By the Committee on Appropriations; and Senator Rodrigues

576-03663-21 202184c1

A bill to be entitled

An act relating to retirement; amending s. 121.051, F.S.; providing for compulsory membership in the Florida Retirement System Investment Plan for specified employees initially enrolled on or after a specified date; providing exceptions; conforming provisions to changes made by the act; amending s. 121.052, F.S.; removing authorization for an elected officer to elect membership in the Senior Management Service Class on or after a specified date; amending s. 121.35, F.S.; modifying provisions governing participation in the investment plan for individuals who are eligible to participate in the State University System Optional Retirement Program to conform to changes made by the act; providing for the transfer of contributions for employees who default into the investment plan; amending s. 121.4501, F.S.; modifying provisions governing the administration of the investment plan to reflect compulsory membership for specified employees; amending s. 121.74, F.S.; revising the employer assessment rate to fund certain administrative and educational expenses related to investment plan administration as of a specified date; amending ss. 238.072 and 413.051, F.S.; conforming cross-references to changes made by the act; providing a declaration of important state interest; providing an effective date.

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

Section 1. Present subsections (3) through (9) of section 121.051, Florida Statutes, are redesignated as subsections (4) through (10), respectively, a new subsection (3) is added to that section, and paragraph (c) of subsection (2) of that section is amended, to read:

121.051 Participation in the system.—

(2) OPTIONAL PARTICIPATION.—

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

1.a. Through June 30, 2001, the cost to the employer for benefits under the optional retirement program equals the normal cost portion of the employer retirement contribution which would be required if the employee were a member of the pension plan's Regular Class, plus the portion of the contribution rate required by s. 112.363(8) which would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

b. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional program an amount equal to 10.43 percent of the employee's gross monthly compensation. The employer shall deduct an amount for the administration of the program.

c. Effective July 1, 2011, through June 30, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3). The employer shall contribute on behalf of each program member an amount equal to the difference between 10.43 percent of the employee’s gross monthly compensation and the employee’s required contribution based on the employee’s gross monthly compensation.

d. Effective July 1, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3). The employer shall contribute on behalf of each program member an amount equal to the difference between 8.15 percent of the employee’s gross monthly compensation and the employee’s required contribution based on the employee’s gross monthly compensation.

e. The employer shall contribute an additional amount to the Florida Retirement System Trust Fund equal to the unfunded actuarial accrued liability portion of the Regular Class contribution rate.

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

3. <u>Effective July 1, 2003, through June 30, 2022,</u> an employee who has elected to participate in the optional retirement program shall have one opportunity, at the employee’s discretion, to transfer from the optional retirement program to

the pension plan of the Florida Retirement System or to the investment plan established under part II of this chapter, subject to the terms of the applicable optional retirement program contracts. Except as provided in subsection (3), an employee participating in the optional retirement program on or after July 1, 2022, is not eligible to transfer to the Florida Retirement System.

a. If the employee chooses to move to the investment plan, any contributions, interest, and earnings creditable to the employee under the optional retirement program are retained by the employee in the optional retirement program, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee chooses to move to the pension plan of the Florida Retirement System, the employee shall receive service credit equal to his or her years of service under the optional retirement program.

(I) The cost for such credit is the amount representing the present value of the employee's accumulated benefit obligation for the affected period of service. The cost shall be calculated as if the benefit commencement occurs on the first date the employee becomes eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the years under the optional retirement program. The present value of any service already maintained must be applied as a credit to total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

(II) The employee must transfer from his or her optional retirement program account and from other employee moneys as necessary, a sum representing the present value of the employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the optional retirement program.

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

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

b. The employee is employed in a full-time position classified in the Accounting Manual for Florida's College System as:

(I) Instructional; or

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

c. The employee is employed in a position not included in the Senior Management Service Class of the Florida Retirement System as described in s. 121.055.

5. Members of the program are subject to the same reemployment limitations, renewed membership provisions, and forfeiture provisions applicable to regular members of the Florida Retirement System under ss. 121.091(9), 121.122, and 121.091(5), respectively. A member who receives a program distribution funded by employer and required employee contributions is deemed to be retired from a state-administered retirement system if the member is subsequently employed with an employer that participates in the Florida Retirement System.

6. Eligible community college employees are compulsory members of the Florida Retirement System until, pursuant to s. 1012.875, a written election to withdraw from the system and participate in the optional retirement program is filed with the program administrator and received by the division.

a. A community college employee whose program eligibility results from initial employment shall be enrolled in the optional retirement program retroactive to the first day of eligible employment. The employer and employee retirement contributions paid through the month of the employee plan change shall be transferred to the community college to the employee’s optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

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

7. Effective July 1, 2003, through December 31, 2008, any member of the optional retirement program who has service credit in the pension plan of the Florida Retirement System for the period between his or her first eligibility to transfer from the pension plan to the optional retirement program and the actual date of transfer may, during employment, transfer to the optional retirement program a sum representing the present value of the accumulated benefit obligation under the defined benefit retirement program for the period of service credit. Upon transfer, all service credit previously earned under the pension plan during this period is nullified for purposes of entitlement to a future benefit under the pension plan.

(3) INVESTMENT PLAN MEMBERSHIP COMPULSORY.—

(a) All eligible employees and officers, except Special Risk Class members, those employees and officers eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those employees eligible for optional retirement programs under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35, initially enrolled on or after July 1, 2022, are compulsory members of the investment plan, and membership in the pension plan is not permitted except as provided in s. 121.591(2) and (4). Employees initially enrolled on or after July 1, 2022, are not eligible to use the election opportunity specified in s. 121.4501(4)(e).

(b) Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may choose to withdraw from the system or to participate in the investment plan as provided in those sections. Employees eligible for optional retirement programs under s. 121.051(2)(c) or s. 121.35 may choose to participate in the optional retirement program or the investment plan as provided in those sections. Eligible employees required to participate in the optional retirement program under s. 121.35, pursuant to s. 121.051(1)(a), must participate in the investment plan when employed in a position not eligible for the optional retirement program.

Section 2. Paragraph (c) of subsection (3) of section 121.052, Florida Statutes, is amended to read:

121.052 Membership class of elected officers.—

(3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective July 1, 1990, participation in the Elected Officers' Class shall be compulsory for elected officers listed in paragraphs (2)(a)-(d) and (f) assuming office on or after said date, unless the elected officer elects membership in another class or withdraws from the Florida Retirement System as provided in paragraphs (3)(a)-(d):

(c) Before July 1, 2022, an ~~any~~ elected officer may, within 6 months after assuming office, ~~or within 6 months after this act becomes a law for serving elected officers,~~ elect membership in the Senior Management Service Class as provided in s. 121.055 in lieu of membership in the Elected Officers' Class. ~~Any~~ Such election does not affect ~~made by a county elected officer shall have no effect upon~~ the statutory limit on the number of nonelective full-time positions that may be designated by a local agency employer for inclusion in the Senior Management Service Class under s. 121.055(1)(b)1.

Section 3. Paragraph (c) of subsection (3) of section 121.35, Florida Statutes, is amended to read:

121.35 Optional retirement program for the State University System.—

(3) ELECTION OF OPTIONAL PROGRAM.—

(c) An ~~any~~ employee who becomes eligible to participate in the optional retirement program on or after January 1, 1993, shall be a compulsory participant of the program unless such employee elects membership in the Florida Retirement System. Such election must ~~shall~~ be ~~made~~ in writing and filed with the personnel officer of the employer. An ~~any~~ eligible employee who fails to make such election within the prescribed time period shall be deemed to have elected to participate in the optional retirement program.

1. An ~~any~~ employee whose optional retirement program eligibility results from initial employment shall be enrolled in the program at the commencement of employment. If, within 90 days after commencement of employment, the employee elects membership in the Florida Retirement System, such membership shall be effective retroactive to the date of commencement of employment as provided in s. 121.4501(4).

2. An ~~Any~~ employee whose optional retirement program

eligibility results from a change in status due to the subsequent designation of the employee’s position as one of those specified in paragraph (2)(a) or due to the employee’s appointment, promotion, transfer, or reclassification to a position specified in paragraph (2)(a) shall be enrolled in the optional retirement program upon such change in status and shall be notified by the employer of such action. If, within 90 days after the date of such notification, the employee elects to retain membership in the Florida Retirement System, such continuation of membership shall be retroactive to the date of the change in status.

3. Notwithstanding subparagraphs 1. and 2. ~~the provisions of this paragraph~~, effective July 1, 1997, an ~~any~~ employee who is eligible to participate in the optional retirement program and who fails to execute a contract with one of the approved companies and to notify the department in writing as provided in subsection (4) within 90 days after the date of eligibility is ~~shall be~~ deemed to have elected membership in the Florida Retirement System, except as provided in s. 121.051(1)(a). This subparagraph ~~provision shall~~ also applies ~~apply~~ to any employee who terminates employment in an eligible position before executing the required investment ~~annuity~~ contract and notifying the department. Such membership shall be retroactive to the date of eligibility, and all appropriate contributions shall be transferred to the Florida Retirement System Trust Fund and the Retiree Health Insurance Subsidy Trust Fund. If a member is initially enrolled on or after July 1, 2022, and fails to execute a contract with one of the approved companies and notify the department in writing within 90 days after the date of

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eligibility as provided in subsection (4), the member is deemed to have elected membership in the Florida Retirement System Investment Plan and such membership shall be retroactive to the date of eligibility. All contributions required under s. 121.72 shall be transferred to a default fund in the investment plan as provided in s. 121.4501(4)(g) and the Retiree Health Insurance Subsidy Trust Fund.

Section 4. Subsections (1), (4), (8), (10), and (15) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(1) ESTABLISHMENT.—The Trustees of the State Board of Administration shall establish a defined contribution program called the “Florida Retirement System Investment Plan” or “investment plan” for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees initially enrolled before July 1, 2022, who elect to participate in the program, for Special Risk members, regardless of the date of initial enrollment, who elect to participate in the program, and for all other eligible employees initially enrolled on or after July 1, 2022, who are compulsory members of the investment plan pursuant to paragraph (4)(g). The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

(4) PARTICIPATION; ENROLLMENT.—

(a)1. Effective June 1, 2002, through February 28, 2003, a

90-day election period was provided to each eligible employee participating in the Florida Retirement System, preceded by a 90-day education period, permitting each eligible employee to elect membership in the investment plan. An employee who failed to elect the investment plan during the election period remained in the pension plan. An eligible employee who was employed in a regularly established position during the election period was granted the option to make one subsequent election, as provided in paragraph (f). With respect to an eligible employee who did not participate in the initial election period or who is initially employed in a regularly established position after the close of the initial election period but before January 1, 2018, such employee shall, by default, be enrolled in the pension plan at the commencement of employment and may, by the last business day of the 5th month following the employee’s month of hire, elect to participate in the investment plan. The employee’s election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (f).

a. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The retirement contributions paid through the month of the employee plan change shall be transferred to the investment program, and, effective the first day of the next month, the employer and employee must pay the applicable contributions based on the employee membership class in the program.

b. An employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

2. With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or her membership in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program. The election must be made in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (f). Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

(b)1. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position commencing on or after January 1, 2018, through June 30, 2022, or who did not complete an election window before June 30, 2022, or any employee in the Special Risk Class initially enrolled on or after July 1, 2022 ~~January 1,~~

~~2018~~, any such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the eighth month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible employees may make a plan election only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

2. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

3.a. Except as provided in subparagraph 4., if the employee fails to make an election to either the pension plan or the investment plan during the 8-month period following the month of hire, the employee is deemed to have elected the investment plan and shall default into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

b. The amount of the employee and employer contributions paid through the date of default to the investment plan shall be transferred to the investment plan and shall be placed in a default fund as designated by the State Board of Administration. The employee may move the contributions once an account is activated in the investment plan.

4. If the employee is employed in a position included in the Special Risk Class and fails to make an election to either

the pension plan or the investment plan during the 8-month period following the month of hire, the employee is deemed to have elected the pension plan and shall default into the pension plan retroactively to the employee's date of employment. The employee's option to participate in the investment plan is forfeited, except as provided in paragraph (f).

5. Effective the first day of the month after an eligible employee makes a plan election of the pension plan or investment plan, or the first day of the month after default, the employee and employer shall pay the applicable contributions based on the employee membership class in the program.

(c) Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

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

(e)1. A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed in a regularly established position on or after July 1, 2010, through June 30, 2017, is not eligible for renewed membership, except as provided in s. 121.122.

2. A retiree who is reemployed on or after July 1, 2017, shall be enrolled as a renewed member as provided in s. 121.122.

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(f) After the period during which an eligible employee <u>initially enrolled before July 1, 2022,</u> had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

1. If the employee chooses to move to the investment plan, the provisions of subsection (3) govern the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and

other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan, the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee’s actuarial accrued liability. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee’s ability to transfer from the pension plan to the investment plan pursuant to paragraphs (a) and (b), and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2., shall

be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve stabilization mechanism defined in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance in the investment plan after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

<u>(g)1. All eligible employees, except Special Risk Class members, those employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those employees eligible for optional retirement programs under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35, initially</u>

enrolled on or after July 1, 2022, are compulsory members of the investment plan. Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may choose to withdraw from the system or to participate in the investment plan as provided in those sections. Employees eligible for optional retirement programs under s. 121.051(2)(c) or s. 121.35, except as provided in s. 121.051(1)(a), may choose to participate in the optional retirement program or the investment plan as provided in those sections. Membership in the pension plan is not authorized except as provided in s. 121.591(2) and (4).

2. Employees who are compulsory members of the investment plan may not use the election opportunity specified in paragraph (f) unless the employee is initially enrolled in a class other than the Special Risk Class and is employed subsequently in a position in the Special Risk Class.

3. As required under s. 121.72, the amount of retirement contributions paid by the employee and employer shall be transferred to the investment plan and placed in a default fund designated by the state board.

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state board may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, may not be required of a member at the time of enrollment. For members initially enrolled before July 1, 2022, acknowledgment of an employee's election to participate in the program shall be no

greater than necessary to confirm the employee’s election. The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules necessary to administer the investment plan in coordination with the pension plan, and the disability benefits and line-of-duty death benefits available under the investment plan provided in s. 121.591(2) and (4), respectively.

(a)1. The state board shall select and contract with a third-party administrator to provide administrative services if those services cannot be competitively and contractually provided by the division. With the approval of the state board, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the state board may compensate any such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

2. These administrative services may include, but are not limited to, enrollment of eligible employees, collection of employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and

direct disbursement of funds to and from the third-party administrator, the division, the state board, employers, members, approved providers, and beneficiaries. This section does not prevent or prohibit a bundled provider from providing any administrative or customer service, including accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member's instructions as to asset and contribution allocation; calculation of daily net asset values; direct access to member account information; or periodic reporting to members, at least quarterly, on account balances and transactions, if these services are authorized by the state board as part of the contract.

(b)1. The state board shall select and contract with one or more organizations to provide educational services. With approval of the state board, the organizations may subcontract to provide components of the educational services. As a cost of administration, the state board may compensate any such contractor for its services in accordance with the terms of the contract, as is deemed necessary or proper by the board. The education organization may not be an approved provider or be affiliated with an approved provider.

2. Educational services shall be designed by the state board and department to assist employers, eligible employees, members, and beneficiaries in order to maintain compliance with United States Department of Labor regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to assist employees in their choice of pension plan or investment plan retirement alternatives. Educational services include, but

are not limited to, disseminating educational materials; providing retirement planning education; explaining the pension plan and the investment plan; and offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. An approved provider may also provide educational information, including retirement planning and investment allocation information concerning its products and services.

(c)1. In evaluating and selecting a third-party administrator, the state board shall establish criteria for evaluating the relative capabilities and qualifications of each proposed administrator. In developing such criteria, the state board shall consider:

a. The administrator’s demonstrated experience in providing administrative services to public or private sector retirement systems.

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

c. The administrator’s ability and willingness to coordinate its activities with employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the department or state board.

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

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

f. Any other factor deemed necessary by the state board.

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

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

b. Ability and willingness to coordinate its activities with the employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, reports on educational contacts.

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

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

e. Any other factor deemed necessary by the state board.

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

(d) The state board shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

1. The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

2. The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

(e)1. The state board may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan. The state board may enter into a contract with one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

2. The department may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan in coordination with the pension plan. The department, in coordination with the state board, may enter into a contract with the third-party administrator in order to coordinate services common to the various programs within the Florida Retirement System.

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

(g) The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving any member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member’s full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

(10) EDUCATION COMPONENT.—

(a) The state board, in coordination with the department, shall provide for an education component for eligible employees in a manner consistent with this subsection.

(b) The education component must provide system members with impartial and balanced information about plan choices <u>for members initially enrolled before July 1, 2022</u>. The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The state board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the state board.

(c) The state board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members initially enrolled before July 1, 2022, with information necessary to make informed plan choice decisions. The transfer education component must include, but is not limited to, information on:

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

2. The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

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

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

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

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

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

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

(d) An ongoing education and communication component must provide eligible employees with information necessary to make informed decisions about choices within their retirement system and in preparation for retirement. The component must include, but is not limited to, information concerning:

1. Rights and conditions of membership.

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

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

4. Significant program changes.

5. Contribution rates and program funding status.

6. Planning for retirement.

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

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

(g) Funding for education of new employees may reflect administrative costs to the investment plan and the pension plan.

(15) STATEMENT OF FIDUCIARY STANDARDS AND RESPONSIBILITIES.—

(a) Investment of investment ~~defined contribution~~ plan assets shall be made for the sole interest and exclusive purpose

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

of providing benefits to members and beneficiaries and defraying reasonable expenses of administering the plan. The program's assets shall be invested on behalf of the program members with the care, skill, and diligence that a prudent person acting in a like manner would undertake. The performance of the investment duties set forth in this paragraph shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this subsection shall prevail.

(b) If a member or beneficiary of the investment plan exercises control over the assets in his or her account, as determined by reference to regulations of the United States Department of Labor under s. 404(c) of the Employee Retirement Income Security Act of 1974 and all applicable laws governing the operation of the program, a program fiduciary is not liable for any loss to a member's or beneficiary's account which results from the member's or beneficiary's exercise of control.

(c) Subparagraph (8)(b)2. and paragraph (b) incorporate the federal law concept of participant control, established by regulations of the United States Department of Labor under s. 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA). The purpose of this paragraph is to assist employers and the state board in maintaining compliance with s. 404(c), while avoiding unnecessary costs and eroding member benefits under the investment plan. Pursuant to <u>29 C.F.R. s. 2550.404a-5(d)(4)</u> ~~29 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(1)(viii)~~, the state board or its designated agents shall deliver to members of the investment plan a copy of the prospectus most recently provided to the plan~~, and, pursuant to 29 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(2)(ii), shall provide such members an opportunity to obtain this information~~, except that:

1. The requirement to deliver a prospectus shall be satisfied by delivery of a fund profile or summary profile that contains the information that would be included in a summary prospectus as described by Rule 498 under the Securities Act of 1933, 17 C.F.R. s. 230.498. If the transaction fees, expense information or other information provided by a mutual fund in the prospectus does not reflect terms negotiated by the state board or its designated agents, the requirement is satisfied by delivery of a separate document described by Rule 498 substituting accurate information; and

2. Delivery shall be effected if delivery is through electronic means and the following standards are satisfied:

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

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

c. Members have adequate access to the electronic documents, at locations such as their worksites or public facilities, and have the ability to convert the documents to paper free of charge by the state board, and the board or its designated agents take appropriate and reasonable measures to ensure that the system for furnishing electronic documents results in actual receipt. Members have provided consent to receive information in electronic format, which consent may be revoked; and

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

Section 5. Section 121.74, Florida Statutes, is amended to read:

121.74 Administrative and educational expenses.—In addition to contributions required to fund member accounts under s. 121.71, effective July 1, 2010, through June 30, 2014, employers participating in the Florida Retirement System shall contribute an employer assessment amount equal to 0.03 percent of the payroll reported for each class or subclass of Florida Retirement System membership. Effective July 1, 2014, the employer assessment is 0.04 percent of the payroll reported for each class or subclass of membership. Effective July 1, 2016, the employer assessment is 0.06 percent of the payroll reported for each class or subclass of membership. Effective July 1, 2022, the employer assessment is 0.07 percent of the payroll reported for each class or subclass of membership. The amount assessed shall be transferred by the division from the Florida Retirement System Contributions Clearing Trust Fund to the State Board of Administration's Administrative Trust Fund to offset the costs of administering the investment plan and the costs of providing educational services to members of the Florida Retirement System. Approval of the trustees is required before the expenditure of these funds. Payments for third-party administrative or educational expenses shall be made only pursuant to the terms of the approved contracts for such services.

Section 6. Section 238.072, Florida Statutes, is amended to read:

238.072 Special service provisions for extension personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(8) ~~s. 121.051(7)~~, who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and participating in the Florida Retirement System, chapter 121, may retire with full benefits upon completion of 30 years of creditable service and shall be considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with ~~the provisions of~~ s. 14, Art. X of the State Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result ~~of the provisions~~ of this section shall be paid on an annual basis from the General Revenue Fund.

Section 7. Subsection (11) of section 413.051, Florida Statutes, is amended to read:

413.051 Eligible blind persons; operation of vending stands.—

(11) Effective July 1, 1996, blind licensees who remain members of the Florida Retirement System pursuant to s. 121.051(7)(b)1. ~~s. 121.051(6)(b)1.~~ shall pay any unappropriated retirement costs from their net profits or from program income.

~~Within 30 days after the effective date of this act,~~ Each blind licensee who is eligible to maintain membership in the Florida Retirement System under s. 121.051(7)(b)1. ~~s. 121.051(6)(b)1.~~, but who elects to withdraw from the system as provided in that subparagraph ~~s. 121.051(6)(b)3.~~, must, on or before July 31, 1996, notify the Division of Blind Services and the Department of Management Services in writing of his or her election to withdraw. Failure to timely notify the divisions shall be deemed a decision to remain a compulsory member of the Florida Retirement System. However, if, at any time after July 1, 1996, sufficient funds are not paid by a blind licensee to cover the required contribution to the Florida Retirement System, that blind licensee shall become ineligible to participate ~~in the Florida Retirement System~~ on the last day of the first month for which no contribution is made or the amount contributed is insufficient to cover the required contribution. For any blind licensee who becomes ineligible to participate in the Florida Retirement System as described in this subsection, no creditable service shall be earned under the Florida Retirement System for any period following the month that retirement contributions ceased to be reported. However, ~~any~~ such person may participate in the Florida Retirement System in the future if employed by a participating employer in a covered position.

Section 8. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that

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are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 9. This act shall take effect July 1, 2021.