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HB 229

2011 Legislature

1                   A bill to be entitled  
2           An act relating to the City of Tampa, Hillsborough County;  
3           amending chapter 23559, Laws of Florida, 1945, as amended;  
4           revising the General Employees' Pension Plan for the City  
5           of Tampa; revising the definitions of the terms "Salaries  
6           or Wages," "Employee," and "Military Service Time";  
7           revising application of the term "Actuarial Equivalent";  
8           defining the term "Limitation Year"; providing that all  
9           employee contributions to the pension fund after a certain  
10          date are mandatory and that the city shall pay such  
11          contributions to the fund on behalf of the employee;  
12          providing certain beneficiaries an option to roll over  
13          certain death benefits; providing for a refund of employee  
14          contributions; revising the provision that addresses the  
15          reemployment of retired employees; revising construction  
16          of the act; allowing DROP members the opportunity to elect  
17          an investment option, as determined by the board of  
18          trustees, to be applied to the participant's account for  
19          the plan year entering the DROP program and for each  
20          subsequent plan year; revising benefit limitations;  
21          revising requirements for distribution of benefits;  
22          providing a default distribution when a member fails to  
23          elect a distribution option; revising direct rollover  
24          options; revising the definitions of the terms "eligible  
25          rollover distribution," "eligible rollover plan," and  
26          "distributee"; providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:

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29  
30 Section 1. Subsections (A), (E), (H), and (P) of section  
31 4, subsection (A) of section 5, subsection (B) of section 16,  
32 section 19, subsection (D) of section 22, subsections (A), (B),  
33 (D), (E), and (F) of section 24, and sections 25 and 26 of  
34 chapter 23559, Laws of Florida, 1945, as amended, are amended,  
35 and subsection (S) is added to section 4, subsection (C) is  
36 added to section 12, and subsection (C) is added to section 14  
37 of that chapter, to read:

38 Section 4. Definitions.

39 (A) Salaries or Wages. Salaries or Wages for the purpose  
40 of this Act shall be the base amounts earned by the Employee,  
41 plus regular longevity bonuses, overtime, and shift premiums.  
42 Salary or Wages shall also include elective amounts that are  
43 excludible from the Employee's gross income under Sections 125  
44 (including amounts that are not available to the Employee in  
45 cash in lieu of group health coverage because the Employee is  
46 unable to certify that he or she has other health coverage, but  
47 only if the Employer does not request or collect information  
48 regarding the Employee's other health coverage as part of the  
49 enrollment for the health plan); 403(b) (tax-sheltered annuity);  
50 457 (Section 457 plan); and 132(f) (4) of the Internal Revenue  
51 Code of 1986, as amended, and the regulations thereunder (the  
52 "Code"). Salaries or Wages shall exclude, ~~but exclusive of~~ other  
53 premiums, other than shift premiums, allowances, ~~or~~ special  
54 payments, or any casual nonrecurring or unpredictable bonuses;  
55 payments for unused accrued bona fide sick, vacation, or other  
56 leave; payments received by an Employee pursuant to a

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57 nonqualified unfunded deferred salary or wages plan; and  
 58 severance pay that is paid after an Employee severs employment  
 59 with the City. However, Salaries or Wages, as defined herein,  
 60 earned but not paid to the Employee by the Employee's severance  
 61 date with the City shall be considered Salary or Wages for Plan  
 62 purposes. In addition to other applicable limitations set forth  
 63 in the Plan, and notwithstanding any other provision of the Plan  
 64 to the contrary, for Plan Years beginning on or after January 1,  
 65 1996, the annual Salaries or Wages of each Employee taken into  
 66 account under the Plan shall not exceed the annual compensation  
 67 limit provided for in Section 401(a)(17) of the Code ~~the Omnibus~~  
 68 ~~Budget Reconciliation Act of 1993 (the "OBRA 1993 Annual~~  
 69 ~~Compensation Limit")~~. ~~The OBRA 1993 Annual Compensation Limit is~~  
 70 ~~\$150,000,~~ as adjusted by the Commissioner of the Internal  
 71 Revenue Service for increases in the cost-of-living in  
 72 accordance with Section 401(a)(17)(B) of the ~~Internal Revenue~~  
 73 ~~Code of 1986, as amended (the "Code")~~. The cost-of-living  
 74 adjustment in effect for a calendar year applies to any period,  
 75 not exceeding 12 months, over which Salaries or Wages are  
 76 determined (determination period) beginning in such calendar  
 77 year. If a determination period consists of fewer than 12  
 78 months, the ~~OBRA 1993 Annual Compensation Limit~~ will be  
 79 multiplied by a fraction, the numerator of which is the number  
 80 of months in the determination period, and the denominator of  
 81 which is 12. ~~For Plan Years beginning on or after January 1,~~  
 82 ~~1996, any reference in this Plan to the limitation under Section~~  
 83 ~~401(a)(17) of the Code shall mean the OBRA 1993 Annual~~  
 84 ~~Compensation Limit set forth in this provision.~~ The limitation

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85 on Salaries or Wages for an "eligible Employee" shall not be  
 86 less than the amount which was allowed to be taken into account  
 87 hereunder as in effect on July 1, 1993. "Eligible Employee" is  
 88 an individual who was a participant in the Plan before the first  
 89 Plan Year beginning after December 31, 1995. ~~Commencing for~~  
 90 ~~earnings paid the first pay date after October 1, 2005, all~~  
 91 ~~mandatory Employee Contributions to the Fund shall be picked up~~  
 92 ~~and paid by the City. Such contributions, although designated as~~  
 93 ~~Employee Contributions, shall be paid by the City in lieu of~~  
 94 ~~contributions by the Employee. The contributions so assumed~~  
 95 ~~shall be treated as tax-deferred Employer "pickup" contributions~~  
 96 ~~pursuant to Section 414(h) of the Internal Revenue Code. Members~~  
 97 ~~shall not have the option of receiving the contributed amounts~~  
 98 ~~directly instead of having such contributions paid by the City~~  
 99 ~~to the Fund.~~

100 (E) Employee. For the purposes of this Act, "Employee"  
 101 shall mean an Employee covered or qualified to be covered under  
 102 either Division A or Division B of this Plan. An Employee  
 103 covered by this Plan shall include all Employees, whether full-  
 104 time full-time, part-time, or temporary, who have taken the  
 105 physical examination required by Section 18. Employees whose  
 106 Salaries or Wages are paid pursuant to a federal grant-in-aid  
 107 program are included in this Act only when the federal  
 108 government pays the employer's contribution. Any individual who  
 109 is an independent contractor, or who performs services for the  
 110 City under an agreement that identifies the individual as an  
 111 independent contractor, is excluded from the Plan even if a  
 112 governmental agency retroactively reclassifies such individual

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113 | as an Employee. Casual laborers are excluded from this  
 114 | definition as are employees covered by other City pension plans.  
 115 | (H) Military Service Time. For members rehired after  
 116 | leave to provide military service prior to December 12, 1994, in  
 117 | computing Service allowance for retirement, creditable Service  
 118 | shall, at the option of the Employee, include any service which  
 119 | interrupted employment with the Employer, not to exceed a period  
 120 | of 3 years, in any of the armed services of the United States  
 121 | during time of war, upon condition that within 90 days from the  
 122 | date of reinstatement of such Employee now or hereafter serving  
 123 | in the armed forces, or within 90 days from the effective date  
 124 | of this Act for those Employees already reinstated, such  
 125 | Employee shall exercise such option by filing written notice  
 126 | thereof with the Board of Trustees and, if a Division A  
 127 | Employee, shall within the 12 ensuing months pay into the  
 128 | retirement fund an amount equal to the aggregate contributions  
 129 | such Employee would have made had such Employee not served in  
 130 | the armed forces, based upon the Salary or Wages being earned at  
 131 | the time of entering the armed services, and if any such  
 132 | Employee shall fail to exercise such option within the time and  
 133 | in the manner hereinabove prescribed, such period of military  
 134 | service shall not thereafter be allowed as creditable Service,  
 135 | but shall not be deemed a break in such Employee's Continuous  
 136 | Service eligibility period. Members rehired on or after December  
 137 | 12, 1994, ~~Notwithstanding the foregoing, an Employee shall be~~  
 138 | credited with service for purposes of vesting and benefit  
 139 | accrual under the Plan for his or her service in the uniformed  
 140 | service (as defined in the Uniformed Services Employment and

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141 Reemployment Rights Act of 1994, known as ~~the "USERR Act"~~) upon  
 142 ~~being granted leave by the Employer for such uniformed service~~  
 143 ~~and~~ termination from employment as an Employee with the  
 144 Employer, provided that the Employee must return to his or her  
 145 employment as an Employee with the Employer within the time  
 146 periods prescribed by the USERR Act, and must comply the  
 147 ~~Employee complies~~ with the Employee contribution requirements  
 148 prescribed by the USERR Act. The maximum service credit for  
 149 uniformed service shall be 5 years or such other time period as  
 150 may be prescribed by the USERR Act. Effective as of the dates  
 151 reflected in the Heroes Earnings Assistance and Relief Tax Act  
 152 ("HEART Act"), the Plan must comply with all applicable  
 153 provisions of the HEART Act.

154 (P) Actuarial Equivalent. The Actuarial Equivalent of an  
 155 Employee's Accrued Pension shall be determined by basing  
 156 mortality on the 1983 Group Annuity Mortality Table for Males  
 157 with female ages set back 6 years and post-disablement mortality  
 158 upon 80 percent of the 1965 Railroad Board Ultimate Mortality  
 159 Table, or such other mortality tables as are in compliance with  
 160 the Code. This subsection does not apply to Plan Limitation  
 161 Years beginning after December 31, 2008.

162 (S) Limitation Year. The limitation year shall be the  
 163 Plan Year.

164 Section 5. Contributions. The Pension Fund shall consist  
 165 of moneys derived from the following sources:

166 (A) Employee Contributions. Division A Employees.  
 167 Commencing for earnings paid beginning with the first pay date  
 168 after January 1, 2005, all Employee contributions to the Fund

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169 shall be mandatory Employee contributions and shall be picked up  
170 and paid by the City on behalf of the member. Such contributions  
171 shall be made by Employees in an amount equal to ~~There shall be~~  
172 ~~a contribution of 7 percent of all Salaries or Wages of all~~  
173 Employees participating in this Fund, which shall be deducted  
174 from said Salaries or Wages by the Director of Finance, before  
175 the same are paid, as long as the Employee continues in the  
176 Service of the City of Tampa, regardless of the number of years  
177 of Service with the City. Such contributions, although  
178 designated as Employee contributions, shall be paid by the City  
179 in lieu of contributions by the Employee. The contributions so  
180 assumed shall be treated as tax-deferred Employer "pick-up"  
181 contributions pursuant to Section 414(h) of the Code. Members  
182 shall not have the option of receiving the contributed amounts  
183 directly instead of having such contributions paid by the City  
184 to the Fund.

185 Section 12. Death Benefits.

186 (C) When the designated beneficiary, as defined in Section  
187 401(a)(9)(E) of the Code, is not the Employee's spouse  
188 (including, without limitation, a child, parent, or sibling),  
189 distributions made after December 31, 2006, from Division A and  
190 Division B shall be made in accordance with Section 402(c)(11)  
191 of the Code, and such designated beneficiary shall have the  
192 option to roll over all or a portion of his or her death benefit  
193 via a direct trustee-to-trustee transfer to an inherited  
194 individual retirement account, as defined in Section  
195 408(d)(3)(c) of the Code, provided such distribution meets the  
196 definition of an eligible rollover distribution as defined in

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197 Section 26 of this Act.

198 Section 14. Refund of Contributions ~~Contribution~~.

199 (C) Refund of Employee contributions shall be paid in  
200 accordance with Section 26 of this Act.

201 Section 16. Reemployment of Retired Employees ~~Employee~~.

202 Upon the employment of any person in Division A or Division B  
203 who shall have retired under the pension or retirement Plan and  
204 shall be receiving pension payments, such person shall resume  
205 his participation in the Plan, shall not be entitled to receive  
206 pension payments during or for the period of such additional  
207 Service, the period of such retirement shall not constitute a  
208 break in Service, and the period of such retirement shall not be  
209 allowed as creditable Service. The monthly pension payable when  
210 such officer or person is eligible to receive a pension shall  
211 consist of the sum of (A) and (B) below, provided that the total  
212 pension shall not be less than \$100 per month after 25 years of  
213 Service.

214 (A) The monthly pension he was receiving immediately prior  
215 to the commencement of his additional Service; plus

216 (B) One and two-tenths ~~one-tenths~~ percent of his Average  
217 Monthly Salary at the end of his period of additional Service  
218 multiplied by the number of years of additional Service,  
219 provided, however, that this additional benefit shall not be  
220 payable before the age of 62 years.

221 Section 19. Construction. This Act shall be liberally  
222 construed in accordance with general law and the federal tax  
223 code, and if any part or portion thereof be declared invalid, or  
224 the application thereof to any person, circumstance, or thing is



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225 declared invalid, the validity of the remainder of this Act  
226 shall not be affected thereby.

227 Section 22. Deferred Retirement Option Program.  
228 Notwithstanding any other provisions of this Act, and subject to  
229 the provisions of this section, the Deferred Retirement Option  
230 Program, hereinafter referred to as the DROP, is an option under  
231 which an eligible member may elect, commencing on October 1,  
232 1999, to have the member's pension benefits calculated as of a  
233 certain date prior to retirement, and accumulate benefits plus  
234 the investment return pursuant to this section during the DROP  
235 calculation period. Participation in the DROP does not guarantee  
236 employment for the DROP calculation period, as defined in this  
237 section.

238 D. Interest and administrative costs. Interest shall  
239 accumulate annually ~~at a rate reflecting the Fund's net~~  
240 ~~investment performance~~, whether positive or negative, during the  
241 DROP calculation period, less the cost of administering the  
242 DROP, all of which shall be determined by the Board of Trustees.  
243 A DROP participant shall have the opportunity to elect, as  
244 provided in this subsection, an investment option to be applied  
245 to such DROP participant's account for the Plan Year when  
246 entering the DROP and for each subsequent Plan Year. In such  
247 election, the DROP participant shall choose to have interest  
248 accumulate annually, whether positive or negative, at either (i)  
249 a rate reflecting the Fund's net investment performance, as  
250 determined by the Board of Trustees, or (ii) a rate reflective  
251 of a low-risk variable rate selected annually by the Board of  
252 Trustees in its sole discretion. Each election must be made at

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253 such time, on such forms, and in such manner as the Board of  
 254 Trustees may determine in its sole discretion. If a DROP  
 255 participant fails to make a valid election upon entering the  
 256 DROP, the Fund interest rate shall be applied as provided in (i)  
 257 herein. If a DROP participant fails to make a valid election in  
 258 a subsequent Plan Year, the election for the then-current Plan  
 259 Year shall be applied.

260 Section 24. Limitations on Amounts of Benefits.

261 (A) For Plan Years ending after December 31, 2001,  
 262 benefits for an Employee under this Plan, when expressed as a  
 263 benefit payable annually in the form of a straight life annuity  
 264 without regard to the death benefit or any other ancillary  
 265 benefit, shall not at any time within the limitation year exceed  
 266 the limits provided under Section 415(b) of the Code ~~\$90,000~~.

267 (B)1. The ~~\$90,000~~ limitation set forth in subsection (A)  
 268 shall be actuarially reduced in accordance with regulations  
 269 prescribed by the Secretary of the Treasury for any retirement  
 270 benefit that may begin before an Employee attains age 62, by  
 271 adjusting such benefit so that it is equivalent to such a  
 272 benefit beginning at age 62. For Plan Years ending before  
 273 January 1, 2002, and repealed for Plan Years ending thereafter,  
 274 the reduction shall not reduce the ~~\$90,000~~ limitation set forth  
 275 in subsection (A) to less than (a) \$75,000 if the benefit begins  
 276 at or after age 55, or (b) if the benefit begins before age 55,  
 277 the equivalent of the \$75,000 limitation for age 55.

278 2. If any retirement benefit begins after the Employee  
 279 attains age 65, the ~~\$90,000~~ limitation set forth in subsection  
 280 (A) shall be adjusted (based upon an interest rate assumption of

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281 5 percent) in accordance with regulations prescribed by the  
282 Secretary of the Treasury, by adjusting such benefit so that it  
283 is equivalent to such benefit beginning at age 65.

284 (D) In accordance with Section 415(b)(5) of the Code, the  
285 ~~\$90,000~~ limitation in subsection (A), and the limitation in  
286 subsection (C), shall be multiplied by a fraction (not in excess  
287 of 1), the numerator of which is the number of the Employee's  
288 years of Service in the Plan (in the case of the ~~\$90,000~~  
289 limitation set forth in subsection (A)) or the number of the  
290 Employee's years of Service (in the case of the limitation set  
291 forth in subsection (C)) and the denominator of which, in either  
292 case, is 10.

293 (E) As of January 1 of each calendar year, the ~~\$90,000~~  
294 limitation set forth in subsection (A) shall be adjusted as and  
295 if permitted by the Secretary of the Treasury, and any such  
296 adjusted limitation shall become effective as the maximum dollar  
297 limitation under the Plan for that calendar year. The maximum  
298 dollar limitation for a calendar year, as so adjusted, shall  
299 apply to limitation years ending with or within such calendar  
300 year.

301 (F) The following is repealed for Plan Limitation Years  
302 beginning after December 31, 1999:

303 1. In the event that any Employee participates in both a  
304 defined benefit plan and a defined contribution plan maintained  
305 by the City, then the sum of the Defined Benefit Plan Fraction  
306 (as defined in Section 415(e) of the Code) and the Defined  
307 Contribution Plan Fraction (as defined in Section 415(e) of the  
308 Code) for any limitation year shall not exceed 1.0.

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309           2. In the event that the sum of the Defined Benefit Plan  
310 Fraction and the Defined Contribution Plan Fraction exceeds 1.0,  
311 then the Board of Trustees shall take such actions, applied in a  
312 uniform and nondiscriminatory manner, as will keep the benefits  
313 and annual additions thereto for such Employees from exceeding  
314 these limits. Adjustments shall be made to this Plan before any  
315 adjustments shall be required to any other plans.

316           Section 25. Latest Date of Commencement of Benefits  
317 Required Distributions. The distribution of a member's benefit  
318 shall be made in accordance with the following requirements, and  
319 shall otherwise comply with Section 401(a)(9) of the Code and  
320 the regulations thereunder, as prescribed by the Commissioner in  
321 Revenue Rulings, Notices, and other guidance published in the  
322 Internal Revenue Bulletin, to the extent that said provisions  
323 apply to governmental plans under Section 414(d) of the Code.  
324 The distribution provisions of Section 401(a)(9) of the Code  
325 shall override any distribution options in the Plan inconsistent  
326 with Section 401(a)(9) of the Code:

327           (A) Any benefit paid to a member ~~an Employee~~ shall  
328 commence not later than the last to occur of:

329           1. April 1 of the year following the calendar year in  
330 which the member ~~Employee~~ retires; or

331           2. April 1 of the year immediately following the calendar  
332 year in which the member ~~Employee~~ reaches age 70 1/2.

333           (B) Distributions of members' benefits will be made in  
334 accordance with Sections 1.401(a)(9)-2. through 1.401(a)(9)-9.  
335 of the Code and such other rules thereunder as may be prescribed  
336 by the Secretary of the Treasury, to the extent that said

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337 provisions apply to governmental plans under Section 414(d) of  
338 the Code.

339 ~~(B) In the case of a benefit payable by reason of an~~  
340 ~~Employee's retirement or other termination of employment, in no~~  
341 ~~event shall payment extend beyond the life or life expectancy of~~  
342 ~~the Employee or the joint lives or life expectancies of the~~  
343 ~~Employee and the Employee's designated beneficiary. In the case~~  
344 ~~of an Employee who is receiving his or her pension benefit as of~~  
345 ~~the date of his or her death, the survivor portion of the~~  
346 ~~Employee's pension benefit shall be paid at least as rapidly as~~  
347 ~~under the method being used prior to the Employee's death.~~

348 (C) Notwithstanding anything contained herein to the  
349 contrary, payments under the Plan to a Beneficiary due to a  
350 member's death shall satisfy the incidental death benefit  
351 requirements and all other applicable provisions of Section  
352 401(a)(9)(G) of the Code, the regulations issued thereunder  
353 ~~(including Section 1.401(a)(9)-2 of the proposed Treasury~~  
354 ~~regulations)~~, and such other rules thereunder as may be  
355 prescribed by the Secretary of the Treasury, including IRS  
356 Notice 2007-7, to the extent that said provisions apply to  
357 governmental plans under Section 414(d) of the Code.

358 Section 26. Direct Rollovers.

359 (A) This section applies to distributions made on or after  
360 January 1, 1993. Notwithstanding any provision of the Plan to  
361 the contrary ~~that would otherwise limit a distributee's (as~~  
362 ~~defined below) election under this section, a distributee may~~  
363 elect, at the time and in the manner prescribed by the  
364 Commissioner of the Internal Revenue Service, to have any

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365 portion of an eligible rollover distribution (as defined below)  
 366 paid directly to an eligible retirement rollover plan (as  
 367 defined below) specified by the distributee in a direct rollover  
 368 (as defined below). If a member fails to elect a distribution  
 369 option as provided under Sections 14 and 22 of this Act, then  
 370 such member's benefit shall be rolled over to an individual  
 371 retirement account designated by the Board of Trustees, as  
 372 defined in Section 6.

373 (B) For purposes of this section, the following terms  
 374 shall have the following meanings:

375 1. An "eligible rollover distribution" is any distribution  
 376 of all or any portion of the balance to the credit of the  
 377 distributee, except that an eligible rollover distribution does  
 378 not include: any distribution that is one of a series of  
 379 substantially equal periodic payments (not less frequently than  
 380 annually) made for the life (or life expectancy) of the  
 381 distributee or the joint lives (or joint life expectancies) of  
 382 the distributee and the distributee's designated beneficiary, or  
 383 for a specified period of 10 years or more; any distribution to  
 384 the extent such distribution is required under Section 401(a)(9)  
 385 of the Code;~~7~~ and the portion of any distribution that is not  
 386 includable in gross income (determined without regard to the  
 387 exclusion for net unrealized appreciation with respect to  
 388 employer securities). Notwithstanding the above, a portion of a  
 389 distribution shall not fail to be an "eligible rollover  
 390 distribution" merely because the portion consists of after-tax  
 391 voluntary Employee contributions that are not includable in  
 392 gross income. However, such portion may be transferred only to

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393 an individual retirement account or annuity described in Section  
 394 408(a) or (b) of the Code or to a qualified defined contribution  
 395 plan described in Section 401(a) or 403(a) of the Code that  
 396 agrees to separately account for amounts transferred, including  
 397 separately accounting for the portion of such distribution that  
 398 is includable in gross income and the portion of such  
 399 distribution that is not so includable.

400 2. An "eligible retirement rollover plan" is an individual  
 401 retirement account described in Section 408(a) of the Code, an  
 402 individual retirement annuity described in Section 408(b) of the  
 403 Code, other than an endowment contract; an annuity plan  
 404 described in Section 403(a) of the Code, or a qualified trust  
 405 (an employees' trust) described in Section 401(a) of the Code  
 406 that is exempt from tax under Section 501(a) of the Code; an  
 407 annuity plan described in Section 403(a) of the Code; an  
 408 eligible plan under Section 457(b) of the Code that is  
 409 maintained by a state, a political subdivision of a state, or  
 410 any agency or instrumentality of a state or political  
 411 subdivision and that agrees to separately account for amounts  
 412 transferred into such plan from this Plan; or an annuity  
 413 contract described in Section 403(b) of the Code that accepts  
 414 the distributee's eligible rollover distribution. However, in  
 415 the case of an eligible rollover distribution to the surviving  
 416 spouse, an eligible retirement rollover plan is an individual  
 417 retirement account or individual retirement annuity.

418 3. A "distributee" includes the member or former member ~~an~~  
 419 ~~Employee or former employee~~. In addition, the member's  
 420 ~~Employee's~~ or former member's ~~employee's~~ surviving spouse and

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421 the member's ~~Employee's~~ or former member's ~~employee's~~ spouse or  
422 former spouse who is the alternate payee under a qualified  
423 domestic relations order, as defined in Section 414(p) of the  
424 Code, are distributees with regard to the interest of the spouse  
425 or former spouse.

426 4. A "direct rollover" is a payment by the Plan to the  
427 eligible retirement plan specified by the distributee.

428 Section 2. This act shall take effect October 1, 2011.