement shall be established as  
 4351 provided under s. 121.091(4) (a)2. and 3.

4352 (d) Total and permanent disability.—A member ~~participant~~  
 4353 shall be considered totally and permanently disabled if, in the  
 4354 opinion of the division, he or she is prevented, by reason of a  
 4355 medically determinable physical or mental impairment, from  
 4356 rendering useful and efficient service as an officer or  
 4357 employee.

4358 (e) Proof of disability.—~~The division,~~ Before approving  
 4359 payment of any disability retirement benefit, the division shall  
 4360 require proof that the member ~~participant~~ is totally and  
 4361 permanently disabled ~~in the same manner~~ as provided ~~for members~~  
 4362 ~~of the defined benefit program of the Florida Retirement System~~  
 4363 under s. 121.091(4) (c).

4364 (f) Disability retirement benefit.—Upon the disability  
 4365 retirement of a member ~~participant~~ under this subsection, the  
 4366 member ~~participant~~ shall receive a monthly benefit that begins  
 4367 accruing ~~shall begin to accrue~~ on the first day of the month of  
 4368 disability retirement, as approved by the division, and is ~~shall~~

4369 ~~be~~ payable on the last day of that month and each month  
 4370 thereafter during his or her lifetime and continued disability.  
 4371 All disability benefits must ~~payable to such member shall~~ be  
 4372 paid out of the disability account of the Florida Retirement  
 4373 System Trust Fund established under this subsection.

4374 (g) Computation of disability retirement benefit.—The  
 4375 amount of each monthly payment must ~~shall~~ be calculated ~~in the~~  
 4376 ~~same manner~~ as provided ~~for members of the defined benefit~~  
 4377 ~~program of the Florida Retirement System~~ under s. 121.091(4)(f).  
 4378 ~~For such purpose,~~ Creditable service under both the pension plan  
 4379 ~~defined benefit program~~ and the investment plan ~~Public Employee~~  
 4380 ~~Optional Retirement Program of the Florida Retirement System~~  
 4381 shall be applicable as provided under paragraph (b).

4382 (h) Reapplication.—A member ~~participant~~ whose initial  
 4383 application for disability retirement is ~~has been~~ denied may  
 4384 reapply for disability benefits ~~in the same manner, and under~~  
 4385 ~~the same conditions,~~ as provided for members of the defined  
 4386 ~~benefit program of the Florida Retirement System~~ under s.  
 4387 121.091(4)(g).

4388 (i) Membership.—Upon approval of a member's ~~an~~ application  
 4389 for disability benefits ~~under this subsection,~~ the member  
 4390 ~~applicant~~ shall be transferred to the pension plan ~~defined~~  
 4391 ~~benefit program of the Florida Retirement System,~~ effective upon  
 4392 his or her disability retirement effective date.

4393 (j) Option to cancel.—A member ~~Any participant~~ whose  
 4394 application for disability benefits is approved may cancel the  
 4395 ~~his or her application~~ if ~~for disability benefits, provided that~~  
 4396 the cancellation request is received by the division before a

4397 disability retirement warrant has been deposited, cashed, or  
 4398 received by direct deposit. Upon ~~such~~ cancellation:

4399 1. The member's participant's transfer to the pension plan  
 4400 ~~defined benefit program~~ under paragraph (i) shall be nullified;

4401 2. The member participant shall be retroactively  
 4402 reinstated in the investment plan ~~Public Employee Optional~~  
 4403 ~~Retirement Program~~ without hiatus;

4404 3. All funds transferred to the Florida Retirement System  
 4405 Trust Fund under paragraph (a) must ~~shall~~ be returned to the  
 4406 member participant accounts from which the ~~such~~ funds were  
 4407 drawn; and

4408 4. The member participant may elect to receive the benefit  
 4409 payable under ~~the provisions of~~ subsection (1) in lieu of  
 4410 disability benefits ~~as provided under this subsection~~.

4411 (k) Recovery from disability.—

4412 1. The division may require periodic reexaminations at the  
 4413 expense of the disability program account of the Florida  
 4414 Retirement System Trust Fund. Except as ~~otherwise~~ provided in  
 4415 subparagraph 2., ~~the requirements, procedures, and restrictions~~  
 4416 ~~relating to the conduct and review of such reexaminations,~~  
 4417 ~~discontinuation or termination of benefits, reentry into~~  
 4418 ~~employment, disability retirement after reentry into covered~~  
 4419 ~~employment, and all other matters relating to recovery from~~  
 4420 disability shall be ~~the same as~~ provided ~~are set forth~~ under s.  
 4421 121.091(4)(h).

4422 2. Upon recovery from disability, the any recipient of  
 4423 disability retirement benefits under this subsection shall be a  
 4424 compulsory member of the investment plan ~~Public Employee~~

4425 ~~Optional Retirement Program of the Florida Retirement System.~~  
 4426 The net difference between the recipient's original account  
 4427 balance transferred to the Florida Retirement System Trust Fund,  
 4428 including earnings, ~~under paragraph (a)~~ and total disability  
 4429 benefits paid to such recipient, if any, shall be determined as  
 4430 provided in sub-subparagraph a.

4431 a. An amount equal to the total benefits paid shall be  
 4432 subtracted from that portion of the transferred account balance  
 4433 consisting of vested accumulations as described under s.  
 4434 121.4501(6), if any, and an amount equal to the remainder of  
 4435 benefit amounts paid, if any, shall ~~then~~ be subtracted from any  
 4436 remaining ~~portion consisting of~~ nonvested accumulations ~~as~~  
 4437 ~~described under s. 121.4501(6).~~

4438 b. Amounts subtracted under sub-subparagraph a. must ~~shall~~  
 4439 be retained within the disability account of the Florida  
 4440 Retirement System Trust Fund. Any remaining account balance  
 4441 shall be transferred to the third-party administrator for  
 4442 disposition as provided under sub-subparagraph c. or sub-  
 4443 subparagraph d., as appropriate.

4444 c. If the recipient returns to covered employment,  
 4445 transferred amounts must ~~shall~~ be deposited in individual  
 4446 accounts under the investment plan ~~Public Employee Optional~~  
 4447 ~~Retirement Program~~, as directed by the member participant.  
 4448 Vested and nonvested amounts shall be separately accounted for  
 4449 as provided in s. 121.4501(6).

4450 d. If the recipient fails to return to covered employment  
 4451 upon recovery from disability:

4452 (I) Any remaining vested amount must ~~shall~~ be deposited in

4453 individual accounts under the investment plan ~~Public Employee~~  
 4454 ~~Optional Retirement Program~~, as directed by the member  
 4455 ~~participant~~, and is ~~shall be~~ payable as provided in subsection  
 4456 (1).

4457 (II) Any remaining nonvested amount must ~~shall~~ be held in  
 4458 a suspense account and is ~~shall be~~ forfeitable after 5 years as  
 4459 provided in s. 121.4501(6).

4460 3. If present value was reassigned from the pension plan  
 4461 ~~defined benefit program~~ to the disability program ~~of the Florida~~  
 4462 ~~Retirement System~~ as provided under subparagraph (a)2., the full  
 4463 present value amount must ~~shall~~ be returned to the defined  
 4464 benefit account within the Florida Retirement System Trust Fund  
 4465 and the member's ~~affected individual's~~ associated retirement  
 4466 credit under the pension plan ~~must~~ ~~defined benefit program~~ ~~shall~~  
 4467 be reinstated in full. Any benefit based upon such credit must  
 4468 ~~shall~~ be calculated as provided in s. 121.091(4)(h)1.

4469 (1) Nonadmissible causes of disability.—A member is  
 4470 ~~participant~~ ~~shall not be~~ entitled to ~~receive~~ a disability  
 4471 retirement benefit if the disability results from any injury or  
 4472 disease ~~sustained or inflicted~~ as described in s. 121.091(4)(i).

4473 (m) Disability retirement of justice or judge by order of  
 4474 Supreme Court.—

4475 1. If a member ~~participant~~ is a justice of the Supreme  
 4476 Court, judge of a district court of appeal, circuit judge, or  
 4477 judge of a county court who has served for 6 years or more as an  
 4478 elected constitutional judicial officer, including service as a  
 4479 judicial officer in any court abolished pursuant to Art. V of  
 4480 the State Constitution, and who is retired for disability ~~by~~



4481 ~~order of the Supreme Court upon recommendation of the Judicial~~  
 4482 ~~Qualifications Commission pursuant to s. 12, the provisions of~~  
 4483 ~~Art. V of the State Constitution, the member's participant's~~  
 4484 ~~Option 1 monthly disability benefit amount as provided in s.~~  
 4485 ~~121.091(6)(a)1. shall be two-thirds of his or her monthly~~  
 4486 ~~compensation as of the member's participant's disability~~  
 4487 ~~retirement date. The member ~~Such a participant~~ may alternatively~~  
 4488 ~~elect to receive an actuarially adjusted disability retirement~~  
 4489 ~~benefit under any other option as provided in s. 121.091(6)(a),~~  
 4490 ~~or to receive the normal benefit payable under the Public~~  
 4491 ~~Employee Optional Retirement Program as set forth in subsection~~  
 4492 ~~(1).~~

4493         2. If any justice or judge who is a member participant of  
 4494 the investment plan ~~Public Employee Optional Retirement Program~~  
 4495 ~~of the Florida Retirement System~~ is retired for disability ~~by~~  
 4496 ~~order of the Supreme Court upon recommendation of the Judicial~~  
 4497 ~~Qualifications Commission pursuant to s. 12, the provisions of~~  
 4498 ~~Art. V of the State Constitution and elects to receive a monthly~~  
 4499 ~~disability benefit under the provisions of this paragraph:~~

4500             a. Any present value amount that was transferred to his or  
 4501 her investment plan ~~program~~ account and all employee and  
 4502 ~~employer~~ contributions made to such account on his or her  
 4503 behalf, plus interest and earnings thereon, must ~~shall~~ be  
 4504 transferred to and deposited in the disability account of the  
 4505 Florida Retirement System Trust Fund; and

4506             b. The monthly disability benefits payable under this  
 4507 ~~paragraph for any affected justice or judge retired from the~~  
 4508 ~~Florida Retirement System pursuant to Art. V of the State~~

CS/HB 1405

2011

4509 ~~Constitution~~ shall be paid from the disability account of the  
 4510 Florida Retirement System Trust Fund.

4511 (n) Death of retiree or beneficiary.—Upon the death of a  
 4512 disabled retiree or beneficiary of the retiree ~~thereof~~ who is  
 4513 receiving monthly disability benefits under this subsection, the  
 4514 monthly benefits shall be paid through the last day of the month  
 4515 of death and shall terminate, or be adjusted, if applicable, as  
 4516 of that date in accordance with the optional form of benefit  
 4517 selected at the time of retirement. The department ~~of Management~~  
 4518 ~~Services~~ may adopt rules necessary to administer this paragraph.

4519 (3) DEATH BENEFITS.—Under the investment plan ~~Public~~  
 4520 ~~Employee Optional Retirement Program~~:

4521 (a) Survivor benefits are ~~shall be~~ payable in accordance  
 4522 with the following terms and conditions:

4523 1. To the extent vested, benefits are ~~shall be~~ payable  
 4524 only to a member's ~~participant's~~ beneficiary or beneficiaries as  
 4525 designated by the member ~~participant~~ as provided in s.  
 4526 121.4501(20).

4527 2. Benefits shall be paid by the third-party administrator  
 4528 or designated approved providers in accordance with the law, the  
 4529 contracts, and any applicable state board rule or policy.

4530 3. To receive benefits under this subsection, the member  
 4531 ~~participant~~ must be deceased.

4532 (b) In the event of a member's ~~participant's~~ death, all  
 4533 vested accumulations as described in s. 121.4501(6), less  
 4534 withholding taxes remitted to the Internal Revenue Service,  
 4535 shall be distributed, as provided in paragraph (c) or as  
 4536 described in s. 121.4501(20), as if the member ~~participant~~

4537 | retired on the date of death. No other death benefits are ~~shall~~  
 4538 | ~~be~~ available for survivors of members ~~participants~~ under the  
 4539 | ~~Public Employee Optional Retirement Program~~, except for such  
 4540 | benefits, or coverage for ~~such~~ benefits, as are otherwise  
 4541 | provided by law or ~~are~~ separately provided ~~afforded~~ by the  
 4542 | employer, at the employer's discretion.

4543 | (c) Upon receipt by the third-party administrator of a  
 4544 | properly executed application for distribution of benefits, the  
 4545 | total accumulated benefit is ~~shall be~~ payable by the third-party  
 4546 | administrator to the member's ~~participant's~~ surviving  
 4547 | beneficiary or beneficiaries, as:

4548 | 1. A lump-sum distribution payable to the beneficiary or  
 4549 | beneficiaries, or to the deceased member's ~~participant's~~ estate;

4550 | 2. An eligible rollover distribution, if permitted, on  
 4551 | behalf of the surviving spouse of a deceased member ~~participant~~,  
 4552 | whereby all accrued benefits, plus interest and investment  
 4553 | earnings, are paid from the deceased member's ~~participant's~~  
 4554 | account directly to the custodian of an eligible retirement  
 4555 | plan, as described in s. 402(c)(8)(B) of the Internal Revenue  
 4556 | Code, on behalf of the surviving spouse; or

4557 | 3. A partial lump-sum payment whereby a portion of the  
 4558 | accrued benefit is paid to the deceased member's ~~participant's~~  
 4559 | surviving spouse or other designated beneficiaries, less  
 4560 | withholding taxes remitted to the Internal Revenue Service, and  
 4561 | the remaining amount is transferred directly to the custodian of  
 4562 | an eligible retirement plan, if permitted, as described in s.  
 4563 | 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
 4564 | surviving spouse. The proportions must be specified by the

4565 member participant or the surviving beneficiary.

4566

4567 This paragraph does not abrogate other applicable provisions of  
 4568 state or federal law providing for payment of death benefits.

4569 (4) LIMITATION ON LEGAL PROCESS.—The benefits payable to  
 4570 any person under the investment plan ~~Public Employee Optional~~  
 4571 ~~Retirement Program~~, and any contributions accumulated under the  
 4572 investment plan ~~such program~~, are not subject to assignment,  
 4573 execution, attachment, or any legal process, except for  
 4574 qualified domestic relations orders by a court of competent  
 4575 jurisdiction, income deduction orders as provided in s. 61.1301,  
 4576 and federal income tax levies.

4577 Section 23. Section 121.5911, Florida Statutes, is amended  
 4578 to read:

4579 121.5911 Disability retirement program; qualified status;  
 4580 rulemaking authority.—It is the intent of the Legislature that  
 4581 the disability retirement program for members ~~participants~~ of  
 4582 the investment plan ~~Public Employee Optional Retirement Program~~  
 4583 ~~as created in this act must~~ meet all applicable requirements of  
 4584 federal law for a qualified plan. The department ~~of Management~~  
 4585 ~~Services~~ shall seek a private letter ruling from the Internal  
 4586 Revenue Service on the disability retirement program ~~for~~  
 4587 ~~participants of the Public Employee Optional Retirement Program~~.  
 4588 Consistent with the private letter ruling, the department ~~of~~  
 4589 ~~Management Services~~ shall adopt ~~any necessary~~ rules necessary  
 4590 ~~required~~ to maintain the qualified status of the disability  
 4591 retirement program and the Florida Retirement System pension  
 4592 ~~defined benefit~~ plan.

CS/HB 1405

2011

4593 Section 24. Section 121.70, Florida Statutes, is amended  
 4594 to read:

4595 121.70 Legislative purpose and intent.—

4596 (1) This part provides for a uniform system for funding  
 4597 benefits provided under the Florida Retirement System Pension  
 4598 Plan ~~defined benefit program~~ established under part I of this  
 4599 chapter (referred to in this part as the pension plan ~~defined~~  
 4600 ~~benefit program~~) and under the Florida Retirement System  
 4601 Investment Plan ~~Public Employee Optional Retirement Program~~  
 4602 established under part II of this chapter (referred to in this  
 4603 part as the investment plan ~~optional retirement program~~). The  
 4604 Legislature recognizes and declares that the Florida Retirement  
 4605 System is a single retirement system, consisting of two  
 4606 retirement plans and other nonintegrated programs. Employees and  
 4607 employers participating in the Florida Retirement System  
 4608 collectively shall be responsible for making contributions to  
 4609 support the benefits provided ~~afforded~~ under both plans. The  
 4610 employees and ~~As provided in this part,~~ employers ~~participating~~  
 4611 ~~in the Florida Retirement System~~ shall make contributions based  
 4612 upon uniform contribution rates determined as a percentage of  
 4613 the employee's gross monthly compensation ~~total payroll~~ for the  
 4614 employee's ~~each~~ class or subclass of Florida Retirement System  
 4615 membership, irrespective of the ~~which~~ retirement plan in which  
 4616 the individual employee is enrolled ~~employees may elect~~. This  
 4617 shall be known as a uniform or blended contribution rate system.

4618 (2) In establishing a uniform contribution rate system, it  
 4619 is the intent of the Legislature to:

4620 (a) Provide greater stability and certainty in financial

4621 | planning and budgeting for Florida Retirement System employers  
 4622 | by eliminating the fiscal instability that would be caused by  
 4623 | dual rates coupled with employee-selected plan participation;

4624 |       (b) Provide greater fiscal equity and uniformity for  
 4625 | system employers by effectively distributing the financial  
 4626 | burden and benefit of short-term system deficits and surpluses,  
 4627 | respectively, in proportion to total system payroll; and

4628 |       (c) Allow employees to make their retirement plan  
 4629 | selection decisions free of circumstances that may cause  
 4630 | employers to favor one plan choice over another.

4631 |       Section 25. Section 121.71, Florida Statutes, is amended  
 4632 | to read:

4633 |       121.71 Uniform rates; process; calculations; levy.—

4634 |       (1) In conducting the system actuarial study required  
 4635 | under s. 121.031, the actuary shall follow all requirements  
 4636 | specified ~~thereunder~~ to determine, by Florida Retirement System  
 4637 | employee membership class, the dollar contribution amounts  
 4638 | necessary for the next ~~forthcoming~~ fiscal year for the pension  
 4639 | plan ~~defined benefit program~~. In addition, the actuary shall  
 4640 | determine, by Florida Retirement System membership class, based  
 4641 | on an estimate for the next ~~forthcoming~~ fiscal year of the gross  
 4642 | compensation of employees participating in the investment plan  
 4643 | ~~optional retirement program~~, the dollar contribution amounts  
 4644 | necessary to make the allocations required under ss. 121.72 and  
 4645 | 121.73. For each employee membership class and subclass, the  
 4646 | actuarial study must ~~shall~~ establish a uniform rate necessary to  
 4647 | fund the benefit obligations under both Florida Retirement  
 4648 | System retirement plans by dividing the sum of total dollars

CS/HB 1405

2011

4649 required by the estimated gross compensation of members in both  
4650 plans.

4651 (2) Based on the uniform rates set forth in subsections  
4652 ~~subsection~~ (3), (4), and (5), employees and employers shall make  
4653 monthly contributions to the Division of Retirement as required  
4654 in s. 121.061(1), which shall initially deposit the funds into  
4655 the Florida Retirement System Contributions Clearing Trust Fund.  
4656 A change in a contribution rate is effective the first day of  
4657 the month for which a full month's employee and employer  
4658 contribution may be made on or after the beginning date of the  
4659 change. Beginning July 1, 2011, each employee shall contribute  
4660 the contributions required in subsection (3). The employer shall  
4661 deduct the contribution from the employee's monthly salary, and  
4662 the contribution shall be submitted to the Division of  
4663 Retirement. These contributions shall be reported as employer-  
4664 paid employee contributions, and shall be credited to the  
4665 account of the employee. The contributions shall be deducted  
4666 from the employee's salary before the computation of applicable  
4667 federal taxes and shall be treated as employer contributions  
4668 under 26 U.S.C. s. 414(h) (2). The contributions, although  
4669 designated as employee contributions, are being paid by the  
4670 employer in lieu of contributions by the employee. The employee  
4671 shall not have the option of choosing to receive the contributed  
4672 amounts directly instead of having them paid by the employer to  
4673 the plan. Such contributions are mandatory and each employee  
4674 shall be considered to consent to payroll deductions. Payment of  
4675 an employee's salary or wages, less the contribution, is a full  
4676 and complete discharge and satisfaction of all claims and

CS/HB 1405

2011

4677 demands for the service rendered by employees during the period  
 4678 covered by the payment, except their claims to the benefits to  
 4679 which they may be entitled under the provisions of this chapter.

4680 (3) Required employee retirement contribution rates for  
 4681 each membership class of the Florida Retirement System for both  
 4682 retirement plans are as follows:

<u>Membership Class</u>	<u>Percentage of Gross Compensation, Effective July 1, 2011</u>
<u>Regular Class</u>	<u>5.00%</u>
<u>Special Risk Class</u>	<u>5.00%</u>
<u>Special Risk Administrative Support Class</u>	<u>5.00%</u>
<u>Elected Officers' Class</u>	<u>5.00%</u>
<u>Senior Management Class</u>	<u>5.00%</u>
<u>DROP</u>	<u>0.00%</u>

4689 (4) ~~(3)~~ Required employer retirement contribution rates for  
 4690 each membership class and subclass of the Florida Retirement  
 4691 System for both retirement plans are as follows:  
 4692

4693



CS/HB 1405

2011

	Percentage of Gross Compensation, Effective July 1, <u>2011</u> <del>2009</del>	<del>Percentage of Gross Compensation, Effective July 1, 2010</del>
4694		
4695		
4696	Regular Class	<u>5.23%</u> <del>8.69%</del> <u>9.63%</u>
4697	Special Risk Class	<u>17.45%</u> <del>19.76%</del> <u>22.11%</u>
4698	Special Risk Administrative Support Class	<u>7.12%</u> <del>11.39%</del> <u>12.10%</u>
4699	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	<u>5.95%</u> <del>13.32%</del> <u>15.20%</u>
4700	Elected Officers' Class— Justices, Judges	<u>7.26%</u> <del>18.40%</del> <u>20.65%</u>

CS/HB 1405

2011

4701	Elected Officers' Class— County Elected Officers	<u>7.09%</u> <del>15.37%</del>	<del>17.50%</del>
4702	Senior Management Class	<u>5.63%</u> <del>11.96%</del>	<del>13.43%</del>
4703	DROP	<u>11.14%</u> <del>9.80%</del>	<del>11.14%</del>
4704	<u>(5) In order to address unfunded actuarial liabilities of</u>		
4705	<u>the system, the required employer retirement contribution rates</u>		
4706	<u>for each membership class and subclass of the Florida Retirement</u>		
4707	<u>System for both retirement plans are as follows:</u>		
4708			

<u>Membership Class</u>	<u>Percentage of</u> <u>Gross</u> <u>Compensation,</u> <u>Effective</u> <u>July 1, 2011</u>	<u>Percentage of</u> <u>Gross</u> <u>Compensation,</u> <u>Effective</u> <u>July 1, 2012</u>
4709		
4710		
4711	<u>0.00%</u>	<u>1.94%</u>
4712	<u>0.00%</u>	<u>5.62%</u>
4713	<u>0.00%</u>	<u>5.80%</u>

CS/HB 1405

2011

4714	<u>Elected Officers' Class—</u> <u>Legislators, Governor,</u> <u>Lt. Governor,</u> <u>Cabinet Officers,</u> <u>State Attorneys,</u> <u>Public Defenders</u>	<u>0.00%</u>	<u>19.39%</u>
4715	<u>Elected Officers' Class—</u> <u>Justices, Judges</u>	<u>0.00%</u>	<u>11.74%</u>
4716	<u>Elected Officers' Class—</u> <u>County Elected Officers</u>	<u>0.00%</u>	<u>19.71%</u>
4717	<u>Senior Management Class</u>	<u>0.00%</u>	<u>9.93%</u>
4718	<u>DROP</u>	<u>0.00%</u>	<u>0.00%</u>
4719	<u>(6) If a member is reported under an incorrect membership</u>		
4720	<u>class and the amount of contributions reported and remitted are</u>		
4721	<u>less than the amount required, the employer shall owe the</u>		
4722	<u>difference, plus the delinquent fee, of 1 percent for each</u>		
4723	<u>calendar month or part thereof that the contributions should</u>		
4724	<u>have been paid. This delinquent assessment may not be waived. If</u>		
4725	<u>the contributions reported and remitted are more than the amount</u>		
4726	<u>required, the employer shall receive a credit to be applied</u>		
4727	<u>against future contributions owed.</u>		
4728	<u>(7) <del>(4)</del> The state actuary shall recognize and use an</u>		
4729	<u>appropriate level of available excess assets of the Florida</u>		

CS/HB 1405

2011

4730 Retirement System Trust Fund to offset the difference between  
4731 the normal costs of the Florida Retirement System and the  
4732 statutorily prescribed contribution rates.

4733 Section 26. Section 121.72, Florida Statutes, is amended  
4734 to read:

4735 121.72 Allocations to investment plan member ~~optional~~  
4736 ~~retirement program participant~~ accounts; percentage amounts.—

4737 (1) The allocations established in subsection (4) shall  
4738 fund retirement benefits under the investment plan ~~optional~~  
4739 ~~retirement program~~ and shall be transferred monthly by the  
4740 Division of Retirement from the Florida Retirement System  
4741 Contributions Clearing Trust Fund to the third-party  
4742 administrator for deposit in each participating employee's  
4743 individual account based on the membership class of the  
4744 participant.

4745 (2) The allocations are stated as a percentage of each  
4746 investment plan member's ~~optional retirement program~~  
4747 ~~participant's~~ gross compensation for the calendar month. A  
4748 change in a contribution percentage is effective the first day  
4749 of the month for which retirement contributions ~~a full month's~~  
4750 ~~employer contribution~~ may be made on or after the beginning date  
4751 of the change. Contribution percentages may be modified by  
4752 general law.

4753 (3) Employer and employee ~~participant~~ contributions to  
4754 member ~~participant~~ accounts shall be accounted for separately.  
4755 ~~Participant contributions may be made only if expressly~~  
4756 ~~authorized by law.~~ Interest and investment earnings on  
4757 contributions shall accrue on a tax-deferred basis until

CS/HB 1405

2011

4758 | proceeds are distributed.

4759 |       (4) (a) Effective July 1, 2002, through June 30, 2011,  
 4760 | allocations from the Florida Retirement System Contributions  
 4761 | Clearing Trust Fund to investment plan member ~~optional~~  
 4762 | ~~retirement program participant~~ accounts shall be as follows:

4763   Membership Class	Percentage of Gross Compensation
4764	
4765   Regular Class	9.00%
4766   Special Risk Class	20.00%
4767   Special Risk Administrative Support Class	11.35%
4768   Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.40%
4769   Elected Officers' Class— Justices, Judges	18.90%
4770   Elected Officers' Class—	16.20%

County Elected Officers

4771

Senior Management Service Class 10.95%

4772

4773

(b) Effective July 1, 2011, allocations from the Florida

4774

Retirement System Contributions Clearing Trust Fund to

4775

investment plan member accounts, which includes employee

4776

contributions as required in s. 121.71(3), shall be 20 percent

4777

of gross compensation for a member in the Special Risk Class and

4778

9 percent of gross compensation for members in all other

4779

classes.

4780

Section 27. Section 121.73, Florida Statutes, is amended

4781

to read:

4782

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

4784

(1) The allocations established in subsection (3) shall be

4785

used to provide disability coverage for members ~~participants~~ in

4786

the investment plan ~~optional retirement program~~ and shall be

4787

transferred monthly by the Division of Retirement from the

4788

Florida Retirement System Contributions Clearing Trust Fund to

4789

the disability account of the Florida Retirement System Trust

4790

Fund.

4791

(2) The allocations are stated as a percentage of each

4792

investment plan member's ~~optional retirement program~~

4793

~~participant's~~ gross compensation for the calendar month. A

4794

change in a contribution percentage is effective the first day

4795

of the month for which retirement contributions ~~a full month's~~

4796

~~employer contribution~~ may be made on or after the beginning date

CS/HB 1405

2011

4797 of the change. Contribution percentages may be modified by  
 4798 general law.

4799 (3) (a) Effective July 1, 2002, through June 30, 2011,  
 4800 allocations from the Florida Retirement System Contributions ~~FRS~~  
 4801 ~~Contribution~~ Clearing Trust Fund to provide disability coverage  
 4802 for members ~~participants~~ in the investment plan ~~optional~~  
 4803 ~~retirement program~~, and to offset the costs of administering  
 4804 said coverage, shall be as follows:

4805

Membership Class	Percentage of Gross Compensation
4806	
4807 Regular Class	0.25%
4808 Special Risk Class	1.33%
4809 Special Risk Administrative Support Class	0.45%
4810 Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
4811 Elected Officers' Class—	0.73%

CS/HB 1405

2011

Justices, Judges

4812

Elected Officers' Class— 0.41%

County Elected Officers

4813

Senior Management Service Class 0.26%

4814

4815 (b) Effective July 1, 2011, allocations from the Florida  
 4816 Retirement System Contributions Clearing Trust Fund to provide  
 4817 disability coverage for participants in the investment plan and  
 4818 to offset the costs of administering such coverage shall be the  
 4819 actuarially indicated amount necessary to fund the statutorily  
 4820 authorized benefit for the plan year as determined by the state  
 4821 actuary.

4822 Section 28. Section 121.74, Florida Statutes, is amended  
 4823 to read:

4824 121.74 Administrative and educational expenses.—In  
 4825 addition to contributions required under ss. ~~s.~~ 121.71 and  
 4826 121.73, effective July 1, 2010, through June 30, 2013 ~~2014~~,  
 4827 employers participating in the Florida Retirement System shall  
 4828 contribute an amount equal to 0.03 percent of the payroll  
 4829 reported for each class or subclass of Florida Retirement System  
 4830 membership. ~~Effective July 1, 2013~~ Effective July 1, 2013 ~~2014~~, the contribution rate  
 4831 shall be 0.04 percent of the payroll reported for each class or  
 4832 subclass of membership. The amount contributed shall be  
 4833 transferred by the Division of Retirement from the Florida  
 4834 Retirement System Contributions Clearing Trust Fund to the State  
 4835 Board of Administration's Administrative Trust Fund to offset



CS/HB 1405

2011

4836 the costs of administering the investment plan ~~optional~~  
 4837 ~~retirement program~~ and the costs of providing educational  
 4838 services to members of the Florida Retirement System  
 4839 ~~participants in the defined benefit program and the optional~~  
 4840 ~~retirement program~~. Approval of the trustees is required before  
 4841 the expenditure of these funds. Payments for third-party  
 4842 administrative or educational expenses shall be made only  
 4843 pursuant to the terms of the approved contracts for such  
 4844 services.

4845 Section 29. Section 121.75, Florida Statutes, is amended  
 4846 to read:

4847 121.75 Allocation for pension plan ~~defined benefit~~  
 4848 ~~program~~.—After making the transfers required pursuant to ss.  
 4849 121.71, 121.72, 121.73, and 121.74, the monthly balance of funds  
 4850 in the Florida Retirement System Contributions Clearing Trust  
 4851 Fund shall be transferred to the Florida Retirement System Trust  
 4852 Fund to pay the costs of providing pension plan ~~defined benefit~~  
 4853 ~~program~~ benefits and plan administrative costs under the pension  
 4854 plan ~~defined benefit program~~.

4855 Section 30. Section 121.77, Florida Statutes, is amended  
 4856 to read:

4857 121.77 Deductions from member ~~participant~~ accounts.—The  
 4858 State Board of Administration may authorize the third-party  
 4859 administrator to deduct reasonable fees and apply appropriate  
 4860 charges to investment plan member ~~optional retirement program~~  
 4861 ~~participant~~ accounts. In no event may ~~shall~~ administrative and  
 4862 educational expenses exceed the portion of employer  
 4863 contributions earmarked for such expenses under this part,

CS/HB 1405

2011

4864 except for reasonable administrative charges assessed against  
 4865 member ~~participant~~ accounts of persons for whom no employer  
 4866 contributions are made during the calendar quarter. Investment  
 4867 management fees shall be deducted from member ~~participant~~  
 4868 accounts, pursuant to the terms of the contract between the  
 4869 provider and the board.

4870 Section 31. Section 121.78, Florida Statutes, is amended  
 4871 to read:

4872 121.78 Payment and distribution of contributions.—

4873 (1) Contributions made pursuant to this part shall be paid  
 4874 by the employer, including the employee contribution, to the  
 4875 Division of Retirement by electronic funds transfer no later  
 4876 than the 5th working day of the month immediately following the  
 4877 month during which the payroll period ended. Accompanying  
 4878 payroll data must be transmitted to the division concurrent with  
 4879 the contributions.

4880 (2) The division, the State Board of Administration, and  
 4881 the third-party administrator, as applicable, shall ensure that  
 4882 the contributions are distributed to the appropriate trust funds  
 4883 or participant accounts in a timely manner.

4884 (3) (a) Employee and employer contributions and  
 4885 accompanying payroll data received after the 5th working day of  
 4886 the month are considered late. The employer shall be assessed by  
 4887 the Division of Retirement a penalty of 1 percent of the  
 4888 contributions due for each calendar month or part thereof that  
 4889 the contributions or accompanying payroll data are late.  
 4890 Proceeds from the 1-percent assessment against contributions  
 4891 made on behalf of members ~~participants~~ of the pension plan must

CS/HB 1405

2011

4892 ~~defined benefit program shall~~ be deposited in the Florida  
 4893 Retirement System Trust Fund, and proceeds from the 1-percent  
 4894 assessment against contributions made on behalf of members  
 4895 ~~participants~~ of the investment plan ~~optional retirement program~~  
 4896 shall be transferred to the third-party administrator for  
 4897 deposit into member ~~participant~~ accounts, as provided in  
 4898 paragraph (c) ~~(b)~~.

4899 (b) Retirement contributions paid for a prior period shall  
 4900 be charged a delinquent fee of 1 percent for each calendar month  
 4901 or part thereof that the contributions should have been paid.  
 4902 This includes prior period contributions due to incorrect wages  
 4903 and contributions from an earlier report or wages and  
 4904 contributions that should have been reported but were not. The  
 4905 delinquent assessments may not be waived.

4906 (c) ~~(b)~~ If employee contributions or contributions made by  
 4907 an employer on behalf of members ~~participants~~ of the investment  
 4908 plan ~~optional retirement program~~ or accompanying payroll data  
 4909 are not received within the calendar month they are due,  
 4910 including, but not limited to, contribution adjustments as a  
 4911 result of employer errors or corrections, and if that  
 4912 delinquency results in market losses to members ~~participants~~,  
 4913 the employer shall reimburse each member's ~~participant's~~ account  
 4914 for market losses resulting from the late contributions. If a  
 4915 member ~~participant~~ has terminated employment and taken a  
 4916 distribution, the member ~~participant~~ is responsible for  
 4917 returning any excess contributions erroneously provided by  
 4918 employers, adjusted for any investment gain or loss incurred  
 4919 during the period such excess contributions were in the member's

CS/HB 1405

2011

4920 ~~participant's~~ account. The state board or its designated agent  
 4921 shall communicate to terminated members ~~participants~~ any  
 4922 obligation to repay such excess contribution amounts. However,  
 4923 the state board, its designated agents, the Florida Retirement  
 4924 System Investment Plan ~~Public Employee Optional Retirement~~  
 4925 ~~Program~~ Trust Fund, the department, or the Florida Retirement  
 4926 System Trust Fund may not incur any loss or gain as a result of  
 4927 an employer's correction of such excess contributions. The  
 4928 third-party administrator, hired by the state board pursuant to  
 4929 s. 121.4501(8), shall calculate the market losses for each  
 4930 affected member ~~participant~~. If contributions made on behalf of  
 4931 members ~~participants~~ of the investment plan ~~optional retirement~~  
 4932 ~~program~~ or accompanying payroll data are not received within the  
 4933 calendar month due, the employer shall also pay the cost of the  
 4934 third-party administrator's calculation and reconciliation  
 4935 adjustments resulting from the late contributions. The third-  
 4936 party administrator shall notify the employer of the results of  
 4937 the calculations and the total amount due from the employer for  
 4938 such losses and the costs of calculation and reconciliation. The  
 4939 employer shall remit to the Division of Retirement the amount  
 4940 due within 30 working days after the date of the penalty notice  
 4941 sent by the division. The division shall transfer that amount to  
 4942 the third-party administrator, which shall deposit proceeds from  
 4943 the 1-percent assessment and from individual market losses into  
 4944 member ~~participant~~ accounts, as appropriate. The state board may  
 4945 adopt rules to administer the provisions regarding late  
 4946 contributions, late submission of payroll data, the process for  
 4947 reimbursing member ~~participant~~ accounts for resultant market

CS/HB 1405

2011

4948 losses, and the penalties charged to the employers.

4949 (d) If employee contributions reported by an employer on  
 4950 behalf of members are reduced as a result of employer errors or  
 4951 corrections, and the member has terminated employment and taken  
 4952 a refund or distribution, the employer shall be billed and is  
 4953 responsible for recovering from the member any excess  
 4954 contributions erroneously provided by the employer.

4955 (e)~~(e)~~ Delinquency fees specified in paragraph (a) may be  
 4956 waived by the Division of Retirement, with regard to pension  
 4957 plan defined benefit program contributions, and by the state  
 4958 board, with regard to investment plan~~optional retirement~~  
 4959 ~~program~~ contributions, only if, in the opinion of the division  
 4960 or the board, as appropriate, exceptional circumstances beyond  
 4961 the employer's control prevented remittance by the prescribed  
 4962 due date notwithstanding the employer's good faith efforts to  
 4963 effect delivery. Such a waiver of delinquency may be granted an  
 4964 employer only once each plan state fiscal year.

4965 (f) If the employer submits excess employer or employee  
 4966 contributions, the employer shall receive a credit to be applied  
 4967 against future contributions owed. The employer is responsible  
 4968 for reimbursing the member for any excess contributions  
 4969 submitted if any return of such an erroneous excess pretax  
 4970 contribution by the program is made within 1 year after making  
 4971 erroneous contributions or such other period allowed under  
 4972 applicable Internal Revenue guidance.

4973 (g)~~(d)~~ If contributions made by an employer on behalf of  
 4974 members~~participants~~ in the investment plan~~optional retirement~~  
 4975 ~~program~~ are delayed in posting to member~~participant~~ accounts

4976 due to acts of God beyond the control of the Division of  
 4977 Retirement, the state board, or the third-party administrator,  
 4978 as applicable, market losses resulting from the late  
 4979 contributions are not payable to the members ~~participants~~.

4980 Section 32. (1) Effective upon this act becoming a law,  
 4981 the State Board of Administration and the Department of  
 4982 Management Services shall request, as soon as practicable, a  
 4983 determination letter and private letter ruling from the United  
 4984 States Internal Revenue Service. If the United States Internal  
 4985 Revenue Service refuses to act upon a request for a private  
 4986 letter ruling, then a legal opinion from a qualified tax  
 4987 attorney or firm may be substituted for such private letter  
 4988 ruling.

4989 (2) If the board or the department receives notification  
 4990 from the United States Internal Revenue Service that this act or  
 4991 any portion of this act will cause the Florida Retirement  
 4992 System, or a portion thereof, to be disqualified for tax  
 4993 purposes under the Internal Revenue Code, then the portion that  
 4994 will cause the disqualification does not apply. Upon such  
 4995 notice, the state board and the department shall notify the  
 4996 presiding officers of the Legislature.

4997 Section 33. The Legislature finds that a proper and  
 4998 legitimate state purpose is served when employees and retirees  
 4999 of the state and its political subdivisions, and the dependents,  
 5000 survivors, and beneficiaries of such employees and retirees, are  
 5001 extended the basic protections afforded by governmental  
 5002 retirement systems. These persons must be provided benefits that  
 5003 are fair and adequate and that are managed, administered, and

CS/HB 1405

2011

5004 funded in an actuarially sound manner, as required by s. 14,  
5005 Article X of the State Constitution and part VII of chapter 112,  
5006 Florida Statutes. Therefore, the Legislature determines and  
5007 declares that this act fulfills an important state interest.

5008 Section 34. For the 2011-2012 fiscal year, the sums of  
5009 \$93,103 of recurring funds and \$534,000 of nonrecurring funds  
5010 from the Florida Retirement System Operating Trust Fund are  
5011 appropriated to, and two full-time equivalent positions are  
5012 authorized for, the Division of Retirement within the Department  
5013 of Management Services for the purpose of implementing this act.

5014 Section 35. Except as otherwise expressly provided in this  
5015 act, this act shall take effect July 1, 2011.