

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01794B-16

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1 A bill to be entitled

2 An act relating to retirement benefits for certain
3 judges; amending s. 121.053, F.S.; authorizing certain
4 retired members of the Florida Retirement System
5 subsequently serving in a specified judicial office
6 covered by the Elected Officers' Class to transfer all
7 or a portion of benefits and interest accrued during
8 participation in the Deferred Retirement Option
9 Program to the investment plan; prohibiting transfer
10 of funds to the Florida Retirement System Trust Fund
11 after the election is made; prohibiting distribution
12 of transferred funds until the member ceases all
13 employment relationships and completes certain
14 requirements; defining the term "eligible officer";
15 amending ss. 121.091 and 121.4501, F.S.; conforming
16 provisions to changes made by the act; requiring the
17 State Board of Administration and the Department of
18 Management Services to request a private letter ruling
19 from the United States Internal Revenue Service;
20 providing for applicability in the event of an
21 unfavorable private letter ruling; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (a) of subsection (7) of section
27 121.053, Florida Statutes, is amended to read:

28 121.053 Participation in the Elected Officers' Class for
29 retired members.—

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

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32 Option Program is not subject to termination as defined in s.
33 121.021, or reemployment limitations as provided in s.
34 121.091(9), until the end of his or her current term of office
35 or, if the officer is consecutively elected or reelected to an
36 elective office eligible for coverage under the Florida
37 Retirement System, until he or she no longer holds an elective
38 office, as follows:

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

40 1. The officer's DROP account may not accrue additional
41 monthly benefits, but does continue to earn interest as provided
42 in s. 121.091(13). However, an officer whose DROP participation
43 begins on or after July 1, 2010, may not continue to earn such
44 interest.

45 2. Retirement contributions, except for unfunded actuarial
46 liability and health insurance subsidy contributions required in
47 ss. 121.71(5) and 121.76, are not required of the employer of
48 the elected officer, and additional retirement credit may not be
49 earned under the Florida Retirement System.

50 3. Before termination, an eligible officer may elect to
51 transfer all or a portion of the benefits and interest accrued
52 during DROP participation to the investment plan pursuant to s.
53 121.4501(21). Once the eligible officer transfers funds to the
54 investment plan, the eligible officer may not elect to transfer
55 funds back to the Florida Retirement System Trust Fund. A
56 distribution of the funds transferred to the investment plan may
57 not occur until the member has ceased all employment
58 relationships as provided in s. 121.021(39) and completed all
59 the requirements under s. 121.091(13) for a distribution under
60 the program. For purposes of this subparagraph, the term

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61 "eligible officer" means a member of the pension plan
62 participating in DROP who is serving as a county judge or
63 circuit judge and has:

64 a. Attained age 62, if initially enrolled in the pension
65 plan before July 1, 2011; or

66 b. Attained age 65, if initially enrolled in the pension
67 plan on or after July 1, 2011.

68 Section 2. Paragraph (c) of subsection (13) of section
69 121.091, Florida Statutes, is amended to read:

70 121.091 Benefits payable under the system.—Benefits may not
71 be paid under this section unless the member has terminated
72 employment as provided in s. 121.021(39) (a) or begun
73 participation in the Deferred Retirement Option Program as
74 provided in subsection (13), and a proper application has been
75 filed in the manner prescribed by the department. The department
76 may cancel an application for retirement benefits when the
77 member or beneficiary fails to timely provide the information
78 and documents required by this chapter and the department's
79 rules. The department shall adopt rules establishing procedures
80 for application for retirement benefits and for the cancellation
81 of such application when the required information or documents
82 are not received.

83 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
84 subject to this section, the Deferred Retirement Option Program,
85 hereinafter referred to as DROP, is a program under which an
86 eligible member of the Florida Retirement System may elect to
87 participate, deferring receipt of retirement benefits while
88 continuing employment with his or her Florida Retirement System
89 employer. The deferred monthly benefits shall accrue in the

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90 Florida Retirement System on behalf of the member, plus interest
91 compounded monthly, for the specified period of the DROP
92 participation, as provided in paragraph (c). Upon termination of
93 employment, the member shall receive the total DROP benefits and
94 begin to receive the previously determined normal retirement
95 benefits. Participation in the DROP does not guarantee
96 employment for the specified period of DROP. Participation in
97 DROP by an eligible member beyond the initial 60-month period as
98 authorized in this subsection shall be on an annual contractual
99 basis for all participants.

100 (c) *Benefits payable under DROP.*—

101 1. Effective on the date of DROP participation, the
102 member's initial normal monthly benefit, including creditable
103 service, optional form of payment, and average final
104 compensation, and the effective date of retirement are fixed.
105 The beneficiary established under the Florida Retirement System
106 is the beneficiary eligible to receive any DROP benefits payable
107 if the DROP participant dies before completing the period of
108 DROP participation. If a joint annuitant predeceases the member,
109 the member may name a beneficiary to receive accumulated DROP
110 benefits payable. The retirement benefit, the annual cost of
111 living adjustments provided in s. 121.101, and interest accrue
112 monthly in the Florida Retirement System Trust Fund. For members
113 whose DROP participation begins:

114 a. Before July 1, 2011, the interest accrues at an
115 effective annual rate of 6.5 percent compounded monthly, on the
116 prior month's accumulated ending balance, up to the month of
117 termination or death, except as provided in s. 121.053(7).

118 b. On or after July 1, 2011, the interest accrues at an

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119 effective annual rate of 1.3 percent, compounded monthly, on the
120 prior month's accumulated ending balance, up to the month of
121 termination or death, except as provided in s. 121.053(7).

122 2. Each employee who elects to participate in DROP may
123 elect to receive a lump-sum payment for accrued annual leave
124 earned in accordance with agency policy upon beginning
125 participation in DROP. The accumulated leave payment certified
126 to the division upon commencement of DROP shall be included in
127 the calculation of the member's average final compensation. The
128 employee electing the lump-sum payment is not eligible to
129 receive a second lump-sum payment upon termination, except to
130 the extent the employee has earned additional annual leave
131 which, combined with the original payment, does not exceed the
132 maximum lump-sum payment allowed by the employing agency's
133 policy or rules. An early lump-sum payment shall be based on the
134 hourly wage of the employee at the time he or she begins
135 participation in DROP. If the member elects to wait and receive
136 a lump-sum payment upon termination of DROP and termination of
137 employment with the employer, any accumulated leave payment made
138 at that time may not be included in the member's retirement
139 benefit, which was determined and fixed by law when the employee
140 elected to participate in DROP.

141 3. The effective date of DROP participation and the
142 effective date of retirement of a DROP participant shall be the
143 first day of the month selected by the member to begin
144 participation in DROP, provided such date is properly
145 established, with the written confirmation of the employer, and
146 the approval of the division, on forms required by the division.

147 4. Normal retirement benefits and any interest continue to

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148 accrue in DROP until the established termination date of DROP or
149 until the member terminates employment or dies before such date,
150 except as provided in s. 121.053(7). Although individual DROP
151 accounts may not be established, a separate accounting of each
152 member's accrued benefits under DROP shall be calculated and
153 provided to the member.

154 5. At the conclusion of the member's participation in DROP,
155 the division shall distribute the member's total accumulated
156 DROP benefits, subject to the following:

157 a. The division shall receive verification by the member's
158 employer or employers that the member has terminated all
159 employment relationships as provided in s. 121.021(39).

160 b. The terminated DROP participant or, if deceased, the
161 member's named beneficiary, shall elect on forms provided by the
162 division to receive payment of the DROP benefits in accordance
163 with one of the options listed below. If a member or beneficiary
164 fails to elect a method of payment within 60 days after
165 termination of DROP, the division shall pay a lump sum as
166 provided in sub-sub-subparagraph (I).

167 (I) Lump sum.—All accrued DROP benefits, plus interest,
168 less withholding taxes remitted to the Internal Revenue Service,
169 shall be paid to the DROP participant or surviving beneficiary.

170 (II) Direct rollover.—All accrued DROP benefits, plus
171 interest, shall be paid from DROP directly to the custodian of
172 an eligible retirement plan as defined in s. 402(c)(8)(B) of the
173 Internal Revenue Code. However, in the case of an eligible
174 rollover distribution to the surviving spouse of a deceased
175 member, an eligible retirement plan is an individual retirement
176 account or an individual retirement annuity as described in s.

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177 402(c)(9) of the Internal Revenue Code.

178 (III) Partial lump sum.—A portion of the accrued DROP
179 benefits shall be paid to DROP participant or surviving spouse,
180 less withholding taxes remitted to the Internal Revenue Service,
181 and the remaining DROP benefits must be transferred directly to
182 the custodian of an eligible retirement plan as defined in s.
183 402(c)(8)(B) of the Internal Revenue Code. However, in the case
184 of an eligible rollover distribution to the surviving spouse of
185 a deceased member, an eligible retirement plan is an individual
186 retirement account or an individual retirement annuity as
187 described in s. 402(c)(9) of the Internal Revenue Code. The
188 proportions must be specified by the DROP participant or
189 surviving beneficiary.

191 An eligible officer, as defined in s. 121.053(7), who
192 transferred accrued DROP benefits and interest to the investment
193 plan must meet the requirements of s. 121.4501(21), which
194 include the termination of all employment relationships as
195 provided in s. 121.021(39), and complete the requirements of
196 this sub-subparagraph to process the payment of any accrued DROP
197 benefits and interest retained in the Florida Retirement System
198 Trust Fund.

199 c. The form of payment selected by the DROP participant or
200 surviving beneficiary must comply with the minimum distribution
201 requirements of the Internal Revenue Code.

202 d. A DROP participant who fails to terminate all employment
203 relationships as provided in s. 121.021(39) shall be deemed as
204 not retired, and the DROP election is null and void. Florida
205 Retirement System membership shall be reestablished

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206 retroactively to the date of the commencement of DROP, and each
207 employer with whom the member continues employment must pay to
208 the Florida Retirement System Trust Fund the difference between
209 the DROP contributions paid in paragraph (i) and the
210 contributions required for the applicable Florida Retirement
211 System class of membership during the period the member
212 participated in DROP, plus 6.5 percent interest compounded
213 annually.

214 6. The retirement benefits of any DROP participant who
215 terminates all employment relationships as provided in s.
216 121.021(39) but is reemployed in violation of the reemployment
217 provisions of subsection (9) are suspended during those months
218 in which the retiree is in violation. Any retiree in violation
219 of this subparagraph and any employer that employs or appoints
220 such person without notifying the division to suspend retirement
221 benefits are jointly and severally liable for any benefits paid
222 during the reemployment limitation period. The employer must
223 have a written statement from the retiree that he or she is not
224 retired from a state-administered retirement system. Any
225 retirement benefits received by a retiree while employed in
226 violation of the reemployment limitations must be repaid to the
227 Florida Retirement System Trust Fund, and his or her retirement
228 benefits shall remain suspended until payment is made. Benefits
229 suspended beyond the end of the reemployment limitation period
230 apply toward repayment of benefits received in violation of the
231 reemployment limitation.

232 7. The accrued benefits of any DROP participant, and any
233 contributions accumulated under the program, are not subject to
234 assignment, execution, attachment, or any legal process except

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235 for qualified domestic relations court orders, income deduction
236 orders as provided in s. 61.1301, and federal income tax levies.

237 8. DROP participants are not eligible for disability
238 retirement benefits as provided in subsection (4).

239 Section 3. Paragraphs (e) and (i) of subsection (2) and
240 subsection (21) of section 121.4501, Florida Statutes, are
241 amended to read:

242 121.4501 Florida Retirement System Investment Plan.—

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

244 (e) "Eligible employee" means an officer or employee, as
245 defined in s. 121.021, who:

246 1. Is a member of, or is eligible for membership in, the
247 Florida Retirement System, including any renewed member of the
248 Florida Retirement System initially enrolled before July 1,
249 2010; or

250 2. Participates in, or is eligible to participate in, the
251 Senior Management Service Optional Annuity Program as
252 established under s. 121.055(6), the State Community College
253 System Optional Retirement Program as established under s.
254 121.051(2)(c), or the State University System Optional
255 Retirement Program established under s. 121.35.

256
257 The term does not include any member participating in the
258 Deferred Retirement Option Program established under s.
259 121.091(13), except as provided in paragraph (21)(b), a retiree
260 of a state-administered retirement system initially reemployed
261 in a regularly established position on or after July 1, 2010, or
262 a mandatory participant of the State University System Optional
263 Retirement Program established under s. 121.35.

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264 (i) "Member" or "employee" means an eligible employee who
265 enrolls in the investment plan as provided in subsection (4), a
266 terminated Deferred Retirement Option Program member as
267 described in paragraph (21) (a), an eligible elected officer as
268 described in paragraph (21) (b) ~~subsection (21)~~, or a beneficiary
269 or alternate payee of a member or employee.

270 (21) PARTICIPATION BY ~~TERMINATED~~ DEFERRED RETIREMENT OPTION
271 PROGRAM MEMBERS.—

272 (a) Notwithstanding any other provision of law, members in
273 the Deferred Retirement Option Program offered under part I may,
274 after conclusion of their participation in the program and
275 meeting the definition of termination in s. 121.021, elect to
276 roll over or authorize a direct trustee-to-trustee transfer to
277 an account under the investment plan of their Deferred
278 Retirement Option Program proceeds distributed as provided under
279 s. 121.091(13)(c)5. The transaction is considered ~~must~~
280 ~~constitute~~ an "eligible rollover distribution" within the
281 meaning of s. 402(c)(4) of the Internal Revenue Code.

282 (b)1. After his or her benefits cease to accrue in the
283 Deferred Retirement Option Program and before meeting the
284 definition of termination in s. 121.021, an eligible officer, as
285 defined in s. 121.053(7)(a)3., may elect to transfer all or a
286 portion of the total accumulated Deferred Retirement Option
287 Program benefits plus interest to the investment plan subject to
288 the terms of s. 121.053(7)(a)3. The transaction must constitute
289 a "direct trustee-to-trustee transfer" under the Internal
290 Revenue Code.

291 2. After the eligible officer has ceased all employment
292 relationships as provided in s. 121.021(39), the eligible

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293 officer may authorize a distribution of those proceeds as
294 provided in s. 121.591.

295 (c)~~(a)~~ The investment plan may accept such amounts for
296 deposit into member accounts as provided in paragraph (5) (e).

297 (d)~~(b)~~ The affected member shall direct the investment of
298 his or her investment account; however, unless he or she becomes
299 a renewed member of the Florida Retirement System under s.
300 121.122 and elects to participate in the investment plan, no
301 contributions may be made to the member's account as provided
302 under paragraph (5) (a).

303 (e)~~(e)~~ The state board or the department is not responsible
304 for locating those persons who may be eligible to participate in
305 the investment plan under this subsection.

306 Section 4. (1) As soon as practicable after the effective
307 date of this act, the State Board of Administration and the
308 Department of Management Services shall request a private letter
309 ruling from the United States Internal Revenue Service. If the
310 United States Internal Revenue Service refuses to act upon the
311 request for a private letter ruling, then a legal opinion from a
312 qualified tax attorney or firm may be substituted for such
313 private letter ruling.

314 (2) If the state board or the department receives
315 notification from the United States Internal Revenue Service
316 that this act or any portion of this act will cause the Florida
317 Retirement System, or a portion thereof, to be disqualified for
318 tax purposes under the Internal Revenue Code, then the portion
319 that will cause the disqualification does not apply. Upon
320 receipt of such notice, the state board and the department shall
321 notify the presiding officers of the Legislature.

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Section 5. This act shall take effect upon becoming a law.