



Government Operations Subcommittee

**Thursday, March 17, 2011
3:15 PM
Morris Hall 17 HOB**

Meeting Packet

**Dean Cannon
Speaker**

**Jimmy Patronis
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Thursday, March 17, 2011 03:15 pm
End Date and Time: Thursday, March 17, 2011 06:00 pm
Location: Morris Hall (17 HOB)
Duration: 2.75 hrs

Consideration of the following bill(s):

HB 1405 Retirement by Workman

Consideration of the following proposed committee bill(s):

PCB GVOPS 11-10 -- OPPAGA Work Papers

NOTICE FINALIZED on 03/15/2011 16:16 by Godwin.Chandra

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

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

57 | reducing the minimum disability retirement benefit for
58 | certain judges to one-third of the monthly compensation at
59 | the time of disability; providing for the refund of
60 | accumulated contributions if a member's employment is
61 | terminated for any reason other than retirement; closing
62 | the Deferred Retirement Option Program to new participants
63 | on July 1, 2011; amending s. 121.101, F.S.; providing a
64 | calculation for cost-of-living adjustments for service
65 | earned after July 1, 2011; amending s. 121.121, F.S.,
66 | relating to the purchase of creditable service following
67 | an authorized leave of absence; requiring that service
68 | credit be purchased at the employee and employer
69 | contribution rates in effect during the leave of absence
70 | effective a certain date; amending s. 121.125, F.S.;
71 | requiring that certain employers make the required
72 | employee and employer retirement contributions following
73 | an employee's workers' compensation injury or illness;
74 | requiring that a penalty be assessed against certain
75 | employers that fail to pay the required contributions;
76 | reenacting s. 121.161, F.S., relating to the references of
77 | other laws as amended; amending s. 121.35, F.S., relating
78 | to the optional retirement program for the State
79 | University System; limiting the payment of benefits prior
80 | to a participant's termination of employment; amending s.
81 | 121.4501, F.S.; changing the name of the Public Employee
82 | Optional Retirement Program to the Florida Retirement
83 | System Investment Plan; requiring members of the Florida
84 | Retirement System Investment Plan to make certain

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

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

141 contributions owed; amending s. 121.72, F.S.; revising
 142 certain requirements governing allocations to optional
 143 retirement program participant accounts; setting the
 144 allocation into retirement accounts at 11.25 percent for
 145 Special Risk Class members and 9 percent for all other
 146 members; amending s. 121.73, F.S., relating to disability
 147 coverage for participants in the optional retirement
 148 program; amending ss. 121.74, 121.75 and 121.77, F.S.;
 149 conforming provisions to changes made by the act; amending
 150 s. 121.78, F.S.; revising certain requirements for
 151 administering the payment and distribution of
 152 contributions; requiring that certain fees be imposed for
 153 delinquent payments; providing that an employer is
 154 responsible for recovering any refund provided to an
 155 employee in error; revising the terms of an authorized
 156 waiver of delinquency; requiring an employer to receive a
 157 credit for excess contributions and to reimburse an
 158 employee for excess contributions, subject to certain
 159 limitations; requiring the State Board of Administration
 160 and the Department of Management Services to request a
 161 determination letter and private letter ruling from the
 162 United States Internal Revenue Service; providing for
 163 severability; providing legislative findings; providing
 164 that the act fulfills an important state interest;
 165 providing appropriations to and authorizing additional
 166 positions for the Division of Retirement within the
 167 Department of Management Services; providing effective
 168 dates.

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

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

110.123 State group insurance program.—

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

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

1. Meets the age and service requirements to qualify for normal retirement as set forth in s. 121.021(29); or
2. Has attained the age specified by s. 72(t)(2)(A)(i) of the Internal Revenue Code and has 6 years of creditable service.

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

112.0801 Group insurance; participation by retired

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

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

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

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

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

244 112.363 Retiree health insurance subsidy.—

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

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

251 1. For a member participant of the investment plan ~~Public~~
 252 ~~Employee Optional Retirement Program~~ established under part II

253 of chapter 121, the participant meets the age or service
 254 requirements to qualify for normal retirement as set forth in s.
 255 121.021(29) and meets the definition of retiree in s.
 256 121.4501(2).

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

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

276 (3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—

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

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

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

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

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

334 2. Beginning July 1, 2011, each eligible participant of
 335 the investment plan of the Florida Retirement System who has met
 336 the requirements of this section, or, if the participant is

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

357 3. A retiree or beneficiary is not eligible to receive the
 358 subsidy unless the retiree earned 6 years of creditable service
 359 in the Florida Retirement System. Service in the optional
 360 retirement programs administered under ss. 121.35 and 1012.875
 361 and the optional annuity program administered under s.
 362 121.055(6) may not be used to meet this service requirement.

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

365 health insurance subsidy.

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

368 112.65 Limitation of benefits.—

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

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

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

392 (3) "System" means the general retirement system

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

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

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

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

421 ~~121.0515. Such member must be employed as a law enforcement~~
 422 ~~officer, a firefighter, or a correctional officer and must meet~~
 423 ~~certain other special criteria as set forth in s. 121.0515.~~

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

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

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

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

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

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

448 (a) Service for which the member had credit under one of

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

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

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

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

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

473 (38) "Continuous service" means creditable service as a
 474 member, beginning with the first day of employment with an
 475 employer covered under a state-administered retirement system
 476 consolidated herein and continuing for as long as the member

477 remains in an employer-employee relationship with an employer
 478 covered under this chapter. An absence of 1 calendar month or
 479 more from an employer's payroll shall be considered a break in
 480 continuous service, except for periods of absence during which
 481 an employer-employee relationship continues to exist and such
 482 period of absence is creditable under this chapter or under one
 483 of the existing systems consolidated herein. However, a law
 484 enforcement officer as defined in s. 121.0515(3)~~(2)~~(a) who was a
 485 member of a state-administered retirement system under chapter
 486 122 or chapter 321 and who resigned and was subsequently
 487 reemployed in a law enforcement position within 12 calendar
 488 months of such resignation by an employer under such state-
 489 administered retirement system shall be deemed to have not
 490 experienced a break in service. Further, with respect to a
 491 state-employed law enforcement officer who meets the criteria
 492 specified in s. 121.0515(3)~~(2)~~(a), if the absence from the
 493 employer's payroll is the result of a "layoff" as defined in s.
 494 110.107 or a resignation to run for an elected office that meets
 495 the criteria specified in s. 121.0515(3)~~(2)~~(a), no break in
 496 continuous service shall be deemed to have occurred if the
 497 member is reemployed as a state law enforcement officer or is
 498 elected to an office which meets the criteria specified in s.
 499 121.0515(3)~~(2)~~(a) within 12 calendar months after the date of
 500 the layoff or resignation, notwithstanding the fact that such
 501 period of layoff or resignation is not creditable service under
 502 this chapter. A withdrawal of contributions will constitute a
 503 break in service. Continuous service also includes past service
 504 purchased under this chapter, provided such service is

505 | continuous within this definition and the rules established by
 506 | the administrator. The administrator may establish
 507 | administrative rules and procedures for applying this definition
 508 | to creditable service authorized under this chapter. Any
 509 | correctional officer, as defined in s. 943.10, whose
 510 | participation in the state-administered retirement system is
 511 | terminated due to the transfer of a county detention facility
 512 | through a contractual agreement with a private entity pursuant
 513 | to s. 951.062, shall be deemed an employee with continuous
 514 | service in the Special Risk Class, provided return to employment
 515 | with the former employer takes place within 3 years due to
 516 | contract termination or the officer is employed by a covered
 517 | employer in a special risk position within 1 year after his or
 518 | her initial termination of employment by such transfer of its
 519 | detention facilities to the private entity.

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

523 | 1. For retirements effective before July 1, 2010, if a
 524 | member is employed by any such employer within the next calendar
 525 | month, termination shall be deemed not to have occurred. A leave
 526 | of absence constitutes a continuation of the employment
 527 | relationship, except that a leave of absence without pay due to
 528 | disability may constitute termination if such member makes
 529 | application for and is approved for disability retirement in
 530 | accordance with s. 121.091(4). The department or state board may
 531 | require other evidence of termination as it deems necessary.

532 | 2. For retirements effective on or after July 1, 2010, if

533 a member is employed by any such employer within the next 6
 534 calendar months, termination shall be deemed not to have
 535 occurred. A leave of absence constitutes a continuation of the
 536 employment relationship, except that a leave of absence without
 537 pay due to disability may constitute termination if such member
 538 makes application for and is approved for disability retirement
 539 in accordance with s. 121.091(4). The department or state board
 540 may require other evidence of termination as it deems necessary.

541 (b) "Termination" for a member electing to participate in
 542 the Deferred Retirement Option Program occurs when the program
 543 participant ceases all employment relationships with
 544 participating employers ~~an employer~~ in accordance with s.
 545 121.091(13), however:

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

551 2. For termination dates occurring on or after July 1,
 552 2010, if the participant becomes employed by any such employer
 553 within the next 6 calendar months, termination will be deemed
 554 not to have occurred, except as provided in s.
 555 121.091(13)(b)4.c. A leave of absence constitutes a continuation
 556 of the employment relationship.

557 (c) Effective July 1, 2011, "termination" for a member
 558 receiving a refund of employee contributions occurs when a
 559 member ceases all employment relationships with participating
 560 employers for 3 calendar months. A leave of absence for less

561 | than 3 calendar months constitutes a continuation of the
 562 | employment relationship.

563 | (55) "Benefit" means any pension payment, lump-sum or
 564 | periodic, to a member, retiree, or beneficiary, based partially
 565 | or entirely on employer contributions or employee contributions,
 566 | if applicable.

567 | (59) "Payee" means a retiree or beneficiary of a retiree
 568 | who has received or is receiving a retirement benefit payment.

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

572 | 121.051 Participation in the system.—

573 | (2) OPTIONAL PARTICIPATION.—

574 | (b)1. The governing body of any municipality, metropolitan
 575 | planning organization, or special district in the state may
 576 | elect to participate in the system upon proper application to
 577 | the administrator and may cover all or any of its units as
 578 | approved by the Secretary of Health and Human Services and the
 579 | administrator. The department shall adopt rules establishing
 580 | procedures ~~provisions~~ for the submission of documents necessary
 581 | for such application. Prior to being approved for participation
 582 | in the Florida Retirement System, the governing body of a any
 583 | ~~such~~ municipality, metropolitan planning organization, or
 584 | special district that has a local retirement system must ~~shall~~
 585 | submit to the administrator a certified financial statement
 586 | showing the condition of the local retirement system as of a
 587 | date within 3 months prior to the proposed effective date of
 588 | membership in the Florida Retirement System. The statement must

589 be certified by a recognized accounting firm that is independent
 590 of the local retirement system. All required documents necessary
 591 for extending Florida Retirement System coverage must be
 592 received by the department for consideration at least 15 days
 593 prior to the proposed effective date of coverage. If the
 594 municipality, metropolitan planning organization, or special
 595 district does not comply with this requirement, the department
 596 may require that the effective date of coverage be changed.

597 2. Any city, metropolitan planning organization, or
 598 special district that has an existing retirement system covering
 599 the employees in the units that are to be brought under the
 600 Florida Retirement System may participate only after holding a
 601 referendum in which all employees in the affected units have the
 602 right to participate. Only those employees electing coverage
 603 under the Florida Retirement System by affirmative vote in said
 604 referendum shall be eligible for coverage under this chapter,
 605 and those not participating or electing not to be covered by the
 606 Florida Retirement System shall remain in their present systems
 607 and shall not be eligible for coverage under this chapter. After
 608 the referendum is held, all future employees shall be compulsory
 609 members of the Florida Retirement System.

610 3. At the time of joining the Florida Retirement System,
 611 the governing body of any city, metropolitan planning
 612 organization, or special district complying with subparagraph 1.
 613 may elect to provide, or not provide, benefits based on past
 614 service of officers and employees as described in s. 121.081(1).
 615 However, if such employer elects to provide past service
 616 benefits, such benefits must be provided for all officers and

617 employees of its covered group.

618 4. Once this election is made and approved it may not be
 619 revoked, except pursuant to subparagraphs 5. and 6., and all
 620 present officers and employees electing coverage under this
 621 chapter and all future officers and employees shall be
 622 compulsory members of the Florida Retirement System.

623 5. Subject to the conditions set forth in subparagraph 6.,
 624 the governing body of a ~~any~~ hospital licensed under chapter 395
 625 which is governed by the board of a special district as defined
 626 in s. 189.403(1) or by the board of trustees of a public health
 627 trust created under s. 154.07, hereinafter referred to as
 628 "hospital district," and which participates in the system, may
 629 elect to cease participation in the system with regard to future
 630 employees in accordance with the following procedure:

631 a. No more than 30 days and at least 7 days before
 632 adopting a resolution to partially withdraw from the Florida
 633 Retirement System and establish an alternative retirement plan
 634 for future employees, a public hearing must be held on the
 635 proposed withdrawal and proposed alternative plan.

636 b. From 7 to 15 days before such hearing, notice of intent
 637 to withdraw, specifying the time and place of the hearing, must
 638 be provided in writing to employees of the hospital district
 639 proposing partial withdrawal and must be published in a
 640 newspaper of general circulation in the area affected, as
 641 provided by ss. 50.011-50.031. Proof of publication of such
 642 notice shall be submitted to the Department of Management
 643 Services.

644 c. The governing body of a ~~any~~ hospital district seeking

645 to partially withdraw from the system must, before such hearing,
 646 have an actuarial report prepared and certified by an enrolled
 647 actuary, as defined in s. 112.625(3), illustrating the cost to
 648 the hospital district of providing, through the retirement plan
 649 that the hospital district is to adopt, benefits for new
 650 employees comparable to those provided under the Florida
 651 Retirement System.

652 d. Upon meeting all applicable requirements of this
 653 subparagraph, and subject to the conditions set forth in
 654 subparagraph 6., partial withdrawal from the system and adoption
 655 of the alternative retirement plan may be accomplished by
 656 resolution duly adopted by the hospital district board. The
 657 hospital district board must provide written notice of such
 658 withdrawal to the division by mailing a copy of the resolution
 659 to the division, postmarked by ~~no later than~~ December 15, 1995.
 660 The withdrawal shall take effect January 1, 1996.

661 6. Following the adoption of a resolution under sub-
 662 subparagraph 5.d., all employees of the withdrawing hospital
 663 district who were participants in the Florida Retirement System
 664 before ~~prior to~~ January 1, 1996, shall remain as participants in
 665 the system for as long as they are employees of the hospital
 666 district, and all rights, duties, and obligations between the
 667 hospital district, the system, and the employees shall remain in
 668 full force and effect. Any employee who is hired or appointed on
 669 or after January 1, 1996, may not participate in the Florida
 670 Retirement System, and the withdrawing hospital district shall
 671 have no obligation to the system with respect to such employees.

672 (c) Employees of public community colleges or charter

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

681 1. Through June 30, 2001, the cost to the employer for
 682 benefits under the optional retirement program ~~such annuity~~
 683 equals the normal cost portion of the employer retirement
 684 contribution which would be required if the employee were a
 685 member of the pension plan's Regular Class ~~defined benefit~~
 686 ~~program~~, plus the portion of the contribution rate required by
 687 s. 112.363(8) which would otherwise be assigned to the Retiree
 688 Health Insurance Subsidy Trust Fund. Effective July 1, 2001,
 689 each employer shall contribute on behalf of each participant in
 690 the optional program an amount equal to 10.43 percent of the
 691 participant's gross monthly compensation. The employer shall
 692 deduct an amount for the administration of the program. The
 693 employer shall contribute an additional amount to the Florida
 694 Retirement System Trust Fund equal to the unfunded actuarial
 695 accrued liability portion of the Regular Class contribution
 696 rate.

697 2. The decision to participate in the an optional
 698 retirement program is irrevocable as long as the employee holds
 699 a position eligible for participation, except as provided in
 700 subparagraph 3. Any service creditable under the Florida

701 Retirement System is retained after the member withdraws from
 702 the system; however, additional service credit in the system may
 703 not be earned while a member of the optional retirement program.

704 3. An employee who has elected to participate in the
 705 optional retirement program shall have one opportunity, at the
 706 employee's discretion, to transfer from the optional retirement
 707 program to the pension plan ~~defined benefit program~~ of the
 708 Florida Retirement System or to the investment plan established
 709 under part II of this chapter ~~Public Employee Optional~~
 710 ~~Retirement Program~~, subject to the terms of the applicable
 711 optional retirement program contracts.

712 a. If the employee chooses to move to the investment plan
 713 ~~Public Employee Optional Retirement Program~~, any contributions,
 714 interest, and earnings creditable to the employee under the
 715 ~~State Community College System~~ optional retirement program are
 716 retained by the employee in the ~~State Community College System~~
 717 optional retirement program, and the applicable provisions of s.
 718 121.4501(4) govern the election.

719 b. If the employee chooses to move to the pension plan
 720 ~~defined benefit program~~ of the Florida Retirement System, the
 721 employee shall receive service credit equal to his or her years
 722 of service under the ~~State Community College System~~ optional
 723 retirement program.

724 (I) The cost for such credit is the amount representing
 725 the present value of the employee's accumulated benefit
 726 obligation for the affected period of service. The cost shall be
 727 calculated as if the benefit commencement occurs on the first
 728 date the employee becomes eligible for unreduced benefits, using

729 the discount rate and other relevant actuarial assumptions that
 730 were used to value the Florida Retirement System pension defined
 731 ~~benefit~~ plan liabilities in the most recent actuarial valuation.
 732 The calculation must include any service already maintained
 733 under the pension defined ~~benefit~~ plan in addition to the years
 734 under the ~~State Community College System~~ optional retirement
 735 program. The present value of any service already maintained
 736 must be applied as a credit to total cost resulting from the
 737 calculation. The division shall ensure that the transfer sum is
 738 prepared using a formula and methodology certified by an
 739 enrolled actuary.

740 (II) The employee must transfer from his or her ~~State~~
 741 ~~Community College System~~ optional retirement program account and
 742 from other employee moneys as necessary, a sum representing the
 743 present value of the employee's accumulated benefit obligation
 744 immediately following the time of such movement, determined
 745 assuming that attained service equals the sum of service in the
 746 pension plan defined benefit program and service in the ~~State~~
 747 ~~Community College System~~ optional retirement program.

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

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

755 b. The employee is ~~must be~~ employed in a full-time
 756 position classified in the Accounting Manual for Florida's

757 Public Community Colleges as:

758 (I) Instructional; or

759 (II) Executive Management, Instructional Management, or

760 Institutional Management and the, ~~if a~~ community college

761 determines that recruiting to fill a vacancy in the position is

762 to be conducted in the national or regional market, and the

763 duties and responsibilities of the position include the

764 formulation, interpretation, or implementation of policies, or

765 the performance of functions that are unique or specialized

766 within higher education and that frequently support the mission

767 of the community college.

768 c. The employee is ~~must be~~ employed in a position not

769 included in the Senior Management Service Class of the Florida

770 Retirement System, ~~as~~ described in s. 121.055.

771 5. Participants in the program are subject to the same

772 reemployment limitations, renewed membership provisions, and

773 forfeiture provisions as are applicable to regular members of

774 the Florida Retirement System under ss. 121.091(9), 121.122, and

775 121.091(5), respectively. A participant who receives a program

776 distribution funded by employer contributions shall be deemed to

777 be retired from a state-administered retirement system if the

778 participant is subsequently employed with an employer that

779 participates in the Florida Retirement System.

780 6. Eligible community college employees are compulsory

781 members of the Florida Retirement System until, pursuant to s.

782 1012.875, a written election to withdraw from the system and

783 participate in the ~~State Community College System~~ optional

784 retirement program is filed with the program administrator and

785 received by the division.

786 a. A community college employee whose program eligibility
 787 results from initial employment shall ~~must~~ be enrolled in the
 788 ~~State Community College System~~ optional retirement program
 789 retroactive to the first day of eligible employment. The
 790 employer retirement contributions paid through the month of the
 791 employee plan change shall be transferred to the community
 792 college to the employee's optional program account, and,
 793 effective the first day of the next month, the employer shall
 794 pay the applicable contributions based upon subparagraph 1.

795 b. A community college employee whose program eligibility
 796 is due to the subsequent designation of the employee's position
 797 as one of those specified in subparagraph 4., or due to the
 798 employee's appointment, promotion, transfer, or reclassification
 799 to a position specified in subparagraph 4., must be enrolled in
 800 the program on the first day of the first full calendar month
 801 that such change in status becomes effective. The employer
 802 retirement contributions paid from the effective date through
 803 the month of the employee plan change must be transferred to the
 804 community college to the employee's optional program account,
 805 and, effective the first day of the next month, the employer
 806 shall pay the applicable contributions based upon subparagraph
 807 1.

808 7. Effective July 1, 2003, through December 31, 2008, any
 809 participant in ~~of~~ the ~~State Community College System~~ optional
 810 retirement program who has service credit in the pension ~~defined~~
 811 ~~benefit~~ plan of the Florida Retirement System for the period
 812 between his or her first eligibility to transfer from the

813 pension ~~defined benefit~~ plan to the optional retirement program
 814 and the actual date of transfer may, during employment, transfer
 815 to the optional retirement program a sum representing the
 816 present value of the accumulated benefit obligation under the
 817 defined benefit retirement program for the period of service
 818 credit. Upon transfer, all service credit previously earned
 819 under the pension plan ~~defined benefit program of the Florida~~
 820 ~~Retirement System~~ during this period is nullified for purposes
 821 of entitlement to a future benefit under the pension plan
 822 ~~defined benefit program of the Florida Retirement System.~~

823 (3) SOCIAL SECURITY COVERAGE.—Social security coverage
 824 shall be provided for all officers and employees who become
 825 members under the provisions of subsection (1) or subsection
 826 (2). Any modification of the present agreement with the Social
 827 Security Administration, or referendum required under the Social
 828 Security Act, for the purpose of providing social security
 829 coverage for any member shall be requested by the state agency
 830 in compliance with the applicable provisions of the Social
 831 Security Act governing such coverage. However, retroactive
 832 social security coverage for service prior to December 1, 1970,
 833 with the employer shall not be provided for a ~~any~~ member who was
 834 not covered under the agreement as of November 30, 1970. The
 835 employer-paid employee contributions specified in s. 121.71(2)
 836 are subject to taxes imposed under the Federal Insurance
 837 Contributions Act, 26 U.S.C. ss. 3101-3128.

838 Section 7. Section 121.0515, Florida Statutes, is amended
 839 to read:

840 121.0515 Special Risk Class ~~membership~~.—

841 (1) ESTABLISHMENT OF CLASS ~~LEGISLATIVE INTENT.~~ There is
 842 established a separate ~~In creating the Special Risk~~ class of
 843 membership within the Florida Retirement System, to be known as
 844 the "Special Risk Class," ~~it is the intent and purpose of the~~
 845 ~~Legislature~~ to recognize that persons employed in certain
 846 categories of law enforcement, firefighting, criminal detention,
 847 and emergency medical care positions are required as one of the
 848 essential functions of their positions to perform work that is
 849 physically demanding or arduous, or work that requires
 850 extraordinary agility and mental acuity, and that such persons,
 851 because of diminishing physical and mental faculties, may find
 852 that they are not able, without risk to the health and safety of
 853 themselves, the public, or their coworkers, to continue
 854 performing such duties and thus enjoy the full career and
 855 retirement benefits enjoyed by persons employed in other
 856 membership classes ~~positions~~ and that, if they find it
 857 necessary, due to the physical and mental limitations of their
 858 age, to retire at an earlier age and usually with less service,
 859 they will suffer an economic deprivation therefrom. To address
 860 ~~Therefore, as a means of recognizing~~ the peculiar and special
 861 problems of this class of employees, ~~it is the intent and~~
 862 ~~purpose of the Legislature to establish~~ a class of retirement
 863 membership is established that awards more retirement credit per
 864 year of service than that awarded to other employees; however,
 865 nothing contained herein shall require ineligibility for Special
 866 Risk Class membership upon reaching age 55.

867 (2) MEMBERSHIP.

868 (a) Until October 1, 1978, "special risk member" means any

869 officer or employee whose application is approved by the
 870 administrator and who receives salary payments for work
 871 performed as a peace officer; law enforcement officer; police
 872 officer; highway patrol officer; custodial employee at a
 873 correctional or detention facility; correctional agency employee
 874 whose duties and responsibilities involve direct contact with
 875 inmates, but excluding secretarial and clerical employees;
 876 firefighter; or an employee in any other job in the field of law
 877 enforcement or fire protection if the duties of such person are
 878 certified as hazardous by his or her employer.

879 (b) Effective October 1, 1978, through September 30, 1999,
 880 "special risk member" means a member of the Florida Retirement
 881 System who is designated as a special risk member by the
 882 division in accordance with this section. Such member must be
 883 employed as a law enforcement officer, a firefighter, or a
 884 correctional officer and must meet certain other special
 885 criteria as set forth in this section.

886 (c) Effective October 1, 1999, "special risk member" means
 887 a member of the Florida Retirement System who is designated as a
 888 special risk member by the division in accordance with this
 889 section. Such member must be employed as a law enforcement
 890 officer, a firefighter, a correctional officer, an emergency
 891 medical technician, or a paramedic and must meet certain other
 892 special criteria as set forth in this section.

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

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

902 (e) Effective July 1, 2001, the term "special risk member"
 903 includes any member who is employed as a youth custody officer
 904 by the Department of Juvenile Justice and meets the special
 905 criteria set forth in paragraph (3) (g).

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

909 ~~(3)-(2)~~ CRITERIA.—A member, to be designated as a special
 910 risk member, must meet the following criteria:

911 (a) Effective October 1, 1978, the member must be employed
 912 as a law enforcement officer and be certified, or required to be
 913 certified, in compliance with s. 943.1395; however, sheriffs and
 914 elected police chiefs shall be excluded from meeting the
 915 certification requirements of this paragraph. In addition, the
 916 member's duties and responsibilities must include the pursuit,
 917 apprehension, and arrest of law violators or suspected law
 918 violators; or as of July 1, 1982, the member must be an active
 919 member of a bomb disposal unit whose primary responsibility is
 920 the location, handling, and disposal of explosive devices; or
 921 the member must be the supervisor or command officer of a member
 922 or members who have such responsibilities; provided, however,
 923 administrative support personnel, including, but not limited to,
 924 those whose primary duties and responsibilities are in

925 accounting, purchasing, legal, and personnel, shall not be
 926 included;

927 (b) Effective October 1, 1978, the member must be employed
 928 as a firefighter and be certified, or required to be certified,
 929 in compliance with s. 633.35 and be employed solely within the
 930 fire department of a local government employer or an agency of
 931 state government with firefighting responsibilities. In
 932 addition, the member's duties and responsibilities must include
 933 on-the-scene fighting of fires; as of October 1, 2001, fire
 934 prevention, ~~or firefighter training;~~ as of October 1, 2001,
 935 direct supervision of firefighting units, fire prevention, or
 936 firefighter training; or as of July 1, 2001, aerial firefighting
 937 surveillance performed by fixed-wing aircraft pilots employed by
 938 the Division of Forestry of the Department of Agriculture and
 939 Consumer Services; or the member must be the supervisor or
 940 command officer of a member or members who have such
 941 responsibilities; provided, however, administrative support
 942 personnel, including, but not limited to, those whose primary
 943 duties and responsibilities are in accounting, purchasing,
 944 legal, and personnel, shall not be included and further provided
 945 that all periods of creditable service in fire prevention or
 946 firefighter training, or as the supervisor or command officer of
 947 a member or members who have such responsibilities, and for
 948 which the employer paid the special risk contribution rate,
 949 shall be included;

950 (c) Effective October 1, 1978, the member must be employed
 951 as a correctional officer and be certified, or required to be
 952 certified, in compliance with s. 943.1395. In addition, the

953 member's primary duties and responsibilities must be the
 954 custody, and physical restraint when necessary, of prisoners or
 955 inmates within a prison, jail, or other criminal detention
 956 facility, or while on work detail outside the facility, or while
 957 being transported; or as of July 1, 1984, the member must be the
 958 supervisor or command officer of a member or members who have
 959 such responsibilities; provided, however, administrative support
 960 personnel, including, but not limited to, those whose primary
 961 duties and responsibilities are in accounting, purchasing,
 962 legal, and personnel, shall not be included; however, wardens
 963 and assistant wardens, as defined by rule, shall participate in
 964 the Special Risk Class;

965 (d) Effective October 1, 1999, the member must be employed
 966 by a licensed Advance Life Support (ALS) or Basic Life Support
 967 (BLS) employer as an emergency medical technician or a paramedic
 968 and be certified in compliance with s. 401.27. In addition, the
 969 member's primary duties and responsibilities must include on-
 970 the-scene emergency medical care or as of October 1, 2001,
 971 direct supervision of emergency medical technicians or
 972 paramedics, or the member must be the supervisor or command
 973 officer of one or more members who have such responsibility.
 974 However, administrative support personnel, including, but not
 975 limited to, those whose primary responsibilities are in
 976 accounting, purchasing, legal, and personnel, shall not be
 977 included;

978 (e) Effective January 1, 2001, the member must be employed
 979 as a community-based correctional probation officer and be
 980 certified, or required to be certified, in compliance with s.

981 943.1395. In addition, the member's primary duties and
 982 responsibilities must be the supervised custody, surveillance,
 983 control, investigation, and counseling of assigned inmates,
 984 probationers, parolees, or community controllees within the
 985 community; or the member must be the supervisor of a member or
 986 members who have such responsibilities. Administrative support
 987 personnel, including, but not limited to, those whose primary
 988 duties and responsibilities are in accounting, purchasing, legal
 989 services, and personnel management, shall not be included;
 990 however, probation and parole circuit and deputy circuit
 991 administrators shall participate in the Special Risk Class;

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

- 997 1. Dietitian (class codes 5203 and 5204);
- 998 2. Public health nutrition consultant (class code 5224);
- 999 3. Psychological specialist (class codes 5230 and 5231);
- 1000 4. Psychologist (class code 5234);
- 1001 5. Senior psychologist (class codes 5237 and 5238);
- 1002 6. Regional mental health consultant (class code 5240);
- 1003 7. Psychological Services Director—DCF (class code 5242);
- 1004 8. Pharmacist (class codes 5245 and 5246);
- 1005 9. Senior pharmacist (class codes 5248 and 5249);
- 1006 10. Dentist (class code 5266);
- 1007 11. Senior dentist (class code 5269);
- 1008 12. Registered nurse (class codes 5290 and 5291);

HB 1405

2011

- 1009 | 13. Senior registered nurse (class codes 5292 and 5293);
 1010 | 14. Registered nurse specialist (class codes 5294 and
 1011 | 5295);
 1012 | 15. Clinical associate (class codes 5298 and 5299);
 1013 | 16. Advanced registered nurse practitioner (class codes
 1014 | 5297 and 5300);
 1015 | 17. Advanced registered nurse practitioner specialist
 1016 | (class codes 5304 and 5305);
 1017 | 18. Registered nurse supervisor (class codes 5306 and
 1018 | 5307);
 1019 | 19. Senior registered nurse supervisor (class codes 5308
 1020 | and 5309);
 1021 | 20. Registered nursing consultant (class codes 5312 and
 1022 | 5313);
 1023 | 21. Quality management program supervisor (class code
 1024 | 5314);
 1025 | 22. Executive nursing director (class codes 5320 and
 1026 | 5321);
 1027 | 23. Speech and hearing therapist (class code 5406); or
 1028 | 24. Pharmacy manager (class code 5251);
 1029 | (g) Effective July 1, 2001, the member must be employed as
 1030 | a youth custody officer and be certified, or required to be
 1031 | certified, in compliance with s. 943.1395. In addition, the
 1032 | member's primary duties and responsibilities must be the
 1033 | supervised custody, surveillance, control, investigation,
 1034 | apprehension, arrest, and counseling of assigned juveniles
 1035 | within the community;
 1036 | (h) Effective October 1, 2005, through June 30, 2008, the

1037 member must be employed by a law enforcement agency or medical
 1038 examiner's office in a forensic discipline recognized by the
 1039 International Association for Identification and must qualify
 1040 for active membership in the International Association for
 1041 Identification. The member's primary duties and responsibilities
 1042 must include the collection, examination, preservation,
 1043 documentation, preparation, or analysis of physical evidence or
 1044 testimony, or both, or the member must be the direct supervisor,
 1045 quality management supervisor, or command officer of one or more
 1046 individuals with such responsibility. Administrative support
 1047 personnel, including, but not limited to, those whose primary
 1048 responsibilities are clerical or in accounting, purchasing,
 1049 legal, and personnel, shall not be included;

1050 (i) Effective July 1, 2008, the member must be employed by
 1051 the Department of Law Enforcement in the crime laboratory or by
 1052 the Division of State Fire Marshal in the forensic laboratory in
 1053 one of the following classes:

- 1054 1. Forensic technologist (class code 8459);
- 1055 2. Crime laboratory technician (class code 8461);
- 1056 3. Crime laboratory analyst (class code 8463);
- 1057 4. Senior crime laboratory analyst (class code 8464);
- 1058 5. Crime laboratory analyst supervisor (class code 8466);
- 1059 6. Forensic chief (class code 9602); or
- 1060 7. Forensic services quality manager (class code 9603);

1061 (j) Effective July 1, 2008, the member must be employed by
 1062 a local government law enforcement agency or medical examiner's
 1063 office and must spend at least 65 percent of his or her time
 1064 performing duties that involve the collection, examination,

1065 preservation, documentation, preparation, or analysis of human
 1066 tissues or fluids or physical evidence having potential
 1067 biological, chemical, or radiological hazard or contamination,
 1068 or use chemicals, processes, or materials that may have
 1069 carcinogenic or health-damaging properties in the analysis of
 1070 such evidence, or the member must be the direct supervisor of
 1071 one or more individuals having such responsibility. If a special
 1072 risk member changes to another position within the same agency,
 1073 he or she must submit a complete application as provided in
 1074 paragraph (4)~~(3)~~(a); or

1075 (k) The member must have already qualified for and be
 1076 actively participating in special risk membership under
 1077 paragraph (a), paragraph (b), or paragraph (c), must have
 1078 suffered a qualifying injury as defined in this paragraph, must
 1079 not be receiving disability retirement benefits as provided in
 1080 s. 121.091(4), and must satisfy the requirements of this
 1081 paragraph.

1082 1. The ability to qualify for the class of membership
 1083 defined in paragraph (2) (f) ~~s. 121.021(15) (f)~~ shall occur when
 1084 two licensed medical physicians, one of whom is a primary
 1085 treating physician of the member, certify the existence of the
 1086 physical injury and medical condition that constitute a
 1087 qualifying injury as defined in this paragraph and that the
 1088 member has reached maximum medical improvement after August 1,
 1089 2008. The certifications from the licensed medical physicians
 1090 must include, at a minimum, that the injury to the special risk
 1091 member has resulted in a physical loss, or loss of use, of at
 1092 least two of the following: left arm, right arm, left leg, or

1093 right leg; and:

1094 a. That this physical loss or loss of use is total and
 1095 permanent, except in the event that the loss of use is due to a
 1096 physical injury to the member's brain, in which event the loss
 1097 of use is permanent with at least 75-percent loss of motor
 1098 function with respect to each arm or leg affected.

1099 b. That this physical loss or loss of use renders the
 1100 member physically unable to perform the essential job functions
 1101 of his or her special risk position.

1102 c. That, notwithstanding this physical loss or loss of
 1103 use, the individual is able to perform the essential job
 1104 functions required by the member's new position, as provided in
 1105 subparagraph 3.

1106 d. That use of artificial limbs is either not possible or
 1107 does not alter the member's ability to perform the essential job
 1108 functions of the member's position.

1109 e. That the physical loss or loss of use is a direct
 1110 result of a physical injury and not a result of any mental,
 1111 psychological, or emotional injury.

1112 2. For the purposes of this paragraph, "qualifying injury"
 1113 means an injury sustained in the line of duty, as certified by
 1114 the member's employing agency, by a special risk member that
 1115 does not result in total and permanent disability as defined in
 1116 s. 121.091(4)(b). An injury is a qualifying injury when the
 1117 injury is a physical injury to the member's physical body
 1118 resulting in a physical loss, or loss of use, of at least two of
 1119 the following: left arm, right arm, left leg, or right leg.
 1120 Notwithstanding anything in this section to the contrary, an

HB 1405

2011

1121 injury that would otherwise qualify as a qualifying injury shall
 1122 not be considered a qualifying injury if and when the member
 1123 ceases employment with the employer for whom he or she was
 1124 providing special risk services on the date the injury occurred.

1125 3. The new position, as described in sub-subparagraph
 1126 1.c., that is required for qualification as a special risk
 1127 member under this paragraph is not required to be a position
 1128 with essential job functions that entitle an individual to
 1129 special risk membership. Whether a new position as described in
 1130 sub-subparagraph 1.c. exists and is available to the special
 1131 risk member is a decision to be made solely by the employer in
 1132 accordance with its hiring practices and applicable law.

1133 4. This paragraph does not grant or create additional
 1134 rights for any individual to continued employment or to be hired
 1135 or rehired by his or her employer that are not already provided
 1136 within the Florida Statutes, the State Constitution, the
 1137 Americans with Disabilities Act, if applicable, or any other
 1138 applicable state or federal law.

1139 ~~(4)(3)~~ PROCEDURE FOR DESIGNATING.-

1140 (a)1. Any Regular Class member of the Florida Retirement
 1141 System employed by a county, city, or special district who feels
 1142 that his or her position ~~he or she~~ meets the criteria set forth
 1143 in this section for membership in the Special Risk Class may
 1144 request that his or her employer submit an application to the
 1145 department requesting that the department designate him or her
 1146 as a Special Risk Class member. Such Regular Class member shall
 1147 complete the appropriate portions of an Application for Special
 1148 Risk Membership provided in Form FRS-400 or Form FRS-405. If the

1149 employer agrees that the member meets the requirements for
 1150 Special Risk Class membership, the employer shall certify and
 1151 submit an application as set forth in this section and submit a
 1152 copy of the current official job description of the member's
 1153 duties showing the percentage of time spent performing each duty
 1154 and a copy of a personnel action form showing the effective date
 1155 of membership in that position to the department on ~~in~~ behalf of
 1156 the employee ~~containing a certification that the member meets~~
 1157 ~~the criteria for special risk membership set forth in this~~
 1158 ~~section and such other supporting documentation as may be~~
 1159 ~~required by administrative rule. The department shall, within 90~~
 1160 ~~days, either designate or refuse to designate the member as a~~
 1161 ~~special risk member.~~

1162 2. Upon receipt of the completed application, proof of
 1163 certification, and supporting documentation, the department
 1164 shall determine if the member meets the requirements for Special
 1165 Risk Class membership. If the requirements are met, the
 1166 department shall approve the member for Special Risk Class
 1167 membership. The employer shall certify to the department any
 1168 changes to the duties and responsibilities of a Special Risk
 1169 Class member. The department shall review the documentation for
 1170 changes to duties and responsibilities and either continue the
 1171 approval of Special Risk Class membership or reclassify the
 1172 member to Regular Class membership.

1173 3. If the employer refuses to certify the member's
 1174 application for Special Risk Class membership, the employer
 1175 shall notify the member of the employer's refusal to certify and
 1176 the reasons for the refusal. If the employer declines to submit

HB 1405

2011

1177 the member's application to the department, ~~or if~~ the department
 1178 does not designate the member to the as a Special Risk Class, or
 1179 the department removes the member from the Special Risk Class
 1180 ~~member,~~ the member or the employer may appeal to the State
 1181 Retirement Commission, as provided in s. 121.23, for designation
 1182 as a Special Risk Class member. A member who receives a final
 1183 affirmative ruling pursuant to such appeal for Special Risk
 1184 Class membership shall have Special Risk Class membership
 1185 retroactive to the date such member would have had Special Risk
 1186 Class membership had such membership been approved by the
 1187 employer and the department, as determined by the department,
 1188 and the employer contributions shall be paid in full within 1
 1189 year after such final ruling.

1190 (b)1. Applying the criteria set forth in this section, the
 1191 Department of Management Services shall specify which current
 1192 and newly created classes of positions under the uniform
 1193 classification plan established pursuant to chapter 110 entitle
 1194 the incumbents of positions in those classes to membership in
 1195 the Special Risk Class. Only employees employed in the classes
 1196 so specified shall be special risk members.

1197 2. When a class is not specified by the department as
 1198 provided in subparagraph 1., the employing agency may petition
 1199 the State Retirement Commission for approval in accordance with
 1200 s. 121.23.

1201 (5)~~(4)~~ REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

1202 (a) Any member who is a special risk member on October 1,
 1203 1978, and who fails to meet the criteria for special risk
 1204 membership established by this section shall have his or her

1205 special risk designation removed and thereafter shall be a
 1206 regular member and shall earn only regular membership credit.
 1207 The department shall have the authority to review the special
 1208 risk designation of members to determine whether or not those
 1209 members continue to meet the criteria for special risk
 1210 membership.

1211 (b) Any member who is a special risk member on July 1,
 1212 2008, and who became eligible to participate under paragraph
 1213 (3)-(2)(h) but fails to meet the criteria for special risk
 1214 membership established by paragraph (3)-(2)(i) or paragraph
 1215 (3)-(2)(j) shall have his or her special risk designation removed
 1216 and thereafter shall be a Regular Class member and earn only
 1217 Regular Class membership credit. The department may review the
 1218 special risk designation of members to determine whether or not
 1219 those members continue to meet the criteria for special risk
 1220 membership.

1221 (c) Any member who is a Special Risk Class member and who
 1222 fails to meet the criteria for the Special Risk Class shall have
 1223 his or her special risk class designation removed and thereafter
 1224 shall be a Regular Class member and earn only Regular Class
 1225 membership service credit. The department may review the Special
 1226 Risk Class designation of members to determine whether or not
 1227 those members continue to meet the criteria for Special Risk
 1228 Class membership.

1229 (6)-(5) CREDIT FOR PAST SERVICE.—A special risk member may
 1230 purchase retirement credit in the Special Risk Class based upon
 1231 past service, and may upgrade retirement credit for such past
 1232 service, to the extent of 2 percent of the member's average

HB 1405

2011

1233 monthly compensation as specified in s. 121.091(1)(a) for such
 1234 service as follows:

1235 (a) The member may purchase special risk credit for past
 1236 service with a city or special district which has elected to
 1237 join the Florida Retirement System, or with a participating
 1238 agency to which a member's governmental unit was transferred,
 1239 merged, or consolidated as provided in s. 121.081(1)(f), if the
 1240 member was employed with the city or special district at the
 1241 time it commenced participating in the Florida Retirement System
 1242 or with the governmental unit at the time of its transfer,
 1243 merger, or consolidation with the participating agency. The
 1244 service must satisfy the criteria set forth in subsection (3)
 1245 ~~(2)~~ for special risk membership as a law enforcement officer,
 1246 firefighter, or correctional officer; however, no certificate or
 1247 waiver of certificate of compliance with s. 943.1395 or s.
 1248 633.35 shall be required for such service.

1249 (b) Contributions for upgrading the additional special
 1250 risk credit pursuant to this subsection shall be equal to the
 1251 difference in the employer and, if applicable, employee
 1252 contributions paid and the special risk percentage rate of gross
 1253 salary in effect at the time of purchase for the period being
 1254 claimed, plus interest thereon at the rate of 4 percent a year
 1255 compounded annually from the date of such service until July 1,
 1256 1975, and 6.5 percent a year thereafter until the date of
 1257 payment. This past service may be purchased by the member or by
 1258 the employer on behalf of the member.

1259 (7)~~(6)~~ CREDIT FOR PRIOR SERVICE.—A special risk member who
 1260 has creditable service with an employer under chapter 122 or

1261 chapter 321, or was employed as a correctional counselor with
 1262 the Department of Corrections between December 1, 1970, and
 1263 September 30, 1979, in a position which satisfies the criteria
 1264 provided for in subsection (3) ~~(2)~~ for special risk membership
 1265 except the requirement for a certificate or waiver of
 1266 certificate, shall have those years of service counted towards
 1267 the attainment of the normal retirement date as a special risk
 1268 member under this chapter. The percentage value of each such
 1269 year of creditable service under chapter 122, chapter 321, or as
 1270 a correctional counselor shall not change as a result of the
 1271 application of this subsection. A special risk member who has
 1272 taken a refund of contributions for such creditable service
 1273 under chapter 122 or chapter 321 and has reclaimed it as prior
 1274 service credit under this chapter shall be permitted to have
 1275 such creditable service counted towards the attainment of the
 1276 normal retirement date for the Special Risk Class of membership
 1277 under this chapter.

1278 ~~(8)(7) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS RETENTION~~
 1279 ~~OF SPECIAL RISK NORMAL RETIREMENT DATE.-~~

1280 (a) A special risk member who is moved or reassigned to a
 1281 nonspecial risk law enforcement, firefighting, correctional, or
 1282 emergency medical care administrative support position with the
 1283 same agency, or who is subsequently employed in such a position
 1284 with any law enforcement, firefighting, correctional, or
 1285 emergency medical care agency under the Florida Retirement
 1286 System, shall participate in the Special Risk Administrative
 1287 Support Class and shall earn credit for such service at the same
 1288 percentage rate as that earned by a regular member.

1289 Notwithstanding the provisions of subsection (5) ~~(4)~~, service in
 1290 such an administrative support position shall, for purposes of
 1291 s. 121.091, apply toward satisfaction of the special risk normal
 1292 retirement date, as defined in s. 121.021(29)(b), provided that,
 1293 while in such position, the member remains certified as a law
 1294 enforcement officer, firefighter, correctional officer,
 1295 emergency medical technician, or paramedic; remains subject to
 1296 reassignment at any time to a position qualifying for special
 1297 risk membership; and completes an aggregate of 6 or more years
 1298 of service as a designated special risk member prior to
 1299 retirement.

1300 (b) Upon application by a member, the provisions of this
 1301 subsection shall apply, with respect to such member,
 1302 retroactively to October 1, 1978, provided that the member was
 1303 removed from the Special Risk Class effective October 1, 1978,
 1304 due to a change in special risk criteria as a result of the
 1305 enactment of chapter 78-308, Laws of Florida, or was reassigned
 1306 or employed for training or career development or to fill a
 1307 critical agency need.

1308 (c) The department shall adopt such rules as are required
 1309 to administer this subsection.

1310 (d) Notwithstanding any provision of this subsection to
 1311 the contrary, this subsection does not apply to any special risk
 1312 member who qualifies for continued membership pursuant to the
 1313 provisions of paragraph (3) ~~(2)~~(k).

1314 (9) ~~(8)~~ RESTORATION OF SPECIAL RISK CREDIT FOR SPECIFIED
 1315 PERIOD OF EMPLOYMENT.—A special risk member who was removed from
 1316 the Special Risk Class effective October 1978, for the sole

HB 1405

2011

1317 | reason that he or she did not possess the required certificate
 1318 | or temporary waiver of certificate, and who obtained
 1319 | certification and was approved for special risk membership on or
 1320 | before June 30, 1982, shall be permitted to have special risk
 1321 | credit restored for that period upon:

1322 | (a) Certification by his or her employer that all
 1323 | requirements for special risk membership except the requirement
 1324 | for certification or temporary waiver of certification were met;
 1325 | and

1326 | (b) Payment of contributions equal to the difference in
 1327 | the contributions that were paid during the period and the
 1328 | contributions required for special risk members during that
 1329 | period, plus 6.5 percent interest thereon, compounded each June
 1330 | 30 from date of service until date of payment.

1331 |

1332 | This credit may be purchased by the member or by the employer on
 1333 | behalf of the member.

1334 | ~~(10)(9)~~ CREDIT FOR UPGRADED SERVICE.—

1335 | (a) Any member of the Special Risk Class who has earned
 1336 | creditable service through September 30, 1999, in another
 1337 | membership class of the Florida Retirement System as an
 1338 | emergency medical technician or paramedic, which service is
 1339 | within the purview of the Special Risk Class, may purchase
 1340 | additional retirement credit to upgrade such service to Special
 1341 | Risk Class service, to the extent of the percentages of the
 1342 | member's average final compensation provided in s.

1343 | 121.091(1)(a)2. Contributions for upgrading such service to
 1344 | Special Risk Class credit under this subsection shall be equal

1345 to the difference in the contributions paid and the Special Risk
 1346 Class contribution rate as a percentage of gross salary in
 1347 effect for the period being claimed, plus interest thereon at
 1348 the rate of 6.5 percent a year, compounded annually until the
 1349 date of payment. This service credit may be purchased by the
 1350 employer on behalf of the member.

1351 (b) Any member of the Special Risk Class who has earned
 1352 creditable service through September 30, 2001, in another
 1353 membership class of the Florida Retirement System whose
 1354 responsibilities included fire prevention or firefighter
 1355 training, which service is within the purview of the Special
 1356 Risk Class, may purchase additional retirement credit to upgrade
 1357 such service to Special Risk Class service, to the extent of the
 1358 percentages of the member's average final compensation provided
 1359 in s. 121.091(1)(a)2. Contributions for upgrading such service
 1360 to Special Risk Class credit under this subsection shall be
 1361 equal to the difference in the contributions paid and the
 1362 Special Risk Class contribution rate as a percentage of gross
 1363 salary in effect for the period being claimed, plus interest
 1364 thereon at the rate of 6.5 percent a year, compounded annually
 1365 until the date of payment. This service credit may be purchased
 1366 by the employer on behalf of the member.

1367 (c) Any member of the Special Risk Class who has earned
 1368 creditable service through June 30, 2005, in another membership
 1369 class of the Florida Retirement System in a position with the
 1370 Department of Law Enforcement or the Division of State Fire
 1371 Marshal and became covered by the Special Risk Class as
 1372 described in paragraph (3)-(2)(i), or with a local government law

1373 enforcement agency or medical examiner's office and became
 1374 covered by the Special Risk Class as described in paragraph
 1375 (3)~~(2)~~(j), which service is within the purview of the Special
 1376 Risk Class, and is employed in such position on or after July 1,
 1377 2008, may purchase additional retirement credit to upgrade such
 1378 service to Special Risk Class service, to the extent of the
 1379 percentages of the member's average final compensation provided
 1380 in s. 121.091(1)(a)2. The cost for such credit shall be an
 1381 amount representing the actuarial accrued liability for the
 1382 difference in accrual value during the affected period of
 1383 service. The cost shall be calculated using the discount rate
 1384 and other relevant actuarial assumptions that were used to value
 1385 the Florida Retirement System Pension ~~defined benefit~~ Plan
 1386 liabilities in the most recent actuarial valuation. The division
 1387 shall ensure that the transfer sum is prepared using a formula
 1388 and methodology certified by an enrolled actuary. The cost must
 1389 be paid immediately upon notification by the division. The local
 1390 government employer may purchase the upgraded service credit on
 1391 behalf of the member if the member has been employed by that
 1392 employer for at least 3 years.

1393 Section 8. Paragraphs (a) and (d) of subsection (4),
 1394 paragraph (b) of subsection (7), and subsection (10) of section
 1395 121.052, Florida Statutes, are amended, present paragraph (c) of
 1396 subsection (7) of that section is redesignated as paragraph (d),
 1397 and a new paragraph (c) is added to that subsection, to read:

1398 121.052 Membership class of elected officers.—

1399 (4) PARTICIPATION BY ELECTED OFFICERS SERVING A SHORTENED
 1400 TERM DUE TO APPORTIONMENT, FEDERAL INTERVENTION, ETC.—

1401 (a) Any duly elected officer whose term of office was
 1402 shortened by legislative or judicial apportionment pursuant to
 1403 the provisions of s. 16, Art. III of the State Constitution may,
 1404 after the term of office to which he or she was elected is
 1405 completed, pay into the System Trust Fund the amount of
 1406 contributions that would have been made by the officer or the
 1407 officer's employer on his or her behalf, plus 4 percent interest
 1408 compounded annually from the date he or she left office until
 1409 July 1, 1975, and 6.5 percent interest compounded annually
 1410 thereafter, and may receive service credit for the length of
 1411 time the officer would have served if such term had not been
 1412 shortened by apportionment.

1413 (d)1. Any justice or judge, or any retired justice or
 1414 judge who retired before July 1, 1993, who has attained the age
 1415 of 70 years and who is prevented under s. 8, Art. V of the State
 1416 Constitution from completing his or her term of office because
 1417 of age may elect to purchase credit for all or a portion of the
 1418 months he or she would have served during the remainder of the
 1419 term of office, but he or she may claim those months only after
 1420 the date the service would have occurred. The justice or judge
 1421 must pay into the System Trust Fund the amount of contributions
 1422 that would have been made by the employer on his or her behalf
 1423 for the period of time being claimed, plus 6.5 percent interest
 1424 thereon compounded each June 30 from the date he or she left
 1425 office, in order to receive service credit in this class for the
 1426 period of time being claimed. After the date the service would
 1427 have occurred, and upon payment of the required contributions,
 1428 the retirement benefit of a retired justice or judge shall ~~will~~

1429 be adjusted prospectively to include the ~~this~~ additional
 1430 creditable service; however, such adjustment may be made only
 1431 once.

1432 2. Any justice or judge who does not seek election to a
 1433 subsequent term of office because he or she would be prevented
 1434 under s. 8, Art. V of the State Constitution from completing
 1435 such term of office upon attaining the age of 70 years may elect
 1436 to purchase service credit for service as a temporary judge as
 1437 assigned by the court if the temporary assignment follows
 1438 immediately the last full term of office served and the purchase
 1439 is limited to the number of months of service needed to vest
 1440 retirement benefits. To receive retirement credit for such
 1441 temporary service beyond termination, the justice or judge must
 1442 pay into the System Trust Fund the amount of contributions that
 1443 would have been made by the justice or judge and the employer on
 1444 his or her behalf had he or she continued in office for the
 1445 period of time being claimed, plus 6.5 percent interest thereon
 1446 compounded each June 30 from the date he or she left office.

1447 (7) CONTRIBUTIONS.—

1448 (b) The employer paying the salary of a member of the
 1449 Elected Officers' Class shall contribute an amount as specified
 1450 in this subsection or s. 121.71, as appropriate, which shall
 1451 constitute the ~~entire~~ employer retirement contribution with
 1452 respect to such member. The employer shall also withhold one-
 1453 half of the entire contribution of the member required for
 1454 social security coverage. Effective July 1, 2011, each member of
 1455 the Elected Officers' Class shall pay employee contributions as
 1456 specified in s. 121.71.

1457 (c) If a member of the Elected Officers' Class ceases to
 1458 fill an office covered by this class for 3 calendar months for
 1459 any reason other than retirement and has not been employed in
 1460 any capacity with any participating employer for 3 calendar
 1461 months, the member may receive a refund of all contributions he
 1462 or she has made to the pension plan, subject to the restrictions
 1463 otherwise provided in this chapter. Partial refunds are not
 1464 permitted. The refund shall not include any interest earnings on
 1465 the contributions for a member of the pension plan. Employer
 1466 contributions made on behalf of the member are not refundable. A
 1467 member may not receive a refund of employee contributions if a
 1468 pending or an approved qualified domestic relations order is
 1469 filed against the member's retirement account. By obtaining a
 1470 refund of contributions, a member waives all rights under the
 1471 Florida Retirement System and the health insurance subsidy
 1472 provided under s. 112.363 to the service credit represented by
 1473 the refunded contributions, except the right to purchase his or
 1474 her prior service credit in accordance with s. 121.081(2).

1475 (10) ACCRUED SERVICE VALUE.—Prior to July 1, 2011, a
 1476 member of the Elected Officers' Class who is a Supreme Court
 1477 justice, district court of appeal judge, circuit judge, or
 1478 county court judge shall receive judicial retirement credit of 3
 1479 1/3 percent of average final compensation, and all other members
 1480 shall receive elected officer accrual value ~~retirement credit~~ of
 1481 3 percent of average final compensation, for each year of
 1482 creditable service in such class. Effective on or after July 1,
 1483 2011, a member of the Elected Officers' Class shall receive the
 1484 accrual value specified in s. 121.091(1)(a)4., for each year of

1485 creditable service in such class.

1486 Section 9. Paragraph (a) of subsection (7) of section
 1487 121.053, Florida Statutes, is amended to read:

1488 121.053 Participation in the Elected Officers' Class for
 1489 retired members.—

1490 (7) A member who is elected or appointed to an elective
 1491 office and who is participating in the Deferred Retirement
 1492 Option Program is not subject to termination as defined in s.
 1493 121.021, or reemployment limitations as provided in s.
 1494 121.091(9), until the end of his or her current term of office
 1495 or, if the officer is consecutively elected or reelected to an
 1496 elective office eligible for coverage under the Florida
 1497 Retirement System, until he or she no longer holds an elective
 1498 office, as follows:

1499 (a) At the end of the 60-month DROP period:

1500 1. The officer's DROP account may not accrue additional
 1501 monthly benefits, but does continue to earn interest as provided
 1502 in s. 121.091(13). However, an officer whose DROP participation
 1503 begins on or after July 1, 2010, may not continue to earn such
 1504 interest.

1505 2. Retirement contributions, except for unfunded actuarial
 1506 liability and health insurance subsidy contributions required in
 1507 ss. 121.71(5) and 121.76, are not required of the employer of
 1508 the elected officer and additional retirement credit may not be
 1509 earned under the Florida Retirement System.

1510 Section 10. Paragraphs (b) and (j) of subsection (1),
 1511 paragraph (b) of subsection (3), paragraph (d) of subsection
 1512 (4), and paragraphs (d) and (e) of subsection (6) of section

1513 | 121.055, Florida Statutes, are amended, present paragraph (c) of
 1514 | subsection (3) of that section is redesignated as paragraph (d),
 1515 | and a new paragraph (c) is added to that subsection, to read:

1516 | 121.055 Senior Management Service Class.—There is hereby
 1517 | established a separate class of membership within the Florida
 1518 | Retirement System to be known as the "Senior Management Service
 1519 | Class," which shall become effective February 1, 1987.

1520 | (1)

1521 | (b)1. Except as provided in subparagraph 2., effective
 1522 | January 1, 1990, participation in the Senior Management Service
 1523 | Class is ~~shall be~~ compulsory for the president of each community
 1524 | college, the manager of each participating city or county, and
 1525 | all appointed district school superintendents. Effective January
 1526 | 1, 1994, additional positions may be designated for inclusion in
 1527 | the Senior Management Service Class of the Florida Retirement
 1528 | System, provided that:

1529 | a. Positions to be included in the class are ~~shall be~~
 1530 | designated by the local agency employer. Notice of intent to
 1531 | designate positions for inclusion in the class must ~~shall~~ be
 1532 | published once a week for 2 consecutive weeks in a newspaper of
 1533 | general circulation published in the county or counties
 1534 | affected, as provided in chapter 50.

1535 | b. Up to 10 nonelective full-time positions may be
 1536 | designated for each local agency employer reporting to the
 1537 | department ~~of Management Services~~; for local agencies with 100
 1538 | or more regularly established positions, additional nonelective
 1539 | full-time positions may be designated, not to exceed 1 percent
 1540 | of the regularly established positions within the agency.

1541 c. Each position added to the class must be a managerial
 1542 or policymaking position filled by an employee who is not
 1543 subject to continuing contract and serves at the pleasure of the
 1544 local agency employer without civil service protection, and who:

- 1545 (I) Heads an organizational unit; or
- 1546 (II) Has responsibility to effect or recommend personnel,
 1547 budget, expenditure, or policy decisions in his or her areas of
 1548 responsibility.

1549 2. In lieu of participation in the Senior Management
 1550 Service Class, members of the Senior Management Service Class,
 1551 pursuant to the provisions of subparagraph 1., may withdraw from
 1552 the Florida Retirement System altogether. The decision to
 1553 withdraw from the Florida Retirement System is ~~shall be~~
 1554 irrevocable ~~for~~ as long as the employee holds the ~~such a~~
 1555 position. Any service creditable under the Senior Management
 1556 Service Class shall be retained after the member withdraws from
 1557 the Florida Retirement System; however, additional service
 1558 credit in the Senior Management Service Class may ~~shall~~ not be
 1559 earned after such withdrawal. Such members are ~~shall~~ not be
 1560 eligible to participate in the Senior Management Service
 1561 Optional Annuity Program.

1562 3. Effective January 1, 2006, through June 30, 2006, an
 1563 employee who has withdrawn from the Florida Retirement System
 1564 under subparagraph 2. has one opportunity to elect to
 1565 participate in either the defined benefit program or the Public
 1566 Employee Optional Retirement Program of the Florida Retirement
 1567 System.

1568 a. If the employee elects to participate in the Public

1569 Employee Optional Retirement Program, membership shall be
 1570 prospective, and the applicable provisions of s. 121.4501(4)
 1571 shall govern the election.

1572 b. If the employee elects to participate in the defined
 1573 benefit program of the Florida Retirement System, the employee
 1574 shall, upon payment to the system trust fund of the amount
 1575 calculated under sub-sub-subparagraph (I), receive service
 1576 credit for prior service based upon the time during which the
 1577 employee had withdrawn from the system.

1578 (I) The cost for such credit shall be an amount
 1579 representing the actuarial accrued liability for the affected
 1580 period of service. The cost shall be calculated using the
 1581 discount rate and other relevant actuarial assumptions that were
 1582 used to value the Florida Retirement System defined benefit plan
 1583 liabilities in the most recent actuarial valuation. The
 1584 calculation must ~~shall~~ include any service already maintained
 1585 under the defined benefit plan in addition to the period of
 1586 withdrawal. The actuarial accrued liability attributable to any
 1587 service already maintained under the defined benefit plan shall
 1588 be applied as a credit to the total cost resulting from the
 1589 calculation. The division must ~~shall~~ ensure that the transfer
 1590 sum is prepared using a formula and methodology certified by an
 1591 actuary.

1592 (II) The employee must transfer a sum representing the net
 1593 cost owed for the actuarial accrued liability in sub-sub-
 1594 subparagraph (I) immediately following the time of such
 1595 movement, determined assuming that attained service equals the
 1596 sum of service in the defined benefit program and the period of

1597 withdrawal.

1598 (j) Except as may otherwise be provided, a ~~any~~ member of
 1599 the Senior Management Service Class may purchase additional
 1600 retirement credit in such class for creditable service within
 1601 the purview of the Senior Management Service Class between
 1602 ~~retroactive to~~ February 1, 1987, and June 30, 2011, and may
 1603 upgrade retirement credit for such service, to the extent of 2
 1604 percent of the member's average monthly compensation as
 1605 specified in paragraph (4) (d) for such service. Contributions
 1606 for upgrading the additional Senior Management Service credit
 1607 pursuant to this paragraph shall be equal to the difference in
 1608 the employer and, if applicable, employee contributions paid and
 1609 the Senior Management Service Class contribution rate as a
 1610 percentage of gross salary in effect for the period being
 1611 claimed, plus interest thereon at the rate of 6.5 percent a
 1612 year, compounded annually until the date of payment. This
 1613 service credit may be purchased by the employer on behalf of the
 1614 member.

1615 (3)

1616 (b) The employer paying the salary of a member of the
 1617 Senior Management Service Class shall contribute an amount as
 1618 specified in this section or s. 121.71, as appropriate, which
 1619 shall constitute the entire employer retirement contribution
 1620 with respect to such member. The employer shall also withhold
 1621 one-half of the entire contribution of the member required for
 1622 social security coverage. Effective July 1, 2011, each member
 1623 shall pay employee contributions as specified in s. 121.71.

1624 (c) Upon termination of employment from all participating

1625 employers for 3 calendar months for any reason other than
 1626 retirement pursuant to s. 121.021(39)(c), a member may receive a
 1627 refund of all contributions he or she has made to the pension
 1628 plan, subject to the restrictions otherwise provided in this
 1629 chapter. Partial refunds are not permitted. The refund shall not
 1630 include any interest earnings on the contributions for a member
 1631 of the pension plan. Employer contributions made on behalf of
 1632 the member are not refundable. A member may not receive a refund
 1633 of employee contributions if a pending or an approved qualified
 1634 domestic relations order is filed against the member's
 1635 retirement account. By obtaining a refund of contributions, a
 1636 member waives all rights under the Florida Retirement System and
 1637 the health insurance subsidy provided under s. 112.363 to the
 1638 service credit represented by the refunded contributions, except
 1639 the right to purchase his or her prior service credit in
 1640 accordance with s. 121.081(2).

1641 (4)

1642 (d)1. A member of the Senior Management Service Class
 1643 shall receive retirement credit at the rate of 2 percent of
 1644 average final compensation for each year of service in such
 1645 class between February 1, 1987, and June 30, 2011 ~~after January~~
 1646 ~~31, 1987.~~

1647 2. Effective on or after July 1, 2011, a member of the
 1648 Senior Management Service Class shall receive the accrual value
 1649 specified in s. 121.091(1)(a)3., for each year of creditable
 1650 service in such class.

1651 (6)

1652 (d) Contributions.—

1653 1. Through June 30, 2001, each employer shall contribute
 1654 on behalf of each participant in the Senior Management Service
 1655 Optional Annuity Program an amount equal to the normal cost
 1656 portion of the employer retirement contribution which would be
 1657 required if the participant were a Senior Management Service
 1658 Class member of the Florida Retirement System pension plan
 1659 ~~defined benefit program~~, plus the portion of the contribution
 1660 rate required in s. 112.363(8) that would otherwise be assigned
 1661 to the Retiree Health Insurance Subsidy Trust Fund. Effective
 1662 July 1, 2001, each employer shall contribute on behalf of each
 1663 participant in the optional program an amount equal to 12.49
 1664 percent of the participant's gross monthly compensation. The
 1665 department shall deduct an amount approved by the Legislature to
 1666 provide for the administration of this program. The payment of
 1667 the contributions to the optional program which is required by
 1668 this subparagraph for each participant shall be made by the
 1669 employer to the department, which shall forward the
 1670 contributions to the designated company or companies contracting
 1671 for payment of benefits for the participant under the program.
 1672 2. Each employer shall contribute on behalf of each
 1673 participant in the Senior Management Service Optional Annuity
 1674 Program an amount equal to the unfunded actuarial accrued
 1675 liability portion of the employer contribution which would be
 1676 required for members of the Senior Management Service Class in
 1677 the Florida Retirement System. This contribution shall be paid
 1678 to the department for transfer to the Florida Retirement System
 1679 Trust Fund.
 1680 3. An Optional Annuity Program Trust Fund shall be

1681 | established in the State Treasury and administered by the
 1682 | department to make payments to provider companies on behalf of
 1683 | the optional annuity program participants, and to transfer the
 1684 | unfunded liability portion of the state optional annuity program
 1685 | contributions to the Florida Retirement System Trust Fund.

1686 | 4. Contributions required for social security by each
 1687 | employer and each participant, in the amount required for social
 1688 | security coverage as now or hereafter may be provided by the
 1689 | federal Social Security Act shall be maintained for each
 1690 | participant in the Senior Management Service retirement program
 1691 | and shall be in addition to the retirement contributions
 1692 | specified in this paragraph.

1693 | 5. Each participant in the Senior Management Service
 1694 | Optional Annuity Program may contribute by way of salary
 1695 | reduction or deduction a percentage amount of the participant's
 1696 | gross compensation not to exceed the percentage amount
 1697 | contributed by the employer to the optional annuity program.
 1698 | Payment of the participant's contributions shall be made by the
 1699 | employer to the department, which shall forward the
 1700 | contributions to the designated company or companies contracting
 1701 | for payment of benefits for the participant under the program.

1702 | (e) Benefits.—

1703 | 1. Benefits under the Senior Management Service Optional
 1704 | Annuity Program are payable only to participants in the program,
 1705 | or their beneficiaries as designated by the participant in the
 1706 | contract with the provider company, and must be paid by the
 1707 | designated company in accordance with the terms of the annuity
 1708 | contract applicable to the participant. A participant must be

1709 terminated from all employment relationships with Florida
 1710 Retirement System employers as provided in s. 121.021(39) to
 1711 begin receiving the employee-funded and employer-funded benefit.
 1712 Benefits funded by employee and employer contributions are
 1713 payable under the terms of the contract to the participant, his
 1714 or her beneficiary, or his or her estate, in addition to:

1715 a. A lump-sum payment to the beneficiary upon the death of
 1716 the participant;

1717 b. A cash-out of a de minimis account upon the request of
 1718 a former participant who has been terminated for a minimum of 6
 1719 calendar months from the employment that entitled him or her to
 1720 optional annuity program participation. Such cash-out must be a
 1721 complete liquidation of the account balance with that company
 1722 and is subject to the Internal Revenue Code;

1723 c. A mandatory distribution of a de minimis account of a
 1724 former participant who has been terminated for a minimum of 6
 1725 calendar months from the employment that entitled him or her to
 1726 optional annuity program participation as authorized by the
 1727 department; or

1728 d. A lump-sum direct rollover distribution whereby all
 1729 accrued benefits, plus interest and investment earnings, are
 1730 paid from the participant's account directly to the custodian of
 1731 an eligible retirement plan, as defined in s. 402(c)(8)(B) of
 1732 the Internal Revenue Code, on behalf of the participant.

1733 2. Under the Senior Management Service Optional Annuity
 1734 Program, benefits are not payable for employee hardships,
 1735 unforeseeable emergencies, loans, medical expenses, educational
 1736 expenses, purchase of a principal residence, payments necessary

1737 | to prevent eviction or foreclosure on an employee's principal
 1738 | residence, or any other reason prior to termination from all
 1739 | employment relationships with participating employers, as
 1740 | provided in s. 121.021(39).

1741 | ~~3.2.~~ The benefits payable to any person under the Senior
 1742 | Management Service Optional Annuity Program, and any
 1743 | contribution accumulated under such program, are not subject to
 1744 | assignment, execution, or attachment or to any legal process
 1745 | whatsoever.

1746 | ~~4.3.~~ Except as provided in subparagraph ~~5. 4.~~, a
 1747 | participant who terminates employment and receives a
 1748 | distribution, including a rollover or trustee-to-trustee
 1749 | transfer, funded by employer contributions shall be deemed to be
 1750 | retired from a state-administered retirement system if the
 1751 | participant is subsequently employed with an employer that
 1752 | participates in the Florida Retirement System.

1753 | ~~5.4.~~ A participant who receives optional annuity program
 1754 | benefits funded by employee and employer contributions as a
 1755 | mandatory distribution of a de minimis account authorized by the
 1756 | department is not considered a retiree.

1757 |
 1758 | As used in this paragraph, a "de minimis account" means an
 1759 | account with a provider company containing employee and employer
 1760 | contributions and accumulated earnings of not more than \$5,000
 1761 | made under this chapter.

1762 | Section 11. Subsections (2) and (5) and paragraph (c) of
 1763 | subsection (6) of section 121.071, Florida Statutes, are
 1764 | amended, present paragraph (d) of subsection (6) is redesignated

1765 as paragraph (e), and a new paragraph (d) is added to that
 1766 subsection, to read:

1767 121.071 Contributions.—Contributions to the system shall
 1768 be made as follows:

1769 (2) (a) Effective January 1, 1975, or October 1, 1975, as
 1770 applicable, and through June 30, 2011, each employer shall
 1771 accomplish the contribution required by subsection (1) by a
 1772 procedure in which no employee's gross salary shall be reduced.
 1773 Effective July 1, 2011, each employee and employer shall pay
 1774 retirement contributions as specified in s. 121.71.

1775 (b) Upon termination of employment from all participating
 1776 employers for 3 calendar months for any reason other than
 1777 retirement pursuant to s. 121.021(39)(c), a member may receive
 1778 ~~shall be entitled to a full refund of all the~~ contributions he
 1779 or she has made to the pension ~~prior or subsequent to~~
 1780 ~~participation in the noncontributory~~ plan, subject to the
 1781 restrictions otherwise provided in this chapter. Partial refunds
 1782 are not permitted. The refund shall not include any interest
 1783 earnings on the contributions for a member of the pension plan.
 1784 Employer contributions made on behalf of the member are not
 1785 refundable. A member may not receive a refund of employee
 1786 contributions if a pending or an approved qualified domestic
 1787 relations order is filed against his or her retirement account.
 1788 By obtaining a refund of contributions, a member waives all
 1789 rights under the Florida Retirement System and the health
 1790 insurance subsidy to the service credit represented by the
 1791 refunded contributions, except the right to purchase his or her
 1792 prior service credit in accordance with s. 121.081(2).

1793 (5) Contributions made in accordance with subsections (1),
 1794 (2), (3), and (4), and s. 121.71 shall be paid ~~by the employer~~
 1795 into the system trust funds in accordance with rules adopted by
 1796 the administrator pursuant to chapter 120, except as may be
 1797 otherwise specified herein. Effective July 1, 2002,
 1798 contributions paid under subsections (1) and (4) and
 1799 accompanying payroll data are due and payable no later than the
 1800 5th working day of the month immediately following the month
 1801 during which the payroll period ended.

1802 (6)

1803 (c) By obtaining a refund of contributions, a member
 1804 waives all rights under the Florida Retirement System and the
 1805 health insurance subsidy as provided in s. 112.363 to the
 1806 service credit represented by the refunded contributions, except
 1807 the right to purchase his or her prior service credit in
 1808 accordance with s. 121.081(2).

1809 (d) If a member or former member of the pension plan
 1810 receives an invalid refund from the Florida Retirement System
 1811 Trust Fund, such person must repay the full amount of the
 1812 invalid refund, plus interest at 6.5 percent compounded annually
 1813 on each June 30 from the date of refund until full payment is
 1814 made to the trust fund. The invalid refund must be repaid before
 1815 the member retires or, if applicable, transfers to the
 1816 investment plan.

1817 Section 12. Paragraphs (b) and (c) of subsection (1) and
 1818 subsection (2) of section 121.081, Florida Statutes, are amended
 1819 to read:

1820 121.081 Past service; prior service; contributions.—

1821 Conditions under which past service or prior service may be
 1822 claimed and credited are:

1823 (1)

1824 (b) Past service earned after January 1, 1975, may be
 1825 claimed by officers or employees of a municipality, metropolitan
 1826 planning organization, charter school, charter technical career
 1827 center, or special district who become a covered group under
 1828 this system. The governing body of a covered group may elect to
 1829 provide benefits for past service earned after January 1, 1975,
 1830 in accordance with this chapter, and the cost for such past
 1831 service is established by applying the following formula: The
 1832 employer shall contribute an amount equal to the employer
 1833 contribution rate in effect at the time the service was earned
 1834 and, if applicable, the employee contribution rate, multiplied
 1835 by the employee's gross salary for each year of past service
 1836 claimed, plus 6.5-percent interest thereon, compounded annually,
 1837 figured on each year of past service, with interest compounded
 1838 from date of annual salary earned until date of payment.

1839 (c) If an employer joins the Florida Retirement System
 1840 prior to July 1, 2011, and does ~~Should the employer~~ not elect to
 1841 provide past service for the member at the time of joining, ~~then~~
 1842 the member may claim and pay for the service as provided in
 1843 ~~same, based on~~ paragraphs (a) and (b).

1844 (2) Prior service, as defined in s. 121.021(19), may be
 1845 claimed as creditable service under the Florida Retirement
 1846 System after a member has been reemployed for 1 complete year of
 1847 creditable service ~~within a period of 12 consecutive months,~~
 1848 except as provided in paragraph (c). Service performed as a

1849 participant of the optional retirement program for the State
 1850 University System under s. 121.35 or the Senior Management
 1851 Service Optional Annuity Program under s. 121.055 may be used to
 1852 satisfy the reemployment requirement of 1 complete year of
 1853 creditable service. The member shall not be permitted to make
 1854 any contributions for prior service until after completion of
 1855 the 1 year of creditable service. If a member does not wish to
 1856 claim credit for all of his or her prior service, the service
 1857 the member claims must be the most recent period of service. The
 1858 required contributions for claiming the various types of prior
 1859 service are:

1860 (a) For prior service performed prior to the date the
 1861 system becomes noncontributory for the member and for which the
 1862 member had credit under one of the existing retirement systems
 1863 and received a refund of contributions upon termination of
 1864 employment, the member shall contribute 4 percent of all salary
 1865 received during the period being claimed, plus 4-percent
 1866 interest compounded annually from date of refund until July 1,
 1867 1975, and 6.5-percent interest compounded annually thereafter,
 1868 until full payment is made to the Retirement Trust Fund, and
 1869 shall receive credit in the Regular Class. A member who elected
 1870 to transfer to the Florida Retirement System from an existing
 1871 system may receive credit for prior service under the existing
 1872 system if he or she was eligible under the existing system to
 1873 claim the prior service at the time of the transfer.
 1874 Contributions for such prior service shall be determined by the
 1875 applicable provisions of the system under which the prior
 1876 service is claimed and shall be paid by the member, with

HB 1405

2011

1877 matching contributions paid by the employer at the time the
 1878 service was performed. Effective July 1, 1978, the account of a
 1879 person who terminated under s. 238.05(3) may not be charged
 1880 interest for contributions that remained on deposit in the
 1881 Annuity Savings Trust Fund established under chapter 238, upon
 1882 retirement under this chapter or chapter 238.

1883 (b) For prior service performed prior to the date the
 1884 system becomes noncontributory for the member and for which the
 1885 member had credit under the Florida Retirement System and
 1886 received a refund of contributions upon termination of
 1887 employment, the member shall contribute at the rate that was
 1888 required of him or her during the period of service being
 1889 claimed, on all salary received during such period, plus 4-
 1890 percent interest compounded annually from date of refund until
 1891 July 1, 1975, and 6.5-percent interest compounded annually
 1892 thereafter, until the full payment is made to the Retirement
 1893 Trust Fund, and shall receive credit in the membership class in
 1894 which the member participated during the period claimed.

1895 (c) For prior service as defined in s. 121.021(19)(b) and
 1896 (c) during which no contributions were made because the member
 1897 did not participate in a retirement system, the member shall
 1898 contribute 14.38 percent of all salary received during such
 1899 period or 14.38 percent of \$100 per month during such period,
 1900 whichever is greater, plus 4-percent interest compounded
 1901 annually from the first year of service claimed until July 1,
 1902 1975, and 6.5-percent interest compounded annually thereafter,
 1903 until full payment is made to the Retirement Trust Fund, and
 1904 shall receive credit in the Regular Class.

1905 (d) In order to claim credit for prior service as defined
 1906 in s. 121.021(19)(d) for which no retirement contributions were
 1907 paid during the period of such service, the member shall
 1908 contribute the total employee and employer contributions which
 1909 were required to be made to the Highway Patrol Pension Trust
 1910 Fund, as provided in chapter 321, during the period claimed,
 1911 plus 4-percent interest compounded annually from the first year
 1912 of service until July 1, 1975, and 6.5-percent interest
 1913 compounded annually thereafter, until full payment is made to
 1914 the Retirement Trust Fund. However, any governmental entity that
 1915 ~~which~~ employed such member may elect to pay up to 50 percent of
 1916 the contributions and interest required to purchase the ~~this~~
 1917 prior service credit. The service shall be credited in
 1918 accordance with the provisions of the Highway Patrol Pension
 1919 Plan in effect during the period claimed unless the member
 1920 terminated and withdrew his or her retirement contributions and
 1921 was thereafter enrolled in the State and County Officers and
 1922 Employees' Retirement System or the Florida Retirement System,
 1923 in which case the service shall be credited as Regular Class
 1924 service.

1925 (e) For service performed under the Florida Retirement
 1926 System after December 1, 1970, that was never reported to the
 1927 division or the department due to error, retirement credit may
 1928 be claimed by a member of the Florida Retirement System. The
 1929 department shall adopt rules establishing criteria for claiming
 1930 such credit and detailing the documentation required to
 1931 substantiate the error.

1932 (f) For prior service performed on or after July 1, 2011,

1933 for which the member had credit under the Florida Retirement
 1934 System and received a refund of contributions upon termination
 1935 of employment for 3 calendar months, the member shall contribute
 1936 at the rate that was required of him or her during the period of
 1937 service being claimed, plus 6.5 percent interest, compounded
 1938 annually on each June 30 from date of refund until the full
 1939 payment is made to the Florida Retirement System Trust Fund, and
 1940 shall receive credit in the membership class in which the member
 1941 participated during the period claimed.

1942 (g)(f) The employer may not ~~be required to~~ make
 1943 contributions for prior service credit for any member, except
 1944 that the employer shall pay the employer portion of
 1945 contributions for any legislator who elects to withdraw from the
 1946 Florida Retirement System and later rejoins the system and pays
 1947 any employee contributions required in accordance with s.
 1948 121.052(3)(d).

1949 Section 13. Subsection (1), paragraph (j) of subsection
 1950 (4), paragraphs (a) and (c) of subsection (5), paragraph (d) of
 1951 subsection (9), and paragraph (a) of subsection (13) of section
 1952 121.091, Florida Statutes, are amended, and paragraph (1) is
 1953 added to subsection (13) of that section, to read:

1954 121.091 Benefits payable under the system.—Benefits may
 1955 not be paid under this section unless the member has terminated
 1956 employment as provided in s. 121.021(39)(a) or begun
 1957 participation in the Deferred Retirement Option Program as
 1958 provided in subsection (13), and a proper application has been
 1959 filed in the manner prescribed by the department. The department
 1960 may cancel an application for retirement benefits when the

1961 member or beneficiary fails to timely provide the information
 1962 and documents required by this chapter and the department's
 1963 rules. The department shall adopt rules establishing procedures
 1964 for application for retirement benefits and for the cancellation
 1965 of such application when the required information or documents
 1966 are not received.

1967 (1) NORMAL RETIREMENT BENEFIT.—Upon attaining his or her
 1968 normal retirement date, the member, upon application to the
 1969 administrator, shall receive a monthly benefit which shall begin
 1970 to accrue on the first day of the month of retirement and be
 1971 payable on the last day of that month and each month thereafter
 1972 during his or her lifetime. The normal retirement benefit,
 1973 including any past or additional retirement credit, may not
 1974 exceed 100 percent of the average final compensation. The amount
 1975 of monthly benefit shall be calculated as the product of A and
 1976 B, subject to the adjustment of C, if applicable, as set forth
 1977 below:

- 1978 (a)1. For creditable years of Regular Class service, A is
 1979 1.60 percent of the member's average final compensation, up to
 1980 the member's normal retirement date. Upon completion of the
 1981 first year after the normal retirement date, A is 1.63 percent
 1982 of the member's average final compensation. Following the second
 1983 year after the normal retirement date, A is 1.65 percent of the
 1984 member's average final compensation. Following the third year
 1985 after the normal retirement date, and for subsequent years, A is
 1986 1.68 percent of the member's average final compensation.
- 1987 2. For creditable years of special risk service, A is:
 1988 a. Two percent of the member's average final compensation

HB 1405

2011

1989 for all creditable years prior to October 1, 1974.†
 1990 b. Three percent of the member's average final
 1991 compensation for all creditable years after September 30, 1974,
 1992 and before October 1, 1978.†
 1993 c. Two percent of the member's average final compensation
 1994 for all creditable years after September 30, 1978, and before
 1995 January 1, 1989.†
 1996 d. Two and two-tenths percent of the member's final
 1997 monthly compensation for all creditable years after December 31,
 1998 1988, and before January 1, 1990.†
 1999 e. Two and four-tenths percent of the member's average
 2000 final compensation for all creditable years after December 31,
 2001 1989, and before January 1, 1991.†
 2002 f. Two and six-tenths percent of the member's average
 2003 final compensation for all creditable years after December 31,
 2004 1990, and before January 1, 1992.†
 2005 g. Two and eight-tenths percent of the member's average
 2006 final compensation for all creditable years after December 31,
 2007 1991, and before January 1, 1993.†
 2008 h. Three percent of the member's average final
 2009 compensation for all creditable years after December 31, 1992.†
 2010 ~~and~~
 2011 i. Three percent of the member's average final
 2012 compensation for all creditable years of service after September
 2013 30, 1978, and before January 1, 1993, for any special risk
 2014 member who retires after July 1, 2000, or any member of the
 2015 Special Risk Administrative Support Class entitled to retain the
 2016 special risk normal retirement date who was a member of the

2017 | Special Risk Class during the time period and who retires after
 2018 | July 1, 2000.

2019 | 3.a. For creditable years of Senior Management Service
 2020 | Class service after January 31, 1987, and before July 1, 2011, A
 2021 | is 2 percent.

2022 | b. For creditable years of Senior Management Service Class
 2023 | service after June 30, 2011, A is equal to the percentage
 2024 | provided in subparagraph 1. of the member's average final
 2025 | compensation.†

2026 | 4.a. For creditable years of Elected Officers' Class
 2027 | service before July 1, 2011, as a Supreme Court Justice,
 2028 | district court of appeal judge, circuit judge, or county court
 2029 | judge, A is 3 1/3 percent of the member's average final
 2030 | compensation, and for all other creditable service before July
 2031 | 1, 2011, in such class, A is 3 percent of average final
 2032 | compensation.

2033 | b. For creditable years of Elected Officers' Class service
 2034 | after June 30, 2011, A is equal to the percentage provided in
 2035 | subparagraph 1. of the member's average final compensation.†

2036 | (b) B is the number of the member's years and any
 2037 | fractional part of a year of creditable service earned
 2038 | subsequent to November 30, 1970.~~† and~~

2039 | (c) C is the normal retirement benefit credit brought
 2040 | forward as of November 30, 1970, by a former member of an
 2041 | existing system. Such normal retirement benefit credit shall be
 2042 | determined as the product of X and Y when X is the percentage of
 2043 | average final compensation which the member would have been
 2044 | eligible to receive if the member had attained his or her normal

2045 retirement date as of November 30, 1970, all in accordance with
 2046 the existing system under which the member is covered on
 2047 November 30, 1970, and Y is average final compensation as
 2048 defined in s. 121.021(24). However, any member of an existing
 2049 retirement system who is eligible to retire and who does retire,
 2050 become disabled, or die prior to April 15, 1971, may have his or
 2051 her retirement benefits calculated on the basis of the best 5 of
 2052 the last 10 years of service.

2053 (d) A member's average final compensation shall be
 2054 determined by formula to obtain the coverage for the 5 highest
 2055 fiscal years' salaries, calculated as provided by rule.

2056 (4) DISABILITY RETIREMENT BENEFIT.—

2057 (j) Disability retirement of justice or judge by order of
 2058 Supreme Court.—

2059 1.a. If a member is a justice of the Supreme Court, judge
 2060 of a district court of appeal, circuit judge, or judge of a
 2061 county court who has served for 6 years or more as an elected
 2062 constitutional judicial officer, including service as a judicial
 2063 officer in any court abolished pursuant to Art. V of the State
 2064 Constitution, and who is retired for disability by order of the
 2065 Supreme Court upon recommendation of the Judicial Qualifications
 2066 Commission pursuant to the provisions of Art. V of the State
 2067 Constitution, the member's Option 1 monthly benefit as provided
 2068 in subparagraph (6)(a)1. may ~~shall~~ not be less than two-thirds
 2069 of his or her monthly compensation as of the member's disability
 2070 retirement date. Such a member may alternatively elect to
 2071 receive a disability retirement benefit under any other option
 2072 as provided in paragraph (6)(a). This sub-subparagraph applies

2073 | to any member retiring prior to July 1, 2011.

2074 | b. Effective July 1, 2011, and applicable to any member

2075 | retiring on or after July 1, 2011, if a member is a justice of

2076 | the Supreme Court, judge of a district court of appeal, circuit

2077 | judge, or judge of a county court who has served for 6 years or

2078 | more as an elected constitutional judicial officer, including

2079 | service as a judicial officer in any court abolished pursuant to

2080 | Art. V of the State Constitution, and who is retired for

2081 | disability by order of the Supreme Court upon recommendation of

2082 | the Judicial Qualifications Commission pursuant to the

2083 | provisions of Art. V of the State Constitution, the member's

2084 | Option 1 monthly benefit as provided in subparagraph (6) (a)1.

2085 | may not be less than one-third of his or her monthly

2086 | compensation as of the member's disability retirement date. Such

2087 | a member may alternatively elect to receive a disability

2088 | retirement benefit under any other option as provided in

2089 | paragraph (6) (a).

2090 | 2. Should any justice or judge who is a member of the

2091 | Florida Retirement System be retired for disability by order of

2092 | the Supreme Court upon recommendation of the Judicial

2093 | Qualifications Commission pursuant to the provisions of Art. V

2094 | of the State Constitution, then all contributions to his or her

2095 | account and all contributions made on his or her behalf by the

2096 | employer shall be transferred to and deposited in the General

2097 | Revenue Fund of the state, and there is hereby appropriated

2098 | annually out of the General Revenue Fund, to be paid into the

2099 | Florida Retirement System Fund, an amount necessary to pay the

2100 | benefits of all justices and judges retired from the Florida

2101 Retirement System pursuant to Art. V of the State Constitution.

2102 (5) TERMINATION BENEFITS.—A member whose employment is
 2103 terminated prior to retirement retains membership rights to
 2104 previously earned member-noncontributory service credit, and to
 2105 member-contributory service credit, if the member leaves the
 2106 member contributions on deposit in his or her retirement
 2107 account. If a terminated member receives a refund of member
 2108 contributions, such member may reinstate membership rights to
 2109 the previously earned service credit represented by the refund
 2110 by completing 1 year of creditable service and repaying the
 2111 refunded member contributions, plus interest.

2112 (a) A member whose employment is terminated for any reason
 2113 other than death or retirement prior to becoming vested is
 2114 entitled to the return of his or her accumulated contributions
 2115 as of the date of termination. Effective July 1, 2011, upon
 2116 termination of employment from all participating employers for 3
 2117 calendar months for any reason other than retirement pursuant to
 2118 s. 121.021(39) (c), a member may receive a refund of all
 2119 contributions he or she has made to the pension plan, subject to
 2120 the restrictions otherwise provided in this chapter. Partial
 2121 refunds are not permitted. The refund shall not include any
 2122 interest earnings on the contributions for a member of the
 2123 pension plan. Employer contributions made on behalf of the
 2124 member are not refundable. A member may not receive a refund of
 2125 employee contributions if a pending or an approved qualified
 2126 domestic relations order is filed against his or her retirement
 2127 account. By obtaining a refund of contributions, a member waives
 2128 all rights under the Florida Retirement System and the health

2129 insurance subsidy to the service credit represented by the
 2130 refunded contributions, except the right to purchase his or her
 2131 prior service credit in accordance with s. 121.081(2).

2132 (c) In lieu of the deferred monthly benefit provided in
 2133 paragraph (b), the terminated member may elect to receive a
 2134 lump-sum amount equal to his or her accumulated contributions as
 2135 of the date of termination. Effective July 1, 2011, upon
 2136 termination of employment from all participating employers for 3
 2137 calendar months for any reason other than retirement pursuant to
 2138 s. 121.021(39) (c), a member may receive a refund of all
 2139 contributions he or she has made to the pension plan, subject to
 2140 the restrictions otherwise provided in this chapter. Partial
 2141 refunds are not permitted. The refund shall not include any
 2142 interest earnings on the contributions for a member of the
 2143 pension plan. Employer contributions made on behalf of the
 2144 member are not refundable. A member may not receive a refund of
 2145 employee contributions if a pending or an approved qualified
 2146 domestic relations order is filed against his or her retirement
 2147 account. By obtaining a refund of contributions, a member waives
 2148 all rights under the Florida Retirement System and the health
 2149 insurance subsidy to the service credit represented by the
 2150 refunded contributions, except the right to purchase his or her
 2151 prior service credit in accordance with s. 121.081(2).

2152 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

2153 (d) The provisions of this subsection apply to retirees,
 2154 as defined in s. 121.4501(2), of the investment plan ~~Public~~
 2155 ~~Employee Optional Retirement Program~~, subject to the following
 2156 conditions:

2157 1. A retiree ~~The retirees~~ may not be reemployed with an
 2158 employer participating in the Florida Retirement System until
 2159 such person has been retired for 6 calendar months.

2160 2. A retiree employed in violation of this subsection and
 2161 an employer that employs or appoints such person are jointly and
 2162 severally liable for reimbursement of any benefits paid to the
 2163 retirement trust fund from which the benefits were paid,
 2164 including the Florida Retirement System Trust Fund and the
 2165 Florida Retirement System Investment Plan ~~Public Employee~~
 2166 Optional Retirement Program Trust Fund, as appropriate. The
 2167 employer must have a written statement from the retiree that he
 2168 or she is not retired from a state-administered retirement
 2169 system.

2170 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
 2171 subject to this section, the Deferred Retirement Option Program,
 2172 hereinafter referred to as DROP, is a program under which an
 2173 eligible member of the Florida Retirement System may elect to
 2174 participate, deferring receipt of retirement benefits while
 2175 continuing employment with his or her Florida Retirement System
 2176 employer. The deferred monthly benefits shall accrue in the
 2177 Florida Retirement System on behalf of the participant, plus
 2178 interest compounded monthly, for the specified period of the
 2179 DROP participation, as provided in paragraph (c). Upon
 2180 termination of employment, the participant shall receive the
 2181 total DROP benefits and begin to receive the previously
 2182 determined normal retirement benefits. Participation in the DROP
 2183 does not guarantee employment for the specified period of DROP.
 2184 Participation in DROP by an eligible member beyond the initial

2185 60-month period as authorized in this subsection shall be on an
 2186 annual contractual basis for all participants.

2187 (a) Eligibility of member to participate in DROP.—All
 2188 active Florida Retirement System members in a regularly
 2189 established position, and all active members of the Teachers'
 2190 Retirement System established in chapter 238 or the State and
 2191 County Officers' and Employees' Retirement System established in
 2192 chapter 122, which are consolidated within the Florida
 2193 Retirement System under s. 121.011, are eligible to elect
 2194 participation in DROP if:

2195 1. The member is not a renewed member under s. 121.122 or
 2196 a member of the State Community College System Optional
 2197 Retirement Program under s. 121.051, the Senior Management
 2198 Service Optional Annuity Program under s. 121.055, or the
 2199 optional retirement program for the State University System
 2200 under s. 121.35.

2201 2. Except as provided in subparagraph 6., election to
 2202 participate is made within 12 months immediately following the
 2203 date on which the member first reaches normal retirement date,
 2204 or, for a member who reaches normal retirement date based on
 2205 service before he or she reaches age 62, or age 55 for Special
 2206 Risk Class members, election to participate may be deferred to
 2207 the 12 months immediately following the date the member attains
 2208 age 57, or age 52 for Special Risk Class members. A member who
 2209 delays DROP participation during the 12-month period immediately
 2210 following his or her maximum DROP deferral date, except as
 2211 provided in subparagraph 6., loses a month of DROP participation
 2212 for each month delayed. A member who fails to make an election

2213 within the 12-month limitation period forfeits all rights to
 2214 participate in DROP. The member shall advise his or her employer
 2215 and the division in writing of the date DROP begins. The
 2216 beginning date may be subsequent to the 12-month election period
 2217 but must be within the original 60-month participation period
 2218 provided in subparagraph (b)1. When establishing eligibility of
 2219 the member to participate in DROP, the member may elect to
 2220 include or exclude any optional service credit purchased by the
 2221 member from the total service used to establish the normal
 2222 retirement date. A member who has dual normal retirement dates
 2223 is eligible to elect to participate in DROP after attaining
 2224 normal retirement date in either class.

2225 3. The employer of a member electing to participate in
 2226 DROP, or employers if dually employed, shall acknowledge in
 2227 writing to the division the date the member's participation in
 2228 DROP begins and the date the member's employment and DROP
 2229 participation will terminate.

2230 4. Simultaneous employment of a participant by additional
 2231 Florida Retirement System employers subsequent to the
 2232 commencement of participation in DROP is permissible if such
 2233 employers acknowledge in writing a DROP termination date no
 2234 later than the participant's existing termination date or the
 2235 maximum participation period provided in subparagraph (b)1.

2236 5. A DROP participant may change employers while
 2237 participating in DROP, subject to the following:

2238 a. A change of employment must take place without a break
 2239 in service so that the member receives salary for each month of
 2240 continuous DROP participation. If a member receives no salary

2241 | during a month, DROP participation shall cease unless the
 2242 | employer verifies a continuation of the employment relationship
 2243 | for such participant pursuant to s. 121.021(39)(b).

2244 | b. Such participant and new employer shall notify the
 2245 | division of the identity of the new employer on forms required
 2246 | by the division.

2247 | c. The new employer shall acknowledge, in writing, the
 2248 | participant's DROP termination date, which may be extended but
 2249 | not beyond the maximum participation period provided in
 2250 | subparagraph (b)1., shall acknowledge liability for any
 2251 | additional retirement contributions and interest required if the
 2252 | participant fails to timely terminate employment, and is subject
 2253 | to the adjustment required in sub-subparagraph (c)5.d.

2254 | 6. Effective July 1, 2001, for instructional personnel as
 2255 | defined in s. 1012.01(2), election to participate in DROP may be
 2256 | made at any time following the date on which the member first
 2257 | reaches normal retirement date. The member shall advise his or
 2258 | her employer and the division in writing of the date on which
 2259 | DROP begins. When establishing eligibility of the member to
 2260 | participate in DROP for the 60-month participation period
 2261 | provided in subparagraph (b)1., the member may elect to include
 2262 | or exclude any optional service credit purchased by the member
 2263 | from the total service used to establish the normal retirement
 2264 | date. A member who has dual normal retirement dates is eligible
 2265 | to elect to participate in either class.

2266 | 7. The effective date of DROP participation of a DROP
 2267 | participant is prior to July 1, 2011.

2268 | (1) Closure of program to new participants.-Effective July

2269 1, 2011, DROP is closed to new participants. Only members whose
 2270 DROP effective date is prior to July 1, 2011, may participate in
 2271 DROP.

2272 Section 14. Section 121.101, Florida Statutes, is amended
 2273 to read:

2274 121.101 Cost-of-living adjustment of benefits.—

2275 (1) The purpose of this section is to provide cost-of-
 2276 living adjustments to the monthly benefits payable to all
 2277 retired members of state-supported retirement systems.

2278 (2) As used in this section, "initial benefit" means the
 2279 first monthly benefit payable to a retiree or beneficiary in
 2280 accordance with the laws governing the determination of such
 2281 benefit at the time of retirement or earlier death.

2282 (3) Commencing July 1, 1987, the benefit of each retiree
 2283 and annuitant retiring prior to July 1, 2011, shall be adjusted
 2284 on each July 1 thereafter, as follows:

2285 (a) For those retirees and annuitants who have never
 2286 received a cost-of-living adjustment under this subsection
 2287 ~~section~~, the amount of the monthly benefit payable for the 12-
 2288 month period commencing on the adjustment date shall be the
 2289 amount of the member's initial benefit plus an amount equal to a
 2290 percentage of the member's initial benefit; this percentage is
 2291 derived by dividing the number of months the member has received
 2292 an initial benefit by 12, and multiplying the result by 3.

2293 (b) For those retirees and annuitants who have received a
 2294 cost-of-living adjustment under this subsection ~~section~~, the
 2295 adjusted monthly benefit shall be the amount of the monthly
 2296 benefit being received on June 30 immediately preceding the

2297 adjustment date plus an amount equal to 3 percent of this
 2298 benefit.

2299 (4) For members retiring effective on or after July 1,
 2300 2011, the benefit of each retiree and annuitant shall be
 2301 adjusted on each July 1 thereafter, as follows:

2302 (a) For those retirees and annuitants who have never
 2303 received a cost-of-living adjustment under this subsection, the
 2304 amount of the monthly benefit payable for the 12-month period
 2305 commencing on the adjustment date shall be the amount of the
 2306 member's initial benefit plus an amount equal to a percentage of
 2307 the member's initial benefit. This percentage is derived by
 2308 dividing the number of months the member has received an initial
 2309 benefit by 12, and multiplying the result by the factor
 2310 calculated pursuant to paragraph (c).

2311 (b) For those retirees and annuitants who have received a
 2312 cost-of-living adjustment under this subsection, the adjusted
 2313 monthly benefit shall be the amount of the monthly benefit being
 2314 received on June 30 immediately preceding the adjustment date
 2315 plus an amount determined by multiplying the benefit by the
 2316 factor calculated pursuant to paragraph (c).

2317 (c) The department shall calculate a cost-of-living factor
 2318 for each retiree and beneficiary retiring after June 30, 2011.
 2319 This factor equals the product of 3 percent multiplied by the
 2320 quotient of the sum of the member's service credit earned for
 2321 service prior to July 1, 2011, divided by the sum of the
 2322 member's total service credit earned.

2323 (5)-(4) In no event shall a retiree's or annuitant's
 2324 monthly retirement benefit be reduced, by the application of

2325 | this section, below the benefit he or she was receiving as of
 2326 | July 1, 1970, or at the date of retirement, if later, nor shall
 2327 | the benefit be reduced below the minimum monthly benefit
 2328 | provided him or her under s. 112.362.

2329 | (6)~~(5)~~ The initial benefit of a retiree who elected an
 2330 | optional form of benefit payment which provided for a percentage
 2331 | of the benefit to be continued to a beneficiary after his or her
 2332 | death shall be reduced at the death of the retiree by
 2333 | application of the stated percentage.

2334 | (7)~~(6)~~ The funds necessary to pay for the cost-of-living
 2335 | adjustment provided by this section are hereby annually
 2336 | appropriated from the System Trust Fund.

2337 | (8)~~(7)~~ The purpose of this subsection is to establish a
 2338 | supplemental cost-of-living adjustment for certain retirees and
 2339 | beneficiaries who receive monthly retirement benefits under the
 2340 | provisions of this chapter and the existing systems consolidated
 2341 | therein, s. 112.05 for certain state officers and employees, and
 2342 | s. 238.171 for certain elderly incapacitated teachers.

2343 | (a) On July 1, 1996, each such retiree retiring prior to
 2344 | July 1, 1976, and each annuitant of such a retiree, who had 25
 2345 | or more years of service, who is neither receiving nor eligible
 2346 | to receive social security benefits, and whose monthly benefit
 2347 | as of July 1, 1996, is less than \$1,000, shall, upon application
 2348 | to the administrator, receive a supplemental cost-of-living
 2349 | adjustment. Such supplemental cost-of-living adjustment shall be
 2350 | applied by adjusting the retiree's or annuitant's monthly
 2351 | benefit to an amount equal to the sum of the monthly benefit
 2352 | being received on July 1, 1996, plus a percentage of the July 1,

2353 | 1996, benefit. This percentage shall equal the product of 1
 2354 | percent multiplied by the number of complete years that have
 2355 | elapsed between the member's date of retirement and July 1,
 2356 | 1996. However, if the supplemental cost-of-living adjustment
 2357 | plus the July 1, 1996, monthly benefit would exceed \$1,000, the
 2358 | adjustment shall be reduced to an amount which would result in a
 2359 | monthly benefit equal to \$1,000.

2360 | (b) Application for the supplemental cost-of-living
 2361 | adjustment provided by this subsection shall include
 2362 | certification by the retiree or annuitant that he or she is not
 2363 | receiving, and is not eligible to receive, social security
 2364 | benefits and shall include written authorization for the
 2365 | department to have access to information from the Social
 2366 | Security Administration concerning his or her entitlement to, or
 2367 | eligibility for, social security benefits. Such supplemental
 2368 | cost-of-living adjustment shall not be paid unless and until the
 2369 | application requirements of this paragraph are met.

2370 | Section 15. Subsection (1) of section 121.121, Florida
 2371 | Statutes, is amended to read:

2372 | 121.121 Authorized leaves of absence.—

2373 | (1) A member may purchase creditable service for up to 2
 2374 | work years of authorized leaves of absence, including any leaves
 2375 | of absence covered under the Family Medical Leave Act, if:

2376 | (a) The member has completed a minimum of 6 years of
 2377 | creditable service, excluding periods for which a leave of
 2378 | absence was authorized;

2379 | (b) The leave of absence is authorized in writing by the
 2380 | employer of the member and approved by the administrator;

2381 (c) The member returns to active employment performing
 2382 service with a Florida Retirement System employer in a regularly
 2383 established position immediately upon termination of the leave
 2384 of absence and remains on the employer's payroll for 1 calendar
 2385 month, except that a member who retires on disability while on a
 2386 medical leave of absence may ~~shall~~ not be required to return to
 2387 employment. A member whose work year is less than 12 months and
 2388 whose leave of absence terminates between school years is
 2389 eligible to receive credit for the leave of absence if ~~as long~~
 2390 ~~as~~ he or she returns to the employment of his or her employer at
 2391 the beginning of the next school year and remains on the
 2392 employer's payroll for 1 calendar month; and

2393 (d) The member makes the required contributions for
 2394 service credit during the leave of absence, which shall be 8
 2395 percent until January 1, 1975, and 9 percent thereafter of his
 2396 or her rate of monthly compensation in effect immediately prior
 2397 to the commencement of such leave for each month of such period,
 2398 plus 4 percent interest until July 1, 1975, and 6.5 percent
 2399 interest thereafter on such contributions, compounded annually
 2400 each June 30 from the due date of the contribution to date of
 2401 payment. Effective July 1, 1980, any leave of absence purchased
 2402 pursuant to this section shall be at the contribution rates
 2403 specified in s. 121.071 or s. 121.71 in effect at the time the
 2404 leave is granted for the class of membership from which the
 2405 leave of absence was granted; however, any member who purchased
 2406 leave-of-absence credit prior to July 1, 1980, for a leave of
 2407 absence from a position in a class other than the regular
 2408 membership class, may pay the appropriate additional

2409 contributions plus compound interest thereon and receive
 2410 creditable service for such leave of absence in the membership
 2411 class from which the member was granted the leave of absence.

2412
 2413 Effective July 1, 2011, any leave of absence purchased by the
 2414 member pursuant to this section shall be at the employee and
 2415 employer contribution rates specified in s. 121.71 in effect
 2416 during the leave for the class of membership from which the
 2417 leave of absence was granted.

2418 Section 16. Section 121.125, Florida Statutes, is amended
 2419 to read:

2420 121.125 Credit for workers' compensation payment periods.—
 2421 A member of the retirement system created by this chapter who
 2422 has been eligible or becomes eligible to receive workers'
 2423 compensation payments for an injury or illness occurring during
 2424 his or her employment while a member of any state retirement
 2425 system shall, upon return to active employment with a covered
 2426 employer for 1 calendar month or upon approval for disability
 2427 retirement in accordance with s. 121.091(4), receive full
 2428 retirement credit for the period prior to such return to active
 2429 employment or disability retirement for which the workers'
 2430 compensation payments were received. However, a ~~no~~ member may
 2431 not receive retirement credit for any such period occurring
 2432 after the earlier of the date of maximum medical improvement as
 2433 defined in s. 440.02 or the date termination has occurred as
 2434 defined in s. 121.021(39). The employer of record at the time of
 2435 the worker's compensation injury or illness shall make the
 2436 required employee and employer retirement contributions based on

2437 the member's rate of monthly compensation immediately prior to
 2438 his or her receiving workers' compensation payments for
 2439 retirement credit received by the member. The employer of record
 2440 at the time of the workers' compensation injury or illness shall
 2441 be assessed by the division a penalty of 1 percent of the
 2442 contributions on all contributions not paid on the first payroll
 2443 report after the member becomes eligible to receive credit. This
 2444 delinquent assessment may not be waived.

2445 Section 17. Section 121.161, Florida Statutes, is
 2446 reenacted to read:

2447 121.161 References to other laws include amendments.—
 2448 References in this chapter to state or federal laws or
 2449 agreements are intended to include such laws as they now exist
 2450 or may hereafter be amended.

2451 Section 18. Paragraphs (g) and (i) of subsection (3),
 2452 paragraph (a) of subsection (4), and subsection (5) of section
 2453 121.35, Florida Statutes, are amended to read:

2454 121.35 Optional retirement program for the State
 2455 University System.—

2456 (3) ELECTION OF OPTIONAL PROGRAM.—

2457 (g) An eligible employee who is a member of the Florida
 2458 Retirement System at the time of election to participate in the
 2459 optional retirement program shall retain all retirement service
 2460 credit earned under the Florida Retirement System, at the rate
 2461 earned. ~~No~~ Additional service credit in the Florida Retirement
 2462 System may not shall be earned while the employee participates
 2463 in the optional program, and nor shall the employee is not be
 2464 eligible for disability retirement under the Florida Retirement

2465 System. An eligible employee may transfer from the Florida
 2466 Retirement System to his or her accounts under the State
 2467 University System Optional Retirement Program a sum representing
 2468 the present value of the employee's accumulated benefit
 2469 obligation under ~~the defined benefit program of the Florida~~
 2470 Retirement System pension plan for any service credit accrued
 2471 from the employee's first eligible transfer date to the optional
 2472 retirement program through the actual date of such transfer, if
 2473 such service credit was earned ~~in the period~~ from July 1, 1984,
 2474 through December 31, 1992. The present value of the employee's
 2475 accumulated benefit obligation shall be calculated as described
 2476 in s. 121.4501(3)~~(e)~~2. Upon ~~such~~ transfer, all ~~such~~ service
 2477 credit ~~previously~~ earned under the ~~defined benefit program of~~
 2478 ~~the Florida Retirement System~~ pension plan during this period is
 2479 ~~shall be~~ nullified for purposes of entitlement to a future
 2480 benefit under the ~~defined benefit program of the Florida~~
 2481 Retirement System pension plan.

2482 (i) Effective January 1, 2008, through December 31, 2008,
 2483 except for an employee who is a mandatory participant of the
 2484 State University System Optional Retirement Program, an employee
 2485 who has elected to participate in the State University System
 2486 Optional Retirement Program shall have one opportunity, at the
 2487 employee's discretion, to choose to transfer from this program
 2488 to the ~~defined benefit program of the Florida Retirement System~~
 2489 pension plan or to the investment plan ~~Public Employee Optional~~
 2490 ~~Retirement Program~~, subject to the terms of the applicable
 2491 contracts of the State University System Optional Retirement
 2492 Program.

2493 1. If the employee chooses to move to the investment plan
 2494 ~~Public Employee Optional Retirement Program~~, any contributions,
 2495 interest, and earnings creditable to the employee under the
 2496 State University System Optional Retirement Program must ~~shall~~
 2497 be retained by the employee in the State University System
 2498 Optional Retirement Program, and the applicable provisions of s.
 2499 121.4501(4) shall govern the election.

2500 2. If the employee chooses to move to the pension plan
 2501 ~~defined benefit program~~ of the Florida Retirement System, the
 2502 employee shall receive service credit equal to his or her years
 2503 of service under the State University System Optional Retirement
 2504 Program.

2505 a. The cost for such credit must be in ~~shall be~~ an amount
 2506 representing the actuarial accrued liability for the affected
 2507 period of service. The cost must ~~shall~~ be calculated using the
 2508 discount rate and other relevant actuarial assumptions that were
 2509 used to value the Florida Retirement System pension ~~defined~~
 2510 ~~benefit~~ plan liabilities in the most recent actuarial valuation.
 2511 The calculation must ~~shall~~ include any service already
 2512 maintained under the pension ~~defined benefit~~ plan in addition to
 2513 the years under the State University System Optional Retirement
 2514 Program. The actuarial accrued liability of any service already
 2515 maintained under the pension ~~defined benefit~~ plan must ~~shall~~ be
 2516 applied as a credit to total cost resulting from the
 2517 calculation. The division must ~~shall~~ ensure that the transfer
 2518 sum is prepared using a formula and methodology certified by an
 2519 enrolled actuary.

2520 b. The employee must transfer from his or her State

2521 University System Optional Retirement Program account, and from
 2522 other employee moneys as necessary, a sum representing the
 2523 actuarial accrued liability immediately following the time of
 2524 such movement, determined assuming that attained service equals
 2525 the sum of service in the pension plan ~~defined benefit program~~
 2526 and service in the State University System Optional Retirement
 2527 Program.

2528 (4) CONTRIBUTIONS.—

2529 (a) Through June 30, 2001, each employer shall contribute
 2530 on behalf of each participant in the optional retirement program
 2531 an amount equal to the normal cost portion of the employer
 2532 retirement contribution which would be required if the
 2533 participant were a regular member of the Florida Retirement
 2534 System pension plan ~~defined benefit program~~, plus the portion of
 2535 the contribution rate required in s. 112.363(8) that would
 2536 otherwise be assigned to the Retiree Health Insurance Subsidy
 2537 Trust Fund. Effective July 1, 2001, each employer shall
 2538 contribute on behalf of each participant in the optional program
 2539 an amount equal to 10.43 percent of the participant's gross
 2540 monthly compensation. The department shall deduct an amount
 2541 approved by the Legislature to provide for the administration of
 2542 this program. The payment of the contributions to the optional
 2543 program which is required by this paragraph for each participant
 2544 shall be made by the employer to the department, which shall
 2545 forward the contributions to the designated company or companies
 2546 contracting for payment of benefits for the participant under
 2547 the program. However, such contributions paid on behalf of an
 2548 employee described in paragraph (3)(c) shall not be forwarded to

2549 a company and shall not begin to accrue interest until the
 2550 employee has executed a contract and notified the department.

2551 (5) BENEFITS.—

2552 (a) Benefits are payable under the optional retirement
 2553 program only to vested participants in the program, or their
 2554 beneficiaries as designated by the participant in the contract
 2555 with a provider company, and such benefits shall be paid only by
 2556 the designated company in accordance with s. 403(b) of the
 2557 Internal Revenue Code and the terms of the annuity contract or
 2558 contracts applicable to the participant. Benefits accrue in
 2559 individual accounts that are participant-directed, portable, and
 2560 funded by employer contributions and the earnings thereon. The
 2561 participant must be terminated for 3 calendar months from all
 2562 employment relationships with all Florida Retirement System
 2563 employers, as provided in s. 121.021(39), to begin receiving the
 2564 employer-funded benefit. Benefits funded by employer
 2565 contributions are payable in accordance with the following terms
 2566 and conditions:

2567 1. Benefits shall be paid only to a participant, to his or
 2568 her beneficiaries, or to his or her estate, as designated by the
 2569 participant.

2570 2. Benefits shall be paid by the provider company or
 2571 companies in accordance with the law, the provisions of the
 2572 contract, and any applicable department rule or policy.

2573 3. In the event of a participant's death, moneys
 2574 accumulated by, or on behalf of, the participant, less
 2575 withholding taxes remitted to the Internal Revenue Service, if
 2576 any, shall be distributed to the participant's designated

2577 beneficiary or beneficiaries, or to the participant's estate, as
 2578 if the participant retired on the date of death, as provided in
 2579 paragraph (d) ~~(e)~~. No other death benefits are available to
 2580 survivors of participants under the optional retirement program
 2581 except for such benefits, or coverage for such benefits, as are
 2582 separately afforded by the employer, at the employer's
 2583 discretion.

2584 (b) Under the optional retirement program, benefits are
 2585 not payable for employee hardships, unforeseeable emergencies,
 2586 loans, medical expenses, educational expenses, purchase of a
 2587 principal residence, payments necessary to prevent eviction or
 2588 foreclosure on an employee's principal residence, or any other
 2589 reason prior to termination from all employment relationships
 2590 with participating employers, as provided in s. 121.021(39).

2591 (c) ~~(b)~~ Upon receipt by the provider company of a properly
 2592 executed application for distribution of benefits, the total
 2593 accumulated benefit shall be payable to the participant, as:

- 2594 1. A lump-sum distribution to the participant;
- 2595 2. A lump-sum direct rollover distribution whereby all
 2596 accrued benefits, plus interest and investment earnings, are
 2597 paid from the participant's account directly to an eligible
 2598 retirement plan, as defined in s. 402(c)(8)(B) of the Internal
 2599 Revenue Code, on behalf of the participant;
- 2600 3. Periodic distributions;
- 2601 4. A partial lump-sum payment whereby a portion of the
 2602 accrued benefit is paid to the participant and the remaining
 2603 amount is transferred to an eligible retirement plan, as defined
 2604 in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of

HB 1405

2011

2605 the participant; or

2606 5. Such other distribution options as are provided for in
2607 the participant's optional retirement program contract.

2608 (d)~~(e)~~ Survivor benefits shall be payable as:

2609 1. A lump-sum distribution payable to the beneficiaries or
2610 to the deceased participant's estate;

2611 2. An eligible rollover distribution on behalf of the
2612 surviving spouse of a deceased participant, whereby all accrued
2613 benefits, plus interest and investment earnings, are paid from
2614 the deceased participant's account directly to an eligible
2615 retirement plan, as described in s. 402(c)(8)(B) of the Internal
2616 Revenue Code, on behalf of the surviving spouse;

2617 3. Such other distribution options as are provided for in
2618 the participant's optional retirement program contract; or

2619 4. A partial lump-sum payment whereby a portion of the
2620 accrued benefit is paid to the deceased participant's surviving
2621 spouse or other designated beneficiaries, less withholding taxes
2622 remitted to the Internal Revenue Service, if any, and the
2623 remaining amount is transferred directly to an eligible
2624 retirement plan, as described in s. 402(c)(8)(B) of the Internal
2625 Revenue Code, on behalf of the surviving spouse. The proportions
2626 must be specified by the participant or the surviving
2627 beneficiary.

2628

2629 This paragraph does not abrogate other applicable provisions of
2630 state or federal law providing payment of death benefits.

2631 (e)~~(d)~~ The benefits payable to any person under the
2632 optional retirement program, and any contribution accumulated

2633 | under such program, shall not be subject to assignment,
 2634 | execution, or attachment or to any legal process whatsoever.

2635 | (f)~~(e)~~ A participant who chooses to receive his or her
 2636 | benefits must be terminated for 3 calendar months to be eligible
 2637 | to receive benefits funded by employer contributions. A
 2638 | participant upon termination as defined in s. 121.021 must
 2639 | notify the provider company of the date he or she wishes
 2640 | benefits funded by required employee and employer contributions
 2641 | to begin and must meet termination as defined in s. 121.021
 2642 | after the initial benefit payment or distribution. Benefits may
 2643 | be deferred until the participant chooses to make such
 2644 | application.

2645 | (g)~~(f)~~ Benefits funded by the participant's voluntary
 2646 | personal contributions may be paid out at any time and in any
 2647 | form within the limits provided in the contract between the
 2648 | participant and his or her provider company. The participant
 2649 | shall notify the provider company regarding the date and
 2650 | provisions under which he or she wants to receive the employee-
 2651 | funded portion of the plan.

2652 | (h)~~(g)~~ For purposes of this section, "retiree" means a
 2653 | former participant of the optional retirement program who has
 2654 | terminated employment and has taken a distribution as provided
 2655 | in this subsection, except for a mandatory distribution of a de
 2656 | minimis account authorized by the department.

2657 | Section 19. Section 121.4501, Florida Statutes, is amended
 2658 | to read:

2659 | 121.4501 Florida Retirement System Investment Plan Public
 2660 | ~~Employee Optional Retirement Program.~~

2661 (1) The Trustees of the State Board of Administration
 2662 shall establish a ~~an optional~~ defined contribution ~~retirement~~
 2663 program called the "Florida Retirement System Investment Plan"
 2664 or "investment plan" for members of the Florida Retirement
 2665 System under which retirement benefits will be provided for
 2666 eligible employees who elect to participate in the program. The
 2667 ~~retirement~~ benefits ~~to be provided for or on behalf of~~
 2668 ~~participants in such optional retirement program~~ shall be
 2669 provided through member-directed ~~employee-directed~~ investments,
 2670 in accordance with s. 401(a) of the Internal Revenue Code and
 2671 ~~its~~ related regulations. The employer and members ~~employers~~
 2672 shall make contributions ~~contribute~~, as provided in this section
 2673 and ~~ss. 121.571,~~ and 121.71, to the Florida Retirement System
 2674 Investment Plan ~~Public Employee Optional Retirement Program~~
 2675 Trust Fund toward the funding of ~~such optional~~ benefits.

2676 (2) DEFINITIONS.—As used in this part, the term:
 2677 (a) "Approved provider" or "provider" means a private
 2678 sector company that is selected and approved by the state board
 2679 to offer one or more investment products or services to the
 2680 investment plan ~~optional retirement program~~. The term includes a
 2681 bundled provider that offers members ~~participants~~ a range of
 2682 individually allocated or unallocated investment products and
 2683 may offer a range of administrative and customer services, which
 2684 may include accounting and administration of individual member
 2685 ~~participant~~ benefits and contributions; individual member
 2686 ~~participant~~ recordkeeping; asset purchase, control, and
 2687 safekeeping; direct execution of the member's ~~participant's~~
 2688 instructions as to asset and contribution allocation;

2689 calculation of daily net asset values; direct access to member
 2690 ~~participant~~ account information; periodic reporting to members
 2691 ~~participants~~, at least quarterly, on account balances and
 2692 transactions; guidance, advice, and allocation services directly
 2693 relating to the provider's own investment options or products,
 2694 but only if the bundled provider complies with the standard of
 2695 care of s. 404(a)(1)(A-B) of the Employee Retirement Income
 2696 Security Act of 1974 (ERISA), and if providing such guidance,
 2697 advice, or allocation services does not constitute a prohibited
 2698 transaction under s. 4975(c)(1) of the Internal Revenue Code or
 2699 s. 406 of ERISA, notwithstanding that such prohibited
 2700 transaction provisions do not apply to the ~~optional~~ retirement
 2701 program; a broad array of distribution options; asset
 2702 allocation; and retirement counseling and education. Private
 2703 sector companies include investment management companies,
 2704 insurance companies, depositories, and mutual fund companies.

2705 (b) "Average monthly compensation" means one-twelfth of
 2706 average final compensation as defined in s. 121.021.

2707 (c) "Covered employment" means employment in a regularly
 2708 established position as defined in s. 121.021.

2709 ~~(d)-(e)~~ "Division" means the Division of Retirement within
 2710 the department.

2711 ~~(e)-(f)~~ "Electronic means" means by telephone, if the
 2712 required information is received on a recorded line, or through
 2713 Internet access, if the required information is captured online.

2714 ~~(f)-(g)~~ "Eligible employee" means an officer or employee,
 2715 as defined in s. 121.021, who:

2716 1. Is a member of, or is eligible for membership in, the

2717 Florida Retirement System, including any renewed member of the
 2718 Florida Retirement System initially enrolled before July 1,
 2719 2010; or

2720 2. Participates in, or is eligible to participate in, the
 2721 Senior Management Service Optional Annuity Program as
 2722 established under s. 121.055(6), the State Community College
 2723 System Optional Retirement Program as established under s.
 2724 121.051(2)(c), or the State University System Optional
 2725 Retirement Program established under s. 121.35.

2726
 2727 The term does not include any member participating in the
 2728 Deferred Retirement Option Program established under s.
 2729 121.091(13), a retiree of a state-administered retirement system
 2730 initially reemployed on or after July 1, 2010, or a mandatory
 2731 participant of the State University System Optional Retirement
 2732 Program established under s. 121.35.

2733 (g)~~(h)~~ "Employer" means an employer, as defined in s.
 2734 121.021, of an eligible employee.

2735 (h)~~(i)~~ "Florida Retirement System Investment Plan" or
 2736 "investment plan" ~~"Optional retirement program" or "optional~~
 2737 ~~program"~~ means the defined contribution program ~~Public Employee~~
 2738 ~~Optional Retirement Program~~ established under this part.

2739 (i)~~(d)~~ "Florida Retirement System Pension Plan" or
 2740 "pension plan" means the defined benefit program of the Florida
 2741 Retirement System administered under part I of this chapter.

2742 ~~"Defined benefit program" means the defined benefit program of~~
 2743 ~~the Florida Retirement System administered under part I of this~~
 2744 ~~chapter.~~

2745 (j) "Participant," "member," or "employee" means an
 2746 eligible employee who enrolls in the investment plan ~~optional~~
 2747 ~~program~~ as provided in subsection (4), ~~or~~ a terminated Deferred
 2748 Retirement Option Program member ~~participant~~ as described in
 2749 subsection (21), or a beneficiary or alternate payee.

2750 (k) "Participant contributions," "member contributions,"
 2751 or "employee contributions" mean the sum of all amounts deducted
 2752 from the salary of a member by his or her employer in accordance
 2753 with s. 121.71(2) and credited to his or her individual account
 2754 in the investment plan, plus any earnings on such amounts and
 2755 any contributions specified in paragraph (5)(e).

2756 (l)~~(k)~~ "Retiree" means a former member ~~participant~~ of the
 2757 investment plan ~~optional retirement program~~ who has terminated
 2758 employment and ~~has~~ taken any ~~a~~ distribution of vested employee
 2759 or employer contributions as provided in s. 121.591, except for
 2760 a mandatory distribution of a de minimis account authorized by
 2761 the state board or a minimum required distribution provided by
 2762 s. 401(a)(9) of the Internal Revenue Code.

2763 (m)~~(l)~~ "Vested" or "vesting" means the guarantee that a
 2764 member ~~participant~~ is eligible to receive a retirement benefit
 2765 upon completion of the required years of service under the
 2766 investment plan ~~optional retirement program.~~

2767 (3) ELIGIBILITY; RETIREMENT SERVICE CREDIT; TRANSFER OF
 2768 BENEFITS.-

2769 ~~(a) Participation in the Public Employee Optional~~
 2770 ~~Retirement Program is limited to eligible employees.~~
 2771 ~~Participation in the optional retirement program is in lieu of~~
 2772 ~~participation in the defined benefit program of the Florida~~

HB 1405

2011

2773 ~~Retirement System.~~

2774 (a)~~(b)~~ An eligible employee who is employed in a regularly
 2775 established position by a state employer on June 1, 2002; by a
 2776 district school board employer on September 1, 2002; or by a
 2777 local employer on December 1, 2002, and who is a member of the
 2778 pension plan defined benefit retirement program of the Florida
 2779 ~~Retirement System~~ at the time of his or her election to
 2780 participate in the investment plan ~~Public Employee Optional~~
 2781 ~~Retirement Program~~ shall retain all retirement service credit
 2782 earned under the pension plan defined benefit retirement program
 2783 ~~of the Florida Retirement System~~ as credited under the system
 2784 and is ~~shall be~~ entitled to a deferred benefit upon termination,
 2785 ~~if eligible under the system.~~ However, election to participate
 2786 in the investment plan ~~Public Employee Optional Retirement~~
 2787 ~~Program~~ terminates the active membership of the employee in the
 2788 pension plan defined benefit program of the Florida Retirement
 2789 ~~System,~~ and the service of a member participant in the
 2790 investment plan is ~~Public Employee Optional Retirement Program~~
 2791 ~~shall not be~~ creditable under the pension plan defined benefit
 2792 ~~retirement program of the Florida Retirement System~~ for purposes
 2793 of benefit accrual but is creditable ~~shall be credited~~ for
 2794 purposes of vesting.

2795 (b)(e)1. Notwithstanding paragraph (a), an ~~(b),~~ each
 2796 eligible employee who elects to participate in the investment
 2797 plan ~~Public Employee Optional Retirement Program~~ and establishes
 2798 one or more individual member participant accounts ~~under the~~
 2799 ~~optional program~~ may elect to transfer to the investment plan
 2800 ~~optional program~~ a sum representing the present value of the

2801 | employee's accumulated benefit obligation under the pension plan
 2802 | ~~defined benefit retirement program of the Florida Retirement~~
 2803 | ~~System~~. Upon ~~such~~ transfer, all service credit ~~previously~~ earned
 2804 | under the pension plan is ~~defined benefit program of the Florida~~
 2805 | ~~Retirement System~~ shall be nullified for purposes of entitlement
 2806 | to a future benefit under the pension plan ~~defined benefit~~
 2807 | ~~program of the Florida Retirement System~~. A member may not
 2808 | transfer ~~participant is precluded from transferring~~ the
 2809 | accumulated benefit obligation balance from the pension plan
 2810 | after the time ~~defined benefit program upon the expiration of~~
 2811 | ~~the period for enrolling afforded to enroll~~ in the investment
 2812 | plan has expired ~~optional program~~.

2813 | 1.2- For purposes of this subsection, the present value of
 2814 | the member's accumulated benefit obligation is based upon the
 2815 | member's estimated creditable service and estimated average
 2816 | final compensation under the pension plan ~~defined benefit~~
 2817 | ~~program~~, subject to recomputation under subparagraph 2. 3- For
 2818 | state employees ~~enrolling under subparagraph (4)(a)1.~~, initial
 2819 | estimates shall ~~will~~ be based upon creditable service and
 2820 | average final compensation as of midnight on June 30, 2002; for
 2821 | district school board employees ~~enrolling under subparagraph~~
 2822 | ~~(4)(b)1.~~, initial estimates shall ~~will~~ be based upon creditable
 2823 | service and average final compensation as of midnight on
 2824 | September 30, 2002; and for local government employees ~~enrolling~~
 2825 | ~~under subparagraph (4)(c)1.~~, initial estimates shall ~~will~~ be
 2826 | based upon creditable service and average final compensation as
 2827 | of midnight on December 31, 2002. The dates ~~respectively~~
 2828 | specified ~~are above shall be construed as~~ the "estimate date"

2829 for these employees. The actuarial present value of the
 2830 employee's accumulated benefit obligation shall be based on the
 2831 following:

2832 a. The discount rate and other relevant actuarial
 2833 assumptions used to value the Florida Retirement System Trust
 2834 Fund at the time the amount to be transferred is determined,
 2835 consistent with the factors provided in sub-subparagraphs b. and
 2836 c.

2837 b. A benefit commencement age, based on the member's
 2838 estimated creditable service as of the estimate date. The
 2839 benefit commencement age is ~~shall be~~ the younger of the
 2840 following, but may ~~shall~~ not be younger than the member's age as
 2841 of the estimate date:

2842 (I) Age 62; or

2843 (II) The age the member would attain if the member
 2844 completed 30 years of service with an employer, assuming the
 2845 member worked continuously from the estimate date, and
 2846 disregarding any vesting requirement that would otherwise apply
 2847 under the pension plan ~~defined benefit program of the Florida~~
 2848 ~~Retirement System.~~

2849 c. For members of the Special Risk Class, and for members
 2850 of the Special Risk Administrative Support Class entitled to
 2851 retain the special risk normal retirement date, the benefit
 2852 commencement age is ~~shall be~~ the younger of the following, but
 2853 may ~~shall~~ not be younger than the member's age as of the
 2854 estimate date:

2855 (I) Age 55; or

2856 (II) The age the member would attain if the member

2857 completed 25 years of service with an employer, assuming the
 2858 member worked continuously from the estimate date, and
 2859 disregarding any vesting requirement that would otherwise apply
 2860 under the pension plan ~~defined benefit program of the Florida~~
 2861 ~~Retirement System.~~

2862 d. The calculation must ~~shall~~ disregard vesting
 2863 requirements and early retirement reduction factors that would
 2864 otherwise apply under the pension plan ~~defined benefit~~
 2865 ~~retirement program.~~

2866 ~~2.3.~~ For each member participant who elects to transfer
 2867 moneys from the pension plan ~~defined benefit program~~ to his or
 2868 her account in the investment plan ~~optional program~~, the
 2869 division shall recompute the amount transferred under
 2870 subparagraph 1. ~~within 2.~~ ~~not later than~~ 60 days after the
 2871 actual transfer of funds based upon the member's ~~participant's~~
 2872 actual creditable service and actual final average compensation
 2873 as of the initial date of participation in the investment plan
 2874 ~~optional program~~. If the recomputed amount differs from the
 2875 amount transferred ~~under subparagraph 2.~~ by \$10 or more, the
 2876 division shall:

2877 a. Transfer, or cause to be transferred, from the Florida
 2878 Retirement System Trust Fund to the member's ~~participant's~~
 2879 ~~account in the optional program~~ the excess, if any, of the
 2880 recomputed amount over the previously transferred amount
 2881 together with interest from the initial date of transfer to the
 2882 date of transfer under this subparagraph, based upon the
 2883 effective annual interest equal to the assumed return on the
 2884 actuarial investment which was used in the most recent actuarial

2885 valuation of the system, compounded annually.

2886 b. Transfer, or cause to be transferred, from the member's
 2887 ~~participant's~~ account to the Florida Retirement System Trust
 2888 Fund the excess, if any, of the previously transferred amount
 2889 over the recomputed amount, together with interest from the
 2890 initial date of transfer to the date of transfer under this
 2891 subparagraph, based upon 6 percent effective annual interest,
 2892 compounded annually, pro rata based on the member's
 2893 ~~participant's~~ allocation plan.

2894 3. If contribution adjustments are made as a result of
 2895 employer errors or corrections, including plan corrections,
 2896 following recomputation of the amount transferred under
 2897 subparagraph 1., the member is entitled to the additional
 2898 contributions or is responsible for returning any excess
 2899 contributions resulting from the correction. However, any return
 2900 of such erroneous excess pretax contribution by the plan must be
 2901 made within the period allowed by the Internal Revenue Service.
 2902 The present value of the member's accumulated benefit obligation
 2903 shall not be recalculated.

2904 4. As directed by the member participant, the state board
 2905 shall transfer or cause to be transferred the appropriate
 2906 amounts to the designated accounts within. ~~The board shall~~
 2907 ~~establish transfer procedures by rule, but the actual transfer~~
 2908 ~~shall not be later than~~ 30 days after the effective date of the
 2909 member's participation in the investment plan ~~optional program~~
 2910 unless the major financial markets for securities available for
 2911 a transfer are seriously disrupted by an unforeseen event that
 2912 ~~which also~~ causes the suspension of trading on any national

2913 securities exchange in the country where the securities were
 2914 issued. In that event, the ~~such~~ 30-day period ~~of time~~ may be
 2915 extended by a resolution of the state board ~~trustees~~. Transfers
 2916 are not commissionable or subject to other fees and may be in
 2917 the form of securities or cash, as determined by the state
 2918 board. Such securities are ~~shall be~~ valued as of the date of
 2919 receipt in the member's ~~participant's~~ account.

2920 5. If the state board or the division receives
 2921 notification from the United States Internal Revenue Service
 2922 that this paragraph or any portion of this paragraph will cause
 2923 the retirement system, or a portion thereof, to be disqualified
 2924 for tax purposes under the Internal Revenue Code, ~~then~~ the
 2925 portion that will cause the disqualification does not apply.
 2926 Upon such notice, the state board and the division shall notify
 2927 the presiding officers of the Legislature.

2928 (4) PARTICIPATION; ENROLLMENT.—

2929 (a)1. With respect to an eligible employee who is employed
 2930 in a regularly established position on June 1, 2002, by a state
 2931 employer:

2932 a. Any such employee may elect to participate in the
 2933 investment plan ~~Public Employee Optional Retirement Program~~ in
 2934 lieu of retaining his or her membership in the pension plan
 2935 ~~defined benefit program of the Florida Retirement System~~. The
 2936 election must be made in writing or by electronic means and must
 2937 be filed with the third-party administrator by August 31, 2002,
 2938 or, in the case of an active employee who is on a leave of
 2939 absence on April 1, 2002, by the last business day of the 5th
 2940 month following the month the leave of absence concludes. This

2941 election is irrevocable, except as provided in paragraph (g)
 2942 ~~(e)~~. Upon making such election, the employee shall be enrolled
 2943 as a member participant of the investment plan ~~Public Employee~~
 2944 ~~Optional Retirement Program~~, the employee's membership in the
 2945 Florida Retirement System shall be governed by the provisions of
 2946 this part, and the employee's membership in the pension plan
 2947 ~~defined benefit program of the Florida Retirement System~~ shall
 2948 terminate. The employee's enrollment in the investment plan
 2949 ~~Public Employee Optional Retirement Program~~ shall be effective
 2950 the first day of the month for which a full month's employer
 2951 contribution is made to the investment plan ~~optional program~~.

2952 b. Any such employee who fails to elect to participate in
 2953 the investment plan ~~Public Employee Optional Retirement Program~~
 2954 within the prescribed time period is deemed to have elected to
 2955 retain membership in the pension plan ~~defined benefit program of~~
 2956 ~~the Florida Retirement System~~, and the employee's option to
 2957 elect to participate in the investment plan ~~optional program~~ is
 2958 forfeited.

2959 2. With respect to employees who become eligible to
 2960 participate in the investment plan ~~Public Employee Optional~~
 2961 ~~Retirement Program~~ by reason of employment in a regularly
 2962 established position with a state employer commencing after
 2963 April 1, 2002:

2964 a. Any such employee shall, by default, be enrolled in the
 2965 pension plan ~~defined benefit retirement program of the Florida~~
 2966 ~~Retirement System~~ at the commencement of employment, and may, by
 2967 the last business day of the 5th month following the employee's
 2968 month of hire, elect to participate in the investment plan

2969 ~~Public Employee Optional Retirement Program.~~ The employee's
 2970 election must be made in writing or by electronic means and must
 2971 be filed with the third-party administrator. The election to
 2972 participate in the investment plan ~~optional program~~ is
 2973 irrevocable, except as provided in paragraph (g) ~~(e)~~.

2974 b. If the employee files such election within the
 2975 prescribed time period, enrollment in the investment plan ~~is~~
 2976 ~~optional program shall be~~ effective on the first day of
 2977 employment. The ~~employer~~ retirement contributions paid through
 2978 the month of the employee plan change shall be transferred to
 2979 the investment ~~optional~~ program, and, effective the first day of
 2980 the next month, the employer and participant must ~~shall~~ pay the
 2981 applicable contributions based on the employee membership class
 2982 in the ~~optional~~ program.

2983 c. An ~~Any such~~ employee who fails to elect to participate
 2984 in the investment plan ~~Public Employee Optional Retirement~~
 2985 ~~Program~~ within the prescribed time period is deemed to have
 2986 elected to retain membership in the pension plan ~~defined benefit~~
 2987 ~~program of the Florida Retirement System,~~ and the employee's
 2988 option to elect to participate in the investment plan ~~optional~~
 2989 ~~program~~ is forfeited.

2990 3. With respect to employees who become eligible to
 2991 participate in the investment plan ~~Public Employee Optional~~
 2992 ~~Retirement Program~~ pursuant to s. 121.051(2)(c)3. or s.
 2993 121.35(3)(i), the any such employee may elect to participate in
 2994 the investment plan ~~Public Employee Optional Retirement Program~~
 2995 in lieu of retaining his or her membership ~~participation~~ in the
 2996 State Community College System Optional Retirement Program or

2997 the State University System Optional Retirement Program. The
 2998 election must be made in writing or by electronic means and must
 2999 be filed with the third-party administrator. This election is
 3000 irrevocable, except as provided in paragraph (g) ~~(e)~~. Upon
 3001 making such election, the employee shall be enrolled as a member
 3002 ~~in participant of the investment plan Public Employee Optional~~
 3003 ~~Retirement Program~~, the employee's membership in the Florida
 3004 Retirement System shall be governed by the provisions of this
 3005 part, and the employee's participation in the State Community
 3006 College System Optional Retirement Program or the State
 3007 University System Optional Retirement Program shall terminate.
 3008 The employee's enrollment in the investment plan is Public
 3009 ~~Employee Optional Retirement Program shall be effective on the~~
 3010 first day of the month for which a full month's employer and
 3011 employee contribution is made to the investment plan optional
 3012 program.

3013 4. For purposes of this paragraph, "state employer" means
 3014 any agency, board, branch, commission, community college,
 3015 department, institution, institution of higher education, or
 3016 water management district of the state, which participates in
 3017 the Florida Retirement System for the benefit of certain
 3018 employees.

3019 (b)1. With respect to an eligible employee who is employed
 3020 in a regularly established position on September 1, 2002, by a
 3021 district school board employer:

3022 a. Any such employee may elect to participate in the
 3023 investment plan ~~Public Employee Optional Retirement Program~~ in
 3024 lieu of retaining his or her membership in the pension plan

3025 ~~defined benefit program of the Florida Retirement System.~~ The
 3026 election must be made in writing or by electronic means and must
 3027 be filed with the third-party administrator by November 30, or,
 3028 in the case of an active employee who is on a leave of absence
 3029 on July 1, 2002, by the last business day of the 5th month
 3030 following the month the leave of absence concludes. This
 3031 election is irrevocable, except as provided in paragraph (g)
 3032 ~~(e)~~. Upon making such election, the employee shall be enrolled
 3033 as a member participant of the investment plan ~~Public Employee~~
 3034 ~~Optional Retirement Program~~, the employee's membership in the
 3035 Florida Retirement System shall be governed by the provisions of
 3036 this part, and the employee's membership in the pension plan
 3037 ~~defined benefit program of the Florida Retirement System~~ shall
 3038 terminate. The employee's enrollment in the investment plan
 3039 ~~Public Employee Optional Retirement Program~~ shall be effective
 3040 the first day of the month for which a full month's employer
 3041 contribution is made to the investment ~~optional~~ program.

3042 b. Any such employee who fails to elect to participate in
 3043 the investment plan ~~Public Employee Optional Retirement Program~~
 3044 within the prescribed time period is deemed to have elected to
 3045 retain membership in the pension plan ~~defined benefit program of~~
 3046 ~~the Florida Retirement System~~, and the employee's option to
 3047 elect to participate in the investment plan ~~optional program~~ is
 3048 forfeited.

3049 2. With respect to employees who become eligible to
 3050 participate in the investment plan ~~Public Employee Optional~~
 3051 ~~Retirement Program~~ by reason of employment in a regularly
 3052 established position with a district school board employer

3053 commencing after July 1, 2002:

3054 a. Any such employee shall, by default, be enrolled in the
 3055 pension plan ~~defined benefit retirement program of the Florida~~
 3056 ~~Retirement System~~ at the commencement of employment, and may, by
 3057 the last business day of the 5th month following the employee's
 3058 month of hire, elect to participate in the investment plan
 3059 ~~Public Employee Optional Retirement Program~~. The employee's
 3060 election must be made in writing or by electronic means and must
 3061 be filed with the third-party administrator. The election to
 3062 participate in the investment plan ~~optional program~~ is
 3063 irrevocable, except as provided in paragraph (g) ~~(e)~~.

3064 b. If the employee files such election within the
 3065 prescribed time period, enrollment in the investment plan
 3066 ~~optional program~~ shall be effective on the first day of
 3067 employment. The employer retirement contributions paid through
 3068 the month of the employee plan change shall be transferred to
 3069 the investment plan ~~optional program~~, and, effective the first
 3070 day of the next month, the employer shall pay the applicable
 3071 contributions based on the employee membership class in the
 3072 investment plan ~~optional program~~.

3073 c. Any such employee who fails to elect to participate in
 3074 the investment plan ~~Public Employee Optional Retirement Program~~
 3075 within the prescribed time period is deemed to have elected to
 3076 retain membership in the pension plan ~~defined benefit program of~~
 3077 ~~the Florida Retirement System~~, and the employee's option to
 3078 elect to participate in the investment plan ~~optional program~~ is
 3079 forfeited.

3080 3. For purposes of this paragraph, "district school board

3081 employer" means any district school board that participates in
 3082 the Florida Retirement System for the benefit of certain
 3083 employees, or a charter school or charter technical career
 3084 center that participates in the Florida Retirement System as
 3085 provided in s. 121.051(2)(d).

3086 (c)1. With respect to an eligible employee who is employed
 3087 in a regularly established position on December 1, 2002, by a
 3088 local employer:

3089 a. Any such employee may elect to participate in the
 3090 investment plan ~~Public Employee Optional Retirement Program~~ in
 3091 lieu of retaining his or her membership in the pension plan
 3092 ~~defined benefit program of the Florida Retirement System~~. The
 3093 election must be made in writing or by electronic means and must
 3094 be filed with the third-party administrator by February 28,
 3095 2003, or, in the case of an active employee who is on a leave of
 3096 absence on October 1, 2002, by the last business day of the 5th
 3097 month following the month the leave of absence concludes. This
 3098 election is irrevocable, except as provided in paragraph (g)
 3099 ~~(e)~~. Upon making such election, the employee shall be enrolled
 3100 as a participant of the investment plan ~~Public Employee Optional~~
 3101 ~~Retirement Program~~, the employee's membership in the Florida
 3102 Retirement System shall be governed by the provisions of this
 3103 part, and the employee's membership in the pension plan ~~defined~~
 3104 ~~benefit program of the Florida Retirement System~~ shall
 3105 terminate. The employee's enrollment in the investment plan
 3106 ~~Public Employee Optional Retirement Program~~ shall be effective
 3107 the first day of the month for which a full month's employer
 3108 contribution is made to the investment plan ~~optional program~~.

3109 b. Any such employee who fails to elect to participate in
 3110 the investment plan ~~Public Employee Optional Retirement Program~~
 3111 within the prescribed time period is deemed to have elected to
 3112 retain membership in the pension plan ~~defined benefit program of~~
 3113 ~~the Florida Retirement System~~, and the employee's option to
 3114 elect to participate in the investment plan ~~optional program~~ is
 3115 forfeited.

3116 2. With respect to employees who become eligible to
 3117 participate in the investment plan ~~Public Employee Optional~~
 3118 ~~Retirement Program~~ by reason of employment in a regularly
 3119 established position with a local employer commencing after
 3120 October 1, 2002:

3121 a. Any such employee shall, by default, be enrolled in the
 3122 pension plan ~~defined benefit retirement program of the Florida~~
 3123 ~~Retirement System~~ at the commencement of employment, and may, by
 3124 the last business day of the 5th month following the employee's
 3125 month of hire, elect to participate in the investment plan
 3126 ~~Public Employee Optional Retirement Program~~. The employee's
 3127 election must be made in writing or by electronic means and must
 3128 be filed with the third-party administrator. The election to
 3129 participate in the investment plan ~~optional program~~ is
 3130 irrevocable, except as provided in paragraph (g) ~~(e)~~.

3131 b. If the employee files such election within the
 3132 prescribed time period, enrollment in the investment plan
 3133 ~~optional program~~ shall be effective on the first day of
 3134 employment. The employer retirement contributions paid through
 3135 the month of the employee plan change shall be transferred to
 3136 the investment plan ~~optional program~~, and, effective the first

3137 | day of the next month, the employer shall pay the applicable
 3138 | contributions based on the employee membership class in the
 3139 | investment plan ~~optional program~~.

3140 | c. Any such employee who fails to elect to participate in
 3141 | the investment plan ~~Public Employee Optional Retirement Program~~
 3142 | within the prescribed time period is deemed to have elected to
 3143 | retain membership in the pension plan ~~defined benefit program of~~
 3144 | ~~the Florida Retirement System~~, and the employee's option to
 3145 | elect to participate in the investment plan ~~optional program~~ is
 3146 | forfeited.

3147 | 3. For purposes of this paragraph, "local employer" means
 3148 | any employer not included in paragraph (a) or paragraph (b).

3149 | (d) Contributions available for self-direction by a member
 3150 | ~~participant~~ who has not selected one or more specific investment
 3151 | products shall be allocated as prescribed by the state board.
 3152 | The third-party administrator shall notify the member ~~any such~~
 3153 | ~~participant~~ at least quarterly that the member ~~participant~~
 3154 | should take an affirmative action to make an asset allocation
 3155 | among the investment ~~optional program~~ products.

3156 | (e) On or after July 1, 2011, a member of the pension plan
 3157 | who obtains a refund of employee contributions retains his or
 3158 | her prior plan choice upon return to employment in a regularly
 3159 | established position with a participating employer.

3160 | (f) A member of the investment plan who takes a
 3161 | distribution of any contributions from his or her investment
 3162 | plan account is considered a retiree. Upon reemployment in a
 3163 | regularly established position with a participating employer,
 3164 | the member returns as a new hire. A retiree who is initially

3165 reemployed on or after July 1, 2010, is not eligible for renewed
 3166 membership.

3167 (g)~~(e)~~ After the period during which an eligible employee
 3168 had the choice to elect the pension plan ~~defined benefit program~~
 3169 or the investment plan ~~optional retirement program~~, or the month
 3170 following the receipt of the eligible employee's plan election,
 3171 if sooner, the employee shall have one opportunity, at the
 3172 employee's discretion, to choose to move from the pension plan
 3173 ~~defined benefit program~~ to the investment plan ~~optional~~
 3174 ~~retirement program~~ or from the investment plan ~~optional~~
 3175 ~~retirement program~~ to the pension plan ~~defined benefit program~~.
 3176 Eligible employees may elect to move between Florida Retirement
 3177 System programs only if they are earning service credit in an
 3178 employer-employee relationship consistent with s.

3179 121.021(17) (b), excluding leaves of absence without pay.
 3180 Effective July 1, 2005, such elections are effective on the
 3181 first day of the month following the receipt of the election by
 3182 the third-party administrator and are not subject to the
 3183 requirements regarding an employer-employee relationship or
 3184 receipt of contributions for the eligible employee in the
 3185 effective month, except when the election is received by the
 3186 third-party administrator. This paragraph is contingent upon
 3187 approval by ~~from~~ the Internal Revenue Service ~~for including the~~
 3188 ~~choice described herein within the programs offered by the~~
 3189 ~~Florida Retirement System.~~

3190 1. If the employee chooses to move to the investment plan
 3191 ~~optional retirement program~~, the applicable provisions of
 3192 subsection (3) ~~this section~~ shall govern the transfer.

3193 2. If the employee chooses to move to the pension plan
 3194 ~~defined benefit program~~, the employee must transfer from his or
 3195 her investment plan ~~optional retirement program~~ account, and
 3196 from other employee moneys as necessary, a sum representing the
 3197 present value of that employee's accumulated benefit obligation
 3198 immediately following the time of such movement, determined
 3199 assuming that attained service equals the sum of service in the
 3200 pension plan ~~defined benefit program~~ and service in the
 3201 investment plan ~~optional retirement program~~. Benefit
 3202 commencement occurs on the first date the employee is eligible
 3203 for unreduced benefits, using the discount rate and other
 3204 relevant actuarial assumptions that were used to value the
 3205 pension ~~defined benefit~~ plan liabilities in the most recent
 3206 actuarial valuation. For any employee who, at the time of the
 3207 second election, already maintains an accrued benefit amount in
 3208 the pension plan ~~defined benefit program~~, the then-present value
 3209 of the accrued benefit shall be deemed part of the required
 3210 transfer amount. The division shall ensure that the transfer sum
 3211 is prepared using a formula and methodology certified by an
 3212 enrolled actuary. A refund of any employee contributions or
 3213 additional member payments made which exceed the employee
 3214 contributions that would have accrued had the member remained in
 3215 the pension plan and not transferred to the investment plan is
 3216 not permitted.

3217 3. Notwithstanding subparagraph 2., an employee who
 3218 chooses to move to the pension plan ~~defined benefit program~~ and
 3219 who became eligible to participate in the investment plan
 3220 ~~optional retirement program~~ by reason of employment in a

3221 regularly established position with a state employer after June
 3222 1, 2002; a district school board employer after September 1,
 3223 2002; or a local employer after December 1, 2002, must transfer
 3224 from his or her investment plan ~~optional retirement program~~
 3225 account, and from other employee moneys as necessary, a sum
 3226 representing the employee's actuarial accrued liability. A
 3227 refund of any employee contributions or additional participant
 3228 payments made which exceed the employee contributions that would
 3229 have accrued had the member remained in the pension plan and not
 3230 transferred to the investment plan is not permitted.

3231 4. An employee's ability to transfer from the pension plan
 3232 ~~defined benefit program~~ to the investment plan ~~optional~~
 3233 ~~retirement program~~ pursuant to paragraphs (a)-(d), and the
 3234 ability of a current employee to have an option to later
 3235 transfer back into the pension plan ~~defined benefit program~~
 3236 under subparagraph 2., shall be deemed a significant system
 3237 amendment. Pursuant to s. 121.031(4), any resulting unfunded
 3238 liability arising from actual original transfers from the
 3239 pension plan ~~defined benefit program~~ to the investment plan
 3240 ~~optional program~~ must be amortized within 30 plan years as a
 3241 separate unfunded actuarial base independent of the reserve
 3242 stabilization mechanism defined in s. 121.031(3)(f). For the
 3243 first 25 years, a direct amortization payment may not be
 3244 calculated for this base. During this 25-year period, the
 3245 separate base shall be used to offset the impact of employees
 3246 exercising their second program election under this paragraph.
 3247 ~~It is the intent of the Legislature that~~ The actuarial funded
 3248 status of the pension plan will ~~defined benefit program~~ not be

3249 affected by such second program elections in any significant
 3250 manner, after due recognition of the separate unfunded actuarial
 3251 base. Following the initial 25-year period, any remaining
 3252 balance of the original separate base shall be amortized over
 3253 the remaining 5 years of the required 30-year amortization
 3254 period.

3255 5. If the employee chooses to transfer from the investment
 3256 plan ~~optional retirement program~~ to the pension plan ~~defined~~
 3257 ~~benefit program~~ and retains an excess account balance in the
 3258 investment plan ~~optional program~~ after satisfying the buy-in
 3259 requirements under this paragraph, the excess may not be
 3260 distributed until the member retires from the pension plan
 3261 ~~defined benefit program~~. The excess account balance may be
 3262 rolled over to the pension plan ~~defined benefit program~~ and used
 3263 to purchase service credit or upgrade creditable service in the
 3264 pension plan ~~that program~~.

3265 (5) CONTRIBUTIONS.—

3266 (a) The employee and ~~Each~~ employer shall make the required
 3267 contributions to contribute on behalf of each participant in the
 3268 investment plan based on a percentage of the employee's gross
 3269 monthly compensation ~~Public Employee Optional Retirement~~
 3270 ~~Program~~, as provided in part III of this chapter.

3271 (b) Employee contributions shall be paid as provided in s.
 3272 121.72(2).

3273 (c) The state board, acting as plan fiduciary, shall
 3274 ensure that all plan assets are held in a trust, pursuant to s.
 3275 401 of the Internal Revenue Code. The fiduciary shall ensure
 3276 that such ~~said~~ contributions are allocated as follows:

3277 1. The employer and employee contribution portion
 3278 earmarked for member ~~participant~~ accounts shall be used to
 3279 purchase interests in the appropriate investment vehicles ~~for~~
 3280 ~~the accounts of each participant~~ as specified by the member
 3281 ~~participant~~, or in accordance with paragraph (4) (d).

3282 2. The employer contribution portion earmarked for
 3283 administrative and educational expenses shall be transferred to
 3284 the Florida Retirement System Investment Plan Trust Fund ~~board~~.

3285 3. The employer contribution portion earmarked for
 3286 disability benefits shall be transferred to the Florida
 3287 Retirement System Trust Fund ~~department~~.

3288 ~~(d)(b)~~ The third-party administrator is ~~Employers are~~
 3289 responsible for monitoring and notifying employers of the
 3290 ~~participants regarding~~ maximum contribution levels allowed for
 3291 members ~~permitted~~ under the Internal Revenue Code. If a member
 3292 ~~participant~~ contributes to any other tax-deferred plan, the
 3293 member ~~he or she~~ is responsible for ensuring that total
 3294 contributions made to the investment plan ~~optional program~~ and
 3295 to any other such plan do not exceed federally permitted
 3296 maximums.

3297 ~~(e)(c)~~ The investment plan ~~Public Employee Optional~~
 3298 ~~Retirement Program~~ may accept for deposit into member
 3299 ~~participant~~ accounts contributions in the form of rollovers or
 3300 direct trustee-to-trustee transfers by or on behalf of members
 3301 ~~participants~~, reasonably determined by the state board to be
 3302 eligible for rollover or transfer to the investment plan
 3303 ~~optional retirement program~~ pursuant to the Internal Revenue
 3304 Code, if such contributions are made in accordance with rules ~~as~~

3305 ~~may be~~ adopted by the board. Such contributions must ~~shall~~ be
 3306 accounted for in accordance with ~~any~~ applicable Internal Revenue
 3307 Code requirements and rules of the state board.

3308 (6) VESTING REQUIREMENTS.—

3309 (a) A member is fully and immediately vested in all
 3310 employee contributions paid to the investment plan as provided
 3311 in s. 121.72(2), plus interest and earnings thereon and less
 3312 investment fees and administrative charges.

3313 (b) ~~(a)~~1. With respect to employer contributions paid on
 3314 behalf of the member participant to the investment plan ~~optional~~
 3315 ~~retirement program~~, plus interest and earnings thereon and less
 3316 investment fees and administrative charges, a member participant
 3317 is vested after completing 1 work year with an employer,
 3318 including any service while the member participant was a member
 3319 of the pension plan ~~defined benefit program~~ or an optional
 3320 retirement program authorized under s. 121.051(2)(c) or s.
 3321 121.055(6).

3322 2. If the member participant terminates employment before
 3323 satisfying the vesting requirements, the nonvested accumulation
 3324 must be transferred from the member's participant's accounts to
 3325 the state board for deposit and investment by the state board in
 3326 its the suspense account created within the Florida Retirement
 3327 System Investment Plan ~~Public Employee Optional Retirement~~
 3328 ~~Program~~ Trust Fund. If the terminated member participant is
 3329 reemployed as an eligible employee within 5 years, the state
 3330 board shall transfer to the member's participant's account any
 3331 amount previously transferred from the member's participant's
 3332 accounts to the suspense account, plus actual earnings on such

3333 amount while in the suspense account.

3334 (c)~~(b)~~1. With respect to amounts contributed by an
 3335 employer and transferred from the pension plan ~~defined benefit~~
 3336 ~~program~~ to the investment plan ~~program~~, plus interest and
 3337 earnings, and less investment fees and administrative charges, a
 3338 member participant shall be vested in the amount transferred
 3339 upon meeting the service requirements for the member's
 3340 ~~participant's~~ membership class as set forth in s. 121.021(29).
 3341 The third-party administrator shall account for such amounts for
 3342 each member participant. The division shall notify the member
 3343 ~~participant~~ and the third-party administrator when the member
 3344 ~~participant~~ has satisfied the vesting period for Florida
 3345 Retirement System purposes.

3346 2. If the member participant terminates employment before
 3347 satisfying the vesting requirements, the nonvested accumulation
 3348 must be transferred from the member's ~~participant's~~ accounts to
 3349 the state board for deposit and investment by the state board in
 3350 the suspense account created within the Florida Retirement
 3351 System Investment Plan ~~Public Employee Optional Retirement~~
 3352 ~~Program~~ Trust Fund. If the terminated member participant is
 3353 reemployed as an eligible employee within 5 years, the state
 3354 board shall transfer to the member's accounts ~~participant's~~
 3355 ~~account~~ any amount previously transferred from the member's
 3356 ~~participant's~~ accounts to the suspense account, plus the actual
 3357 earnings on such amount while in the suspense account.

3358 (d)~~(e)~~ Any nonvested accumulations transferred from a
 3359 member's ~~participant's~~ account to the state board's suspense
 3360 account shall be forfeited, including accompanying service

3361 credit, by the member participant if the member participant is
 3362 not reemployed as an eligible employee within 5 years after
 3363 termination.

3364 (e) If the member elects to receive any of his or her
 3365 vested employee or employer contributions upon termination of
 3366 employment as provided in s. 121.021(39)(a), except for a
 3367 mandatory distribution of a de minimis account authorized by the
 3368 state board or a minimum required distribution provided by s.
 3369 401(a)(9) of the Internal Revenue Code, the member shall forfeit
 3370 all nonvested employer contributions, and accompanying service
 3371 credit, paid on behalf of the member to the investment plan.

3372 (7) BENEFITS.—Under the investment plan, benefits must
 3373 ~~Public Employee Optional Retirement Program:~~

3374 (a) ~~Benefits shall~~ Be provided in accordance with s.
 3375 401(a) of the Internal Revenue Code.

3376 (b) ~~Benefits shall~~ Accrue in individual accounts that are
 3377 member-directed participant-directed, portable, and funded by
 3378 employer and employee contributions and earnings thereon.

3379 (c) ~~Benefits shall~~ Be payable in accordance with ~~the~~
 3380 ~~provisions of~~ s. 121.591.

3381 (8) INVESTMENT PLAN ADMINISTRATION OF PROGRAM.—

3382 ~~(a)~~ The investment plan optional retirement program shall
 3383 be administered by the state board and affected employers. The
 3384 state board may require oaths, by affidavit or otherwise, and
 3385 acknowledgments from persons in connection with the
 3386 administration of its statutory duties and responsibilities for
 3387 the investment plan this program. An oath, by affidavit or
 3388 otherwise, may not be required of a member an employee

3389 ~~participant~~ at the time of enrollment. Acknowledgment of an
 3390 employee's election to participate in the program shall be no
 3391 greater than necessary to confirm the employee's election. The
 3392 state board shall adopt rules to carry out its statutory duties
 3393 with respect to administering the investment plan ~~optional~~
 3394 ~~retirement program~~, including establishing the roles and
 3395 responsibilities of affected state, local government, and
 3396 education-related employers, the state board, the department,
 3397 and third-party contractors. The department shall adopt rules
 3398 necessary to administer the investment plan ~~optional program~~ in
 3399 coordination with the pension plan ~~defined benefit program~~ and
 3400 the disability benefits available under the investment plan
 3401 ~~optional program~~.

3402 (a) ~~(b)~~1. The state board shall select and contract with a
 3403 ~~one~~ third-party administrator to provide administrative services
 3404 if those services cannot be competitively and contractually
 3405 provided by the division ~~of Retirement within the Department of~~
 3406 ~~Management Services~~. With the approval of the state board, the
 3407 third-party administrator may subcontract ~~with other~~
 3408 ~~organizations or individuals~~ to provide components of the
 3409 administrative services. As a cost of administration, the state
 3410 board may compensate any such contractor for its services, in
 3411 accordance with the terms of the contract, as is deemed
 3412 necessary or proper by the board. The third-party administrator
 3413 may not be an approved provider or be affiliated with an
 3414 approved provider.

3415 2. These administrative services may include, but are not
 3416 limited to, enrollment of eligible employees, collection of

3417 employer and employee contributions, disbursement of ~~such~~
 3418 contributions to approved providers in accordance with the
 3419 allocation directions of members ~~participants~~; services relating
 3420 to consolidated billing; individual and collective recordkeeping
 3421 and accounting; asset purchase, control, and safekeeping; and
 3422 direct disbursement of funds to and from the third-party
 3423 administrator, the division, the state board, employers, members
 3424 ~~participants~~, approved providers, and beneficiaries. This
 3425 section does not prevent or prohibit a bundled provider from
 3426 providing any administrative or customer service, including
 3427 accounting and administration of individual member ~~participant~~
 3428 benefits and contributions; individual member ~~participant~~
 3429 recordkeeping; asset purchase, control, and safekeeping; direct
 3430 execution of the member's ~~participant's~~ instructions as to asset
 3431 and contribution allocation; calculation of daily net asset
 3432 values; direct access to member ~~participant~~ account information;
 3433 or periodic reporting to members ~~participants~~, at least
 3434 quarterly, on account balances and transactions, if these
 3435 services are authorized by the state board as part of the
 3436 contract.

3437 (b)1.3. The state board shall select and contract with one
 3438 or more organizations to provide educational services. With
 3439 approval of the state board, the organizations may subcontract
 3440 ~~with other organizations or individuals~~ to provide components of
 3441 the educational services. As a cost of administration, the state
 3442 board may compensate any such contractor for its services in
 3443 accordance with the terms of the contract, as is deemed
 3444 necessary or proper by the board. The education organization may

3445 not be an approved provider or be affiliated with an approved
 3446 provider.

3447 2.4. Educational services shall be designed by the state
 3448 board and department to assist employers, eligible employees,
 3449 members ~~participants~~, and beneficiaries in order to maintain
 3450 compliance with United States Department of Labor regulations
 3451 under s. 404(c) of the Employee Retirement Income Security Act
 3452 of 1974 and to assist employees in their choice of pension plan
 3453 ~~defined benefit~~ or investment plan ~~defined contribution~~
 3454 retirement alternatives. Educational services include, but are
 3455 not limited to, disseminating educational materials; providing
 3456 retirement planning education; explaining the pension
 3457 ~~differences between the defined benefit retirement plan and the~~
 3458 investment ~~defined contribution retirement~~ plan; and offering
 3459 financial planning guidance on matters such as investment
 3460 diversification, investment risks, investment costs, and asset
 3461 allocation. An approved provider may also provide educational
 3462 information, including retirement planning and investment
 3463 allocation information concerning its products and services.

3464 (c)1. In evaluating and selecting a third-party
 3465 administrator, the state board shall establish criteria for
 3466 evaluating ~~under which it shall consider~~ the relative
 3467 capabilities and qualifications of each proposed administrator.

3468 In developing such criteria, the state board shall consider:

3469 a. The administrator's demonstrated experience in
 3470 providing administrative services to public or private sector
 3471 retirement systems.

3472 b. The administrator's demonstrated experience in

3473 providing daily valued recordkeeping to defined contribution
 3474 programs ~~plans~~.

3475 c. The administrator's ability and willingness to
 3476 coordinate its activities with ~~the Florida Retirement System~~
 3477 employers, the state board, and the division, and to supply to
 3478 such employers, the board, and the division the information and
 3479 data they require, including, but not limited to, monthly
 3480 management reports, quarterly member ~~participant~~ reports, and ad
 3481 hoc reports requested by the department or state board.

3482 d. The cost-effectiveness and levels of the administrative
 3483 services provided.

3484 e. The administrator's ability to interact with the
 3485 members ~~participants~~, the employers, the state board, the
 3486 division, and the providers; the means by which members
 3487 ~~participants~~ may access account information, direct investment
 3488 of contributions, make changes to their accounts, transfer
 3489 moneys between available investment vehicles, and transfer
 3490 moneys between investment products; and any fees that apply to
 3491 such activities.

3492 f. Any other factor deemed necessary by the ~~Trustees of~~
 3493 ~~the state board of Administration~~.

3494 2. In evaluating and selecting an educational provider,
 3495 the state board shall establish criteria under which it shall
 3496 consider the relative capabilities and qualifications of each
 3497 proposed educational provider. In developing such criteria, the
 3498 state board shall consider:

3499 a. Demonstrated experience in providing educational
 3500 services to public or private sector retirement systems.

3501 b. Ability and willingness to coordinate its activities
 3502 with the ~~Florida Retirement System~~ employers, the state board,
 3503 and the division, and to supply to such employers, the board,
 3504 and the division the information and data they require,
 3505 including, but not limited to, reports on educational contacts.

3506 c. The cost-effectiveness and levels of the educational
 3507 services provided.

3508 d. Ability to provide educational services via different
 3509 media, including, but not limited to, the Internet, personal
 3510 contact, seminars, brochures, and newsletters.

3511 e. Any other factor deemed necessary by the ~~Trustees of~~
 3512 ~~the state board of Administration.~~

3513 3. The establishment of the criteria shall be solely
 3514 within the discretion of the state board.

3515 (d) The state board shall develop the form and content of
 3516 any contracts to be offered under the investment plan ~~Public~~
 3517 ~~Employee Optional Retirement Program.~~ In developing the ~~its~~
 3518 contracts, the board shall ~~must~~ consider:

3519 1. The nature and extent of the rights and benefits to be
 3520 afforded in relation to the ~~required~~ contributions required
 3521 under the plan ~~program~~.

3522 2. The suitability of the rights and benefits provided ~~to~~
 3523 ~~be afforded~~ and the interests of employers in the recruitment
 3524 and retention of eligible employees.

3525 (e)1. The state board may contract ~~with any consultant~~ for
 3526 professional services, including legal, consulting, accounting,
 3527 and actuarial services, deemed necessary to implement and
 3528 administer the investment plan ~~optional program by the Trustees~~

3529 ~~of the State Board of Administration.~~ The state board may enter
 3530 into a contract with one or more vendors to provide low-cost
 3531 investment advice to members ~~participants~~, supplemental to
 3532 education provided by the third-party administrator. All fees
 3533 under any such contract shall be paid by those members
 3534 ~~participants~~ who choose to use the services of the vendor.

3535 2. The department may contract ~~with consultants~~ for
 3536 professional services, including legal, consulting, accounting,
 3537 and actuarial services, deemed necessary to implement and
 3538 administer the investment plan ~~optional program~~ in coordination
 3539 with the pension plan ~~defined benefit program of the Florida~~
 3540 ~~Retirement System~~. The department, in coordination with the
 3541 state board, may enter into a contract with the third-party
 3542 administrator in order to coordinate services common to the
 3543 various programs within the Florida Retirement System.

3544 (f) The third-party administrator may ~~shall~~ not receive
 3545 direct or indirect compensation from an approved provider,
 3546 except as specifically provided for in the contract with the
 3547 state board.

3548 (g) The state board shall receive and resolve member
 3549 ~~participant~~ complaints against the program, the third-party
 3550 administrator, or any program vendor or provider; shall resolve
 3551 any conflict between the third-party administrator and an
 3552 approved provider if such conflict threatens the implementation
 3553 or administration of the program or the quality of services to
 3554 employees; and may resolve any other conflicts. The third-party
 3555 administrator shall retain all member ~~participant~~ records for at
 3556 least 5 years for use in resolving any member ~~participant~~

3557 conflicts. The state board, the third-party administrator, or a
 3558 provider is not required to produce documentation or an audio
 3559 recording to justify action taken with regard to a member
 3560 ~~participant~~ if the action occurred 5 or more years before the
 3561 complaint is submitted to the state board. It is presumed that
 3562 all action taken 5 or more years before the complaint is
 3563 submitted was taken at the request of the member ~~participant~~ and
 3564 with the member's ~~participant's~~ full knowledge and consent. To
 3565 overcome this presumption, the member ~~participant~~ must present
 3566 documentary evidence or an audio recording demonstrating
 3567 otherwise.

3568 (9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE REVIEW.—

3569 (a) The state board shall develop policy and procedures
 3570 for selecting, evaluating, and monitoring the performance of
 3571 approved providers and investment products ~~to which employees~~
 3572 ~~may direct retirement contributions~~ under the investment plan
 3573 ~~program~~. In accordance with such policy and procedures, the
 3574 state board shall designate and contract for a number of
 3575 investment products as determined by the board. The board shall
 3576 also select one or more bundled providers, each of which ~~whom~~
 3577 may offer multiple investment options and related services, if
 3578 ~~when~~ such ~~an~~ approach is determined by the board to provide
 3579 ~~afford~~ value to the members ~~participants~~ otherwise not available
 3580 through individual investment products. Each approved bundled
 3581 provider may offer investment options that provide members
 3582 ~~participants~~ with the opportunity to invest in each of the
 3583 following asset classes, to be composed of individual options
 3584 that represent ~~either~~ a single asset class or a combination

3585 | thereof: money markets, United States fixed income, United
 3586 | States equities, and foreign stock. The state board shall review
 3587 | and manage all educational materials, contract terms, fee
 3588 | schedules, and other aspects of the approved provider
 3589 | relationships to ensure that no provider is unduly favored or
 3590 | penalized by virtue of its status within the investment plan.

3591 | (b) The state board shall consider investment options or
 3592 | products it considers appropriate to give members ~~participants~~
 3593 | the opportunity to accumulate retirement benefits, subject to
 3594 | the following:

3595 | 1. The investment plan ~~Public Employee Optional Retirement~~
 3596 | ~~Program~~ must offer a diversified mix of low-cost investment
 3597 | products that span the risk-return spectrum and may include a
 3598 | guaranteed account as well as investment products, such as
 3599 | individually allocated guaranteed and variable annuities, which
 3600 | meet the requirements of this subsection and combine the ability
 3601 | to accumulate investment returns with the option of receiving
 3602 | lifetime income consistent with the long-term retirement
 3603 | security of a pension plan and similar to the lifetime-income
 3604 | benefit provided by the Florida Retirement System.

3605 | 2. Investment options or products offered by ~~the group of~~
 3606 | approved providers may include mutual funds, group annuity
 3607 | contracts, individual retirement annuities, interests in trusts,
 3608 | collective trusts, separate accounts, and other such financial
 3609 | instruments, and ~~may include~~ products that give members
 3610 | ~~participants~~ the option of committing their contributions for an
 3611 | extended time period in an effort to obtain returns higher than
 3612 | those that could be obtained from investment products offering

3613 full liquidity.

3614 3. The state board may ~~shall~~ not contract with a ~~any~~
 3615 provider that imposes a front-end, back-end, contingent, or
 3616 deferred sales charge, or any other fee that limits or restricts
 3617 the ability of members ~~participants~~ to select any investment
 3618 product available in the investment plan ~~optional program~~. This
 3619 prohibition does not apply to fees or charges that are imposed
 3620 on withdrawals from products that give members ~~participants~~ the
 3621 option of committing ~~their~~ contributions for an extended time
 3622 period in an effort to obtain returns higher than those that
 3623 could be obtained from investment products offering full
 3624 liquidity, if ~~provided that~~ the product ~~in question~~, net of all
 3625 fees and charges, produces material benefits relative to other
 3626 comparable products in the investment plan ~~program~~ offering full
 3627 liquidity.

3628 4. Fees or charges for insurance features, such as
 3629 mortality and expense-risk charges, must be reasonable relative
 3630 to the benefits provided.

3631 (c) In evaluating and selecting approved providers and
 3632 products, the state board shall establish criteria for
 3633 evaluating ~~under which it shall consider~~ the relative
 3634 capabilities and qualifications of each proposed provider
 3635 company and product. In developing such criteria, the board
 3636 shall consider the following to the extent such factors may be
 3637 applied in connection with investment products, services, or
 3638 providers:

3639 1. Experience in the United States providing retirement
 3640 products and related financial services under defined

3641 contribution retirement programs ~~plans~~.

3642 2. Financial strength and stability as ~~which shall be~~

3643 evidenced by the highest ratings assigned by nationally

3644 recognized rating services when comparing proposed providers

3645 that are so rated.

3646 3. Intrastate and interstate portability of the product

3647 offered, including early withdrawal options.

3648 4. Compliance with the Internal Revenue Code.

3649 5. The cost-effectiveness of the product provided and the

3650 levels of service supporting the product relative to its

3651 benefits and its characteristics, including, ~~without limitation,~~

3652 the level of risk borne by the provider.

3653 6. The provider company's ability and willingness to

3654 coordinate its activities with Florida Retirement System

3655 employers, the department, and the state board, and to supply

3656 the ~~to such~~ employers, the department, and the board with the

3657 information and data they require.

3658 7. The methods available to members ~~participants~~ to

3659 interact with the provider company; the means by which members

3660 ~~participants~~ may access account information, direct investment

3661 of contributions, make changes to their accounts, transfer

3662 moneys between available investment vehicles, and transfer

3663 moneys between provider companies; and any fees that apply to

3664 such activities.

3665 8. The provider company's policies with respect to the

3666 transfer of individual account balances, contributions, and

3667 earnings thereon, both internally among investment products

3668 offered by the provider company and externally between approved

3669 providers, as well as any fees, charges, reductions, or
 3670 penalties that may be applied.

3671 9. An evaluation of specific investment products, taking
 3672 into account each product's experience in meeting its investment
 3673 return objectives net of all related fees, expenses, and
 3674 charges, including, but not limited to, investment management
 3675 fees, loads, distribution and marketing fees, custody fees,
 3676 recordkeeping fees, education fees, annuity expenses, and
 3677 consulting fees.

3678 10. Organizational factors, including, but not limited to,
 3679 financial solvency, organizational depth, and experience in
 3680 providing institutional and retail investment services.

3681 (d) By March 1, 2010, the state board shall identify and
 3682 offer at least one terror-free investment product that allocates
 3683 its funds among securities not subject to divestiture as
 3684 provided in s. 215.473 if the investment product is deemed by
 3685 the state board to be consistent with prudent investor
 3686 standards. A ~~No~~ person may not bring a civil, criminal, or
 3687 administrative action against an approved provider; the state
 3688 board; or any employee, officer, director, or trustee of such
 3689 provider based upon the divestiture of any security or the
 3690 offering of a terror-free investment product as specified in
 3691 this paragraph.

3692 (e) As a condition of offering an ~~any~~ investment option or
 3693 product in the investment plan ~~optional retirement program~~, the
 3694 approved provider must agree to make the investment product or
 3695 service available under the most beneficial terms offered to any
 3696 other customer, subject to approval by the ~~Trustees of the state~~

3697 | board ~~of Administration.~~

3698 | (f) The state board shall regularly review the performance
3699 | of each approved provider and product and related organizational
3700 | factors to ensure continued compliance with established
3701 | selection criteria and with board policy and procedures.

3702 | Providers and products may be terminated subject to contract
3703 | provisions. The state board shall adopt procedures to transfer
3704 | account balances from terminated products or providers to other
3705 | products or providers in the investment plan ~~optional program.~~

3706 | (g)1. An approved provider shall comply with all
3707 | applicable federal and state securities and insurance laws and
3708 | regulations ~~applicable to the provider,~~ as well as with the
3709 | applicable rules and guidelines of the National Association of
3710 | Securities Dealers which govern the ethical marketing of
3711 | investment products. In furtherance of this mandate, an approved
3712 | provider must agree in its contract with the state board to
3713 | establish and maintain a compliance education and monitoring
3714 | system to supervise the activities of all personnel who directly
3715 | communicate with individual members ~~participants~~ and recommend
3716 | investment products, which system is consistent with rules of
3717 | the National Association of Securities Dealers.

3718 | 2. Approved provider personnel who directly communicate
3719 | with individual members ~~participants~~ and who recommend
3720 | investment products shall make an independent and unbiased
3721 | determination as to whether an investment product is suitable
3722 | for a particular member ~~participant.~~

3723 | 3. The state board shall develop procedures to receive and
3724 | resolve member ~~participant~~ complaints against a provider or

3725 approved provider personnel, and, if ~~when~~ appropriate, refer
 3726 such complaints to the appropriate agency.

3727 4. Approved providers may not sell or in any way
 3728 distribute any customer list or member ~~participant~~
 3729 identification information generated through their offering of
 3730 products or services through the investment plan ~~optional~~
 3731 ~~retirement program~~.

3732 (10) EDUCATION COMPONENT.—

3733 (a) The state board, in coordination with the department,
 3734 shall provide for an education component for system members in a
 3735 manner consistent with the provisions of this section. The
 3736 education component must be available to eligible employees at
 3737 least 90 days prior to the beginning date of the election period
 3738 for the employees of the respective types of employers.

3739 (b) The education component must provide system members
 3740 with impartial and balanced information about plan choices. The
 3741 education component must involve multimedia formats. Program
 3742 comparisons must, to the greatest extent possible, be based upon
 3743 the retirement income that different retirement programs may
 3744 provide to the member ~~participant~~. The state board shall monitor
 3745 the performance of the contract to ensure that the program is
 3746 conducted in accordance with the contract, applicable law, and
 3747 the rules of the state board.

3748 (c) The state board, in coordination with the department,
 3749 shall provide for an initial and ongoing transfer education
 3750 component to provide system members with information necessary
 3751 to make informed plan choice decisions. The transfer education
 3752 component must include, but is not limited to, information on:

3753 1. The amount of money available to a member to transfer
3754 to the defined contribution program.

3755 2. The features of and differences between the pension
3756 plan ~~defined benefit program~~ and the defined contribution
3757 program, both generally and specifically, as those differences
3758 may affect the member.

3759 3. The expected benefit available if the member were to
3760 retire under each of the retirement programs, based on
3761 appropriate alternative sets of assumptions.

3762 4. The rate of return from investments in the defined
3763 contribution program and the period of time over which such rate
3764 of return must be achieved to equal or exceed the expected
3765 monthly benefit payable to the member under the pension plan
3766 ~~defined benefit program~~.

3767 5. The historical rates of return for the investment
3768 alternatives available in the defined contribution programs.

3769 6. The benefits and historical rates of return on
3770 investments available in a typical deferred compensation plan or
3771 a typical plan under s. 403(b) of the Internal Revenue Code for
3772 which the employee may be eligible.

3773 7. The program choices available to employees of the State
3774 University System and the comparative benefits of each available
3775 program, if applicable.

3776 8. Payout options available in each of the retirement
3777 programs.

3778 (d) An ongoing education and communication component must
3779 provide eligible employees ~~system members~~ with information
3780 necessary to make informed decisions about choices within their

3781 retirement system ~~program of membership~~ and in preparation for
 3782 retirement. The component must include, but is not limited to,
 3783 information concerning:

- 3784 1. Rights and conditions of membership.
- 3785 2. Benefit features within the program, options, and
- 3786 effects of certain decisions.
- 3787 3. Coordination of contributions and benefits with a
- 3788 deferred compensation plan under s. 457 or a plan under s.
- 3789 403(b) of the Internal Revenue Code.
- 3790 4. Significant program changes.
- 3791 5. Contribution rates and program funding status.
- 3792 6. Planning for retirement.

3793 (e) Descriptive materials must be prepared under the
 3794 assumption that the employee is an unsophisticated investor, and
 3795 all materials used in the education component must be approved
 3796 by the state board prior to dissemination.

3797 (f) The state board and the department shall also
 3798 establish a communication component to provide program
 3799 information to participating employers and the employers'
 3800 personnel and payroll officers and to explain their respective
 3801 responsibilities in conjunction with the retirement programs.

3802 (g) Funding for education of new employees may reflect
 3803 administrative costs to the investment plan ~~optional program~~ and
 3804 the pension plan ~~defined benefit program~~.

3805 (h) Pursuant to subsection ~~paragraph~~ (8) ~~(a)~~, all Florida
 3806 Retirement System employers have an obligation to regularly
 3807 communicate the existence of the two Florida Retirement System
 3808 plans and the plan choice in the natural course of administering

3809 | their personnel functions, using the educational materials
 3810 | supplied by the state board and the Department of Management
 3811 | Services.

3812 | (11) MEMBER ~~PARTICIPANT~~ INFORMATION REQUIREMENTS.—The
 3813 | state board shall ensure that each member ~~participant~~ is
 3814 | provided a quarterly statement that accounts for the
 3815 | contributions made on behalf of the member ~~such participant~~; the
 3816 | interest and investment earnings thereon; and any fees,
 3817 | penalties, or other deductions that apply ~~thereto~~. At a minimum,
 3818 | such statements must:

3819 | (a) Indicate the member's ~~participant's~~ investment
 3820 | options.

3821 | (b) State the market value of the account at the close of
 3822 | the current quarter and previous quarter.

3823 | (c) Show account gains and losses ~~for the period~~ and
 3824 | changes in account accumulation unit values for the quarter
 3825 | ~~period~~.

3826 | (d) Itemize account contributions for the quarter.

3827 | (e) Indicate any account changes due to adjustment of
 3828 | contribution levels, reallocation of contributions, balance
 3829 | transfers, or withdrawals.

3830 | (f) Set forth any fees, charges, penalties, and deductions
 3831 | that apply to the account.

3832 | (g) Indicate the amount of the account in which the member
 3833 | ~~participant~~ is fully vested and the amount of the account in
 3834 | which the member ~~participant~~ is not vested.

3835 | (h) Indicate each investment product's performance
 3836 | relative to an appropriate market benchmark.

3837
 3838 The third-party administrator shall provide quarterly and annual
 3839 summary reports to the state board and any other reports
 3840 requested by the department or the state board. In any
 3841 solicitation or offer of coverage under the investment plan ~~an~~
 3842 ~~optional retirement program~~, a provider company shall be
 3843 governed by the contract readability provisions of s. 627.4145,
 3844 notwithstanding s. 627.4145(6)(c). In addition, all descriptive
 3845 materials must be prepared under the assumption that the member
 3846 ~~participant~~ is an unsophisticated investor. Provider companies
 3847 must maintain an internal system of quality assurance, have
 3848 proven functional systems that are date-calculation compliant,
 3849 and be subject to a due-diligence inquiry that proves their
 3850 capacity and fitness to undertake service responsibilities.

3851 (12) ADVISORY COUNCIL TO PROVIDE ADVICE AND ASSISTANCE.—

3852 The Investment Advisory Council, created pursuant to s. 215.444,
 3853 shall assist the state board in implementing and administering
 3854 the investment plan ~~Public Employee Optional Retirement Program~~.
 3855 The ~~Investment Advisory council, created pursuant to s. 215.444,~~
 3856 shall review the state board's initial recommendations regarding
 3857 the criteria to be used in selecting and evaluating approved
 3858 providers and investment products. The council may provide
 3859 comments on the recommendations to the state board within 45
 3860 days after receiving the initial recommendations. The state
 3861 board shall make the final determination as to whether any
 3862 investment provider or product, any contractor, or any and all
 3863 contract provisions are ~~shall be~~ approved for the investment
 3864 plan ~~program~~.

3865 (13) FEDERAL REQUIREMENTS.--

3866 (a) ~~Provisions of~~ This section shall be construed, and the

3867 investment plan ~~Public Employee Optional Retirement Program~~

3868 shall be administered, so as to comply with the Internal Revenue

3869 Code, 26 U.S.C., and specifically with plan qualification

3870 requirements imposed on governmental plans under s. 401(a) of

3871 the Internal Revenue Code. The state board ~~may shall have the~~

3872 ~~power and authority to~~ adopt rules reasonably necessary to

3873 establish or maintain the qualified status of the investment

3874 plan ~~Optional Retirement Program~~ under the Internal Revenue Code

3875 and to implement and administer the investment plan ~~Optional~~

3876 ~~Retirement Program~~ in compliance with the Internal Revenue Code

3877 and as designated under this part; provided however, that the

3878 board shall not have the authority to adopt any rule which makes

3879 a substantive change to the investment plan ~~Optional Retirement~~

3880 ~~Program~~ as designed by this part.

3881 (b) Any section or provision of this chapter which is

3882 susceptible to more than one construction shall ~~must~~ be

3883 interpreted in favor of the construction most likely to satisfy

3884 requirements imposed by s. 401(a) of the Internal Revenue Code.

3885 (c) Contributions payable under this section for any

3886 limitation year may not exceed the maximum amount allowable for

3887 qualified defined contribution pension plans under applicable

3888 provisions of the Internal Revenue Code. If an employee who is

3889 enrolled ~~has elected to participate~~ in the investment plan

3890 ~~Public Employee Optional Retirement Program~~ participates in any

3891 other plan that is maintained by the participating employer,

3892 benefits that accrue under the investment plan ~~Public Employee~~

3893 ~~Optional Retirement Program~~ shall be considered primary for any
 3894 aggregate limitation applicable under s. 415 of the Internal
 3895 Revenue Code.

3896 (14) INVESTMENT POLICY STATEMENT.—

3897 (a) Investment products and approved providers selected
 3898 for the investment plan must ~~Public Employee Optional Retirement~~
 3899 ~~Program~~ shall conform with the Florida Retirement System
 3900 Investment Plan ~~Public Employee Optional Retirement Program~~
 3901 Investment Policy Statement, herein referred to as the
 3902 "statement," as developed and approved by the trustees of the
 3903 state board ~~of Administration~~. The statement must include, among
 3904 other items, the investment objectives of the investment plan
 3905 ~~Public Employee Optional Retirement Program~~, manager selection
 3906 and monitoring guidelines, and performance measurement criteria.
 3907 As required from time to time, the executive director of the
 3908 state board may present recommended changes in the statement to
 3909 the board for approval.

3910 (b) Prior to presenting the statement, or any recommended
 3911 changes ~~thereto~~, to the state board, the executive director of
 3912 the board shall present such statement or changes to the
 3913 Investment Advisory Council for review. The council shall
 3914 present the results of its review to the board prior to the
 3915 board's final approval of the statement or changes in the
 3916 statement.

3917 (15) STATEMENT OF FIDUCIARY STANDARDS AND
 3918 RESPONSIBILITIES.—

3919 (a) Investment of ~~optional~~ defined contribution ~~retirement~~
 3920 plan assets shall be made for the sole interest and exclusive

HB 1405

2011

3921 | purpose of providing benefits to members ~~plan-participants~~ and
 3922 | beneficiaries and defraying reasonable expenses of administering
 3923 | the plan. The program's assets shall ~~are to~~ be invested, on
 3924 | behalf of the program members ~~participants~~, with the care,
 3925 | skill, and diligence that a prudent person acting in a like
 3926 | manner would undertake. The performance of the investment duties
 3927 | set forth in this paragraph shall comply with the fiduciary
 3928 | standards set forth in the Employee Retirement Income Security
 3929 | Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of
 3930 | conflict with other provisions of law authorizing investments,
 3931 | the investment and fiduciary standards set forth in this
 3932 | subsection shall prevail.

3933 | (b) If a member ~~participant~~ or beneficiary of the
 3934 | investment plan ~~Public Employee Optional Retirement Program~~
 3935 | exercises control over the assets in his or her account, as
 3936 | determined by reference to regulations of the United States
 3937 | Department of Labor under s. 404(c) of the Employee Retirement
 3938 | Income Security Act of 1974 and all applicable laws governing
 3939 | the operation of the program, a ~~no~~ program fiduciary is not
 3940 | ~~shall be~~ liable for any loss to a member's ~~participant's~~ or
 3941 | beneficiary's account which results from the member's ~~such~~
 3942 | ~~participant's~~ or beneficiary's exercise of control.

3943 | (c) Subparagraph (8)(b) 2.4 ~~and~~ paragraph ~~(15)~~(b)
 3944 | incorporate the federal law concept of participant control,
 3945 | established by regulations of the United States Department of
 3946 | Labor under s. 404(c) of the Employee Retirement Income Security
 3947 | Act of 1974 (ERISA). The purpose of this paragraph is to assist
 3948 | employers and the state board ~~of Administration~~ in maintaining

3949 compliance with s. 404(c), while avoiding unnecessary costs and
 3950 eroding member participant benefits under the investment plan
 3951 ~~Public Employee Optional Retirement Program~~. Pursuant to 29
 3952 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(1)(viii), the state board of
 3953 ~~Administration~~ or its designated agents shall deliver to members
 3954 ~~participants~~ of the investment plan ~~Public Employee Optional~~
 3955 ~~Retirement Program~~ a copy of the prospectus most recently
 3956 provided to the plan, and, pursuant to 29 C.F.R. s. 2550.404c-
 3957 1(b)(2)(i)(B)(2)(ii), shall provide such members participants an
 3958 opportunity to obtain this information, except that:

3959 1. The requirement to deliver a prospectus shall be ~~deemed~~
 3960 ~~to be~~ satisfied by delivery of a fund profile or summary profile
 3961 that contains the information that would be included in a
 3962 summary prospectus as described by Rule 498 under the Securities
 3963 Act of 1933, 17 C.F.R. s. 230.498. If ~~When~~ the transaction fees,
 3964 expense information or other information provided by a mutual
 3965 fund in the prospectus does not reflect terms negotiated by the
 3966 state board of ~~Administration~~ or its designated agents, the
 3967 ~~aforementioned~~ requirement is ~~deemed to be~~ satisfied by delivery
 3968 of a separate document described by Rule 498 substituting
 3969 accurate information; and

3970 2. Delivery shall be ~~deemed to have been~~ effected if
 3971 delivery is through electronic means and the following standards
 3972 are satisfied:

3973 a. Electronically-delivered documents are prepared and
 3974 provided consistent with style, format, and content requirements
 3975 applicable to printed documents;

3976 b. Each member participant is provided timely and adequate

3977 | notice of the documents that are to be delivered, and their
 3978 | significance thereof, and of the member's ~~participant's~~ right to
 3979 | obtain a paper copy of such documents free of charge;

3980 | c. ~~(I)~~ Members ~~Participants~~ have adequate access to the
 3981 | electronic documents, at locations such as their worksites or
 3982 | public facilities, and have the ability to convert the documents
 3983 | to paper free of charge by the state board ~~of Administration~~,
 3984 | and the board or its designated agents take appropriate and
 3985 | reasonable measures to ensure that the system for furnishing
 3986 | electronic documents results in actual receipt, ~~or~~

3987 | ~~(II)~~ Members ~~Participants~~ have provided consent to receive
 3988 | information in electronic format, which consent may be revoked;
 3989 | and

3990 | d. The state board ~~of Administration~~, or its designated
 3991 | agent, actually provides paper copies of the documents free of
 3992 | charge, upon request.

3993 | (16) DISABILITY BENEFITS.—For any member ~~participant~~ of
 3994 | the investment plan ~~optional retirement program~~ who becomes
 3995 | totally and permanently disabled, benefits must ~~shall~~ be paid in
 3996 | accordance with the provisions of s. 121.591.

3997 | (17) SOCIAL SECURITY COVERAGE.—Social security coverage
 3998 | shall be provided for all officers and employees who become
 3999 | members ~~participants~~ of the investment plan ~~optional program~~.
 4000 | Any modification of the present agreement with the Social
 4001 | Security Administration, or referendum required under the Social
 4002 | Security Act, for the purpose of providing social security
 4003 | coverage for any member shall be requested by the state agency
 4004 | in compliance with the applicable provisions of the Social

4005 Security Act governing such coverage. However, retroactive
 4006 social security coverage for service prior to December 1, 1970,
 4007 with the employer may ~~shall~~ not be provided for any member who
 4008 was not covered under the agreement as of November 30, 1970.

4009 (18) RETIREE HEALTH INSURANCE SUBSIDY.—All officers and
 4010 employees who are members ~~participants~~ of the investment plan
 4011 are ~~optional program~~ shall be eligible to receive the retiree
 4012 health insurance subsidy, subject to the provisions of s.
 4013 112.363.

4014 (19) MEMBER PARTICIPANT RECORDS.—Personal identifying
 4015 information of a member ~~participant~~ in the investment plan
 4016 ~~Public Employee Optional Retirement Program~~ contained in Florida
 4017 Retirement System records held by the state board ~~of~~
 4018 ~~Administration~~ or the department ~~of Management Services~~ is
 4019 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 4020 Constitution.

4021 (20) DESIGNATION OF BENEFICIARIES.—

4022 (a) Each member ~~participant~~ may, by electronic means or on
 4023 a form provided for that purpose, signed and filed with the
 4024 third-party administrator, designate a choice of one or more
 4025 persons, named sequentially or jointly, as his or her
 4026 beneficiary for receiving ~~who shall receive~~ the benefits, if
 4027 any, which may be payable pursuant to this chapter in the event
 4028 of the member's ~~participant's~~ death. If no beneficiary is named
 4029 in this manner, or if no beneficiary designated by the member
 4030 ~~participant~~ survives the member ~~participant~~, the beneficiary
 4031 shall be the spouse of the deceased, if living. If the member's
 4032 ~~participant's~~ spouse is not alive at the time of the

4033 | beneficiary's ~~his or her~~ death, the beneficiary shall be the
 4034 | living children of the member participant. If no children
 4035 | survive, the beneficiary shall be the member's participant's
 4036 | father or mother, if living; otherwise, the beneficiary shall be
 4037 | the member's participant's estate. The beneficiary most recently
 4038 | designated by a member participant ~~on a form or letter filed~~
 4039 | ~~with the third-party administrator~~ shall be the beneficiary
 4040 | entitled to any benefits payable at the time of the member's
 4041 | participant's death. ~~However Notwithstanding any other provision~~
 4042 | ~~in this subsection to the contrary~~, for a member participant who
 4043 | dies prior to his or her effective date of retirement, the
 4044 | spouse at the time of death shall be the member's participant's
 4045 | beneficiary unless the member ~~such participant~~ designates a
 4046 | different beneficiary ~~as provided in this subsection~~ subsequent
 4047 | to the member's participant's most recent marriage.

4048 | (b) If a member participant designates a primary
 4049 | beneficiary other than the member's participant's spouse, the
 4050 | member's participant's spouse must sign the beneficiary
 4051 | designation form to acknowledge the designation. This
 4052 | requirement does not apply to the designation of one or more
 4053 | contingent beneficiaries to receive benefits remaining upon the
 4054 | death of the primary beneficiary or beneficiaries.

4055 | (c) Notwithstanding the member's participant's designation
 4056 | of benefits to be paid through a trust to a beneficiary that is
 4057 | a natural person, and ~~notwithstanding~~ the provisions of the
 4058 | trust, benefits must ~~shall~~ be paid directly to the beneficiary
 4059 | if the person is no longer a minor or an incapacitated person as
 4060 | defined in s. 744.102.

4061 (21) PARTICIPATION BY TERMINATED DEFERRED RETIREMENT
 4062 OPTION PROGRAM MEMBERS PARTICIPANTS.--Notwithstanding any other
 4063 provision of law ~~to the contrary~~, members participants in the
 4064 Deferred Retirement Option Program offered under part I may,
 4065 after conclusion of their participation in the program, elect to
 4066 roll over or authorize a direct trustee-to-trustee transfer to
 4067 an account under the investment plan ~~Public Employee Optional~~
 4068 ~~Retirement Program~~ of their Deferred Retirement Option Program
 4069 proceeds distributed as provided under s. 121.091(13)(c)5. The
 4070 transaction must constitute an "eligible rollover distribution"
 4071 within the meaning of s. 402(c)(4) of the Internal Revenue Code.

4072 (a) The investment plan ~~Public Employee Optional~~
 4073 ~~Retirement Program~~ may accept such amounts for deposit into
 4074 member participant accounts as provided in paragraph (5) (e) ~~(e)~~.

4075 (b) The affected member participant shall direct the
 4076 investment of his or her investment account; however, unless he
 4077 or she becomes a renewed member of the Florida Retirement System
 4078 under s. 121.122 and elects to participate in the investment
 4079 plan ~~Public Employee Optional Retirement Program~~, no employer
 4080 contributions may ~~not~~ be made to the member's participant's
 4081 account as provided under paragraph (5)(a).

4082 (c) The state board or the department is not responsible
 4083 for locating those persons who may be eligible to participate in
 4084 the investment plan ~~Public Employee Optional Retirement Program~~
 4085 under this subsection.

4086 (22) CREDIT FOR MILITARY SERVICE.--Creditable service of
 4087 any member of the investment plan includes ~~Public Employee~~
 4088 ~~Optional Retirement Program~~ shall include military service in

4089 the Armed Forces of the United States as provided in ~~the~~
 4090 ~~conditions outlined in~~ s. 121.111(1).

4091 Section 20. Section 121.4502, Florida Statutes, is amended
 4092 to read:

4093 121.4502 Florida Retirement System Investment Plan ~~Public~~
 4094 ~~Employee Optional Retirement Program~~ Trust Fund.—

4095 (1) The Florida Retirement System Investment Plan ~~Public~~
 4096 ~~Employee Optional Retirement Program~~ Trust Fund is created to
 4097 hold the assets of the Florida Retirement System Investment Plan
 4098 ~~Public Employee Optional Retirement Program~~ in trust for the
 4099 exclusive benefit of such program's members ~~participants~~ and
 4100 beneficiaries, and for the payment of reasonable administrative
 4101 expenses of the program, in accordance with s. 401 of the
 4102 Internal Revenue Code, and shall be administered by the state
 4103 board of ~~Administration~~ as trustee. Funds shall be credited to
 4104 the trust fund as provided in this part, to be used for the
 4105 purposes of this part. The trust fund is exempt from the service
 4106 charges imposed by s. 215.20.

4107 (2) The Florida Retirement System Investment Plan ~~Public~~
 4108 ~~Employee Optional Retirement Program~~ Trust Fund is a retirement
 4109 trust fund of the Florida Retirement System that accounts for
 4110 retirement plan assets held by the state in a trustee capacity
 4111 as a fiduciary for individual participants in the Florida
 4112 Retirement System Investment Plan ~~Public Employee Optional~~
 4113 ~~Retirement Program~~ and, pursuant to s. 19(f), Art. III of the
 4114 State Constitution, is not subject to termination.

4115 (3) A forfeiture account shall be created within the
 4116 Florida Retirement System Investment Plan ~~Public Employee~~

4117 ~~Optional Retirement Program~~ Trust Fund to hold the assets
 4118 derived from the forfeiture of benefits by participants.
 4119 Pursuant to a private letter ruling from the Internal Revenue
 4120 Service, the forfeiture account may be used only for paying
 4121 expenses of the Florida Retirement System Investment Plan ~~Public~~
 4122 ~~Employee Optional Retirement Program~~ and reducing future
 4123 employer contributions to the program. Consistent with Rulings
 4124 80-155 and 74-340 of the Internal Revenue Service, unallocated
 4125 reserves within the forfeiture account must be used as quickly
 4126 and as prudently as possible considering the state board's
 4127 fiduciary duty. Expected withdrawals from the account must
 4128 endeavor to reduce the account to zero each fiscal year.

4129 Section 21. Subsections (1) and (3) of section 121.4503,
 4130 Florida Statutes, are amended to read:

4131 121.4503 Florida Retirement System Contributions Clearing
 4132 Trust Fund.—

4133 (1) The Florida Retirement System Contributions Clearing
 4134 Trust Fund is created as a clearing fund for disbursing employee
 4135 and employer contributions to the component plans of the Florida
 4136 Retirement System and shall be administered by the Department of
 4137 Management Services. Funds shall be credited to the trust fund
 4138 as provided in this chapter and shall be held in trust for the
 4139 contributing members and employers until such time as the assets
 4140 are transferred by the department to the Florida Retirement
 4141 System Trust Fund, the Florida Retirement System Investment Plan
 4142 ~~Public Employee Optional Retirement Program~~ Trust Fund, or other
 4143 trust funds as authorized by law, to be used for the purposes of
 4144 this chapter. The trust fund is exempt from the service charges

4145 imposed by s. 215.20.

4146 (3) The Department of Management Services may adopt rules
 4147 governing the receipt and disbursement of amounts received by
 4148 the Florida Retirement System Contributions Clearing Trust Fund
 4149 from employees and employers contributing to the component plans
 4150 of the Florida Retirement System.

4151 Section 22. Section 121.571, Florida Statutes, is amended
 4152 to read:

4153 121.571 Contributions.—Contributions to the investment
 4154 plan ~~Public Employee Optional Retirement Program~~ shall be made
 4155 as follows:

4156 (1) CONTRIBUTORY NONCONTRIBUTORY PLAN.—Each member and
 4157 employer shall submit ~~accomplish the~~ contributions as required
 4158 by s. 121.71 ~~by a procedure in which no employee's gross salary~~
 4159 ~~shall be reduced~~.

4160 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund
 4161 the retirement and disability benefits provided under this part
 4162 must ~~shall~~ be based on the uniform contribution rates
 4163 established by s. 121.71 and on the membership class or subclass
 4164 of the member participant. Such contributions must ~~shall~~ be
 4165 allocated as provided in ss. 121.72 and 121.73.

4166 (3) CONTRIBUTIONS FOR SOCIAL SECURITY COVERAGE AND FOR
 4167 RETIREE HEALTH INSURANCE SUBSIDY.—Contributions required under
 4168 s. 121.71 ~~this section shall be~~ in addition to employer and
 4169 member contributions ~~required~~ for social security and the
 4170 Retiree Health Insurance Subsidy Trust Fund as required under
 4171 ~~provided in~~ ss. 112.363, 121.052, 121.055, and 121.071, as
 4172 appropriate.

HB 1405

2011

4173 Section 23. Section 121.591, Florida Statutes, is amended
 4174 to read:

4175 121.591 Payment of benefits payable under the Public
 4176 ~~Employee Optional Retirement Program of the Florida Retirement~~
 4177 ~~System.~~—Benefits may not be paid under the Florida Retirement
 4178 System Investment Plan ~~this section~~ unless the member has
 4179 terminated employment as provided in s. 121.021(39)(a) or is
 4180 deceased and a proper application has been filed as in the
 4181 ~~manner~~ prescribed by the state board or the department. Benefits
 4182 are not payable under the investment plan before termination of
 4183 employment as provided in s. 121.021(39)(a) for employee
 4184 hardships, unforeseeable emergencies, loans, medical expenses,
 4185 educational expenses, purchase of a principal residence,
 4186 payments necessary to prevent eviction or foreclosure on an
 4187 employee's principal residence, or any other reason prior to
 4188 termination from all employment relationships with participating
 4189 employers. The state board or department, as appropriate, may
 4190 cancel an application for retirement benefits if ~~when~~ the member
 4191 or beneficiary fails to timely provide the information and
 4192 documents required by this chapter and the rules of the state
 4193 board and department. In accordance with their respective
 4194 responsibilities ~~as provided herein,~~ the state board ~~of~~
 4195 ~~Administration~~ and the department ~~of Management Services~~ shall
 4196 adopt rules establishing procedures for application for
 4197 retirement benefits and for the cancellation of such application
 4198 if ~~when~~ the required information or documents are not received.
 4199 The state board ~~of Administration~~ and the department ~~of~~
 4200 ~~Management Services,~~ as appropriate, are authorized to cash out

HB 1405

2011

4201 | a de minimis account of a member ~~participant~~ who has been
 4202 | terminated from Florida Retirement System covered employment for
 4203 | a minimum of 6 calendar months. A de minimis account is an
 4204 | account containing member and employer contributions and
 4205 | accumulated earnings of not more than \$5,000 made under the
 4206 | provisions of this chapter. Such cash-out must either be a
 4207 | complete lump-sum liquidation of the account balance, subject to
 4208 | the provisions of the Internal Revenue Code, or a lump-sum
 4209 | direct rollover distribution paid directly to the custodian of
 4210 | an eligible retirement plan, as defined by the Internal Revenue
 4211 | Code, on behalf of the member ~~participant~~. Any nonvested
 4212 | accumulations and associated service credit, including amounts
 4213 | transferred to the suspense account of the Florida Retirement
 4214 | System Investment Plan Trust Fund authorized under s.
 4215 | 121.4501(6), shall be forfeited upon payment of any vested
 4216 | benefit to a member or beneficiary, except for de minimis
 4217 | distributions or minimum required distributions as provided
 4218 | under this section. If any financial instrument issued for the
 4219 | payment of retirement benefits under this section is not
 4220 | presented for payment within 180 days after the last day of the
 4221 | month in which it was originally issued, the third-party
 4222 | administrator or other duly authorized agent of the state board
 4223 | ~~of Administration~~ shall cancel the instrument and credit the
 4224 | amount of the instrument to the suspense account of the Florida
 4225 | Retirement System Investment Plan ~~Public Employee Optional~~
 4226 | ~~Retirement Program~~ Trust Fund authorized under s. 121.4501(6).
 4227 | Any such amounts transferred to the suspense account are payable
 4228 | upon a proper application, not to include earnings thereon, as

4229 provided in this section, within 10 years after the last day of
 4230 the month in which the instrument was originally issued, after
 4231 which time such amounts and any earnings attributable to
 4232 employer contributions ~~thereon~~ shall be forfeited. Any such
 4233 forfeited amounts are assets of the Florida Retirement System
 4234 Investment Plan ~~Public Employee Optional Retirement Program~~
 4235 Trust Fund and are not subject to the provisions of chapter 717.

4236 (1) NORMAL BENEFITS.—Under the investment plan ~~Public~~
 4237 ~~Employee Optional Retirement Program~~:

4238 (a) Benefits in the form of vested accumulations as
 4239 described in s. 121.4501(6) are payable under this subsection in
 4240 accordance with the following terms and conditions:

4241 1. ~~To the extent vested,~~ Benefits are payable only to a
 4242 member, an alternate payee of a qualified domestic relations
 4243 order, or a beneficiary participant.

4244 2. Benefits shall be paid by the third-party administrator
 4245 or designated approved providers in accordance with the law, the
 4246 contracts, and any applicable board rule or policy.

4247 3. ~~To receive benefits,~~ The member participant must be
 4248 terminated from all employment with all Florida Retirement
 4249 System employers, as provided in s. 121.021(39).

4250 4. Benefit payments may not be made until the member
 4251 ~~participant~~ has been terminated for 3 calendar months, except
 4252 that the state board may authorize by rule for the distribution
 4253 of up to 10 percent of the member's participant's account after
 4254 being terminated for 1 calendar month if the member participant
 4255 has reached the normal retirement date as defined in s. 121.021
 4256 ~~of the defined benefit plan.~~

4257 5. If a member or former member of the Florida Retirement
 4258 System receives an invalid distribution ~~from the Public Employee~~
 4259 ~~Optional Retirement Program Trust Fund~~, such person must either
 4260 repay the full amount ~~invalid distribution to the trust fund~~
 4261 within 90 days after receipt of final notification by the state
 4262 board or the third-party administrator that the distribution was
 4263 invalid, or, in lieu of repayment, the member must terminate
 4264 employment from all participating employers. If such person
 4265 fails to repay the full invalid distribution within 90 days
 4266 after receipt of final notification, the person may be deemed
 4267 retired from the investment plan ~~optional retirement program~~ by
 4268 the state board, ~~as provided pursuant to s. 121.4501(2)(k)~~, and
 4269 is subject to s. 121.122. If such person is deemed retired ~~by~~
 4270 ~~the state board~~, any joint and several liability set out in s.
 4271 121.091(9)(d)2. is ~~becomes null and void~~, and the state board,
 4272 the department, or the employing agency is not liable for gains
 4273 on payroll contributions that have not been deposited to the
 4274 person's account in the investment plan ~~retirement program~~,
 4275 pending resolution of the invalid distribution. The member or
 4276 former member who has been deemed retired or who has been
 4277 determined by the state board to have taken an invalid
 4278 distribution may appeal the agency decision through the
 4279 complaint process as provided under s. 121.4501(9)(g)3. As used
 4280 in this subparagraph, the term "invalid distribution" means any
 4281 distribution from an account in the investment plan ~~optional~~
 4282 ~~retirement program~~ which is taken in violation of this section,
 4283 s. 121.091(9), or s. 121.4501.

4284 (b) If a member ~~participant~~ elects to receive his or her

4285 benefits upon termination of employment as defined in s.
 4286 121.021, the member ~~participant~~ must submit a written
 4287 application or an application by electronic means to the third-
 4288 party administrator indicating his or her preferred distribution
 4289 date and selecting an authorized method of distribution as
 4290 provided in paragraph (c). The member ~~participant~~ may defer
 4291 receipt of benefits until he or she chooses to make such
 4292 application, subject to federal requirements.

4293 (c) Upon receipt by the third-party administrator of a
 4294 properly executed application for distribution of benefits, the
 4295 total accumulated benefit is ~~shall be~~ payable to the member pro
 4296 rata across all Florida Retirement System benefit sources
 4297 participant, as:

4298 1. A lump-sum or partial distribution to the member
 4299 participant;

4300 2. A lump-sum direct rollover distribution whereby all
 4301 accrued benefits, plus interest and investment earnings, are
 4302 paid from the member's ~~participant's~~ account directly to the
 4303 custodian of an eligible retirement plan, as defined in s.
 4304 402(c)(8)(B) of the Internal Revenue Code, on behalf of the
 4305 member ~~participant~~; or

4306 3. Periodic distributions, as authorized by the state
 4307 board.

4308 (d) The distribution payment method selected by the member
 4309 or beneficiary, and the retirement of the member or beneficiary,
 4310 shall be final and irrevocable at the time a benefit
 4311 distribution payment is cashed, deposited, or transferred to
 4312 another financial institution. Any additional service that

4313 remains unclaimed at retirement may not be claimed or purchased,
 4314 and the type of retirement may not be changed, except that if a
 4315 member recovers from a disability, the member may subsequently
 4316 request benefits under subsection (2).

4317 (e) A member may not receive a distribution of employee
 4318 contributions if a pending qualified domestic relations order is
 4319 filed against the member's investment plan account.

4320 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided
 4321 under this subsection are payable in lieu of the benefits that
 4322 ~~which~~ would otherwise be payable under the provisions of
 4323 subsection (1). Such benefits must shall be funded ~~entirely~~ from
 4324 employer contributions made under s. 121.571, transferred
 4325 employee contributions and participant funds accumulated
 4326 pursuant to paragraph (a), and interest and earnings thereon.
 4327 Pursuant thereto:

4328 (a) Transfer of funds.—To qualify to receive monthly
 4329 disability benefits under this subsection:

4330 1. All moneys accumulated in the member's participant's
 4331 ~~Public Employee Optional Retirement Program~~ accounts, including
 4332 vested and nonvested accumulations as described in s.
 4333 121.4501(6), must shall be transferred from such individual
 4334 accounts to the division ~~of Retirement~~ for deposit in the
 4335 disability account of the Florida Retirement System Trust Fund.
 4336 Such moneys must shall be ~~separately~~ accounted for separately.
 4337 Earnings must shall be credited on an annual basis for amounts
 4338 held in the disability accounts of the Florida Retirement System
 4339 Trust Fund based on actual earnings of the ~~Florida Retirement~~
 4340 ~~System~~ trust fund.

4341 2. If the member participant has retained retirement
 4342 credit ~~he or she had~~ earned under the pension plan defined
 4343 ~~benefit program of the Florida Retirement System~~ as provided in
 4344 s. 121.4501(3)~~(b)~~, a sum representing the actuarial present
 4345 value of such credit within the Florida Retirement System Trust
 4346 Fund shall be reassigned by the division ~~of Retirement~~ from the
 4347 pension plan defined benefit program to the disability program
 4348 as implemented under this subsection and shall be deposited in
 4349 the disability account of the ~~Florida Retirement System~~ trust
 4350 fund. Such moneys must ~~shall~~ be ~~separately~~ accounted for
 4351 separately.

4352 (b) Disability retirement; entitlement.-

4353 1. A member participant of the investment plan Public
 4354 ~~Employee Optional Retirement Program~~ who becomes totally and
 4355 permanently disabled, as defined in paragraph (d) ~~s.~~
 4356 ~~121.091(4)(b)~~, after completing 8 years of creditable service,
 4357 or a member participant who becomes totally and permanently
 4358 disabled in the line of duty regardless of ~~his or her~~ length of
 4359 service, is ~~shall be~~ entitled to a monthly disability benefit ~~as~~
 4360 ~~provided herein~~.

4361 2. In order for service to apply toward the 8 years of
 4362 creditable service required ~~to vest~~ for regular disability
 4363 benefits, or toward the creditable service used in calculating a
 4364 service-based benefit as provided ~~for~~ under paragraph (g), the
 4365 service must be creditable service as described below:

4366 a. The member's participant's period of service under the
 4367 investment plan shall Public Employee Optional Retirement
 4368 ~~Program will~~ be considered creditable service, except as

4369 provided in subparagraph d.

4370 b. If the member ~~participant~~ has elected to retain credit
 4371 for ~~his or her~~ service under the pension plan defined benefit
 4372 ~~program of the Florida Retirement System~~ as provided under s.
 4373 121.4501(3) ~~(b)~~, all such service shall ~~will~~ be considered
 4374 creditable service.

4375 c. If the member elects ~~participant has elected~~ to
 4376 transfer to his or her member ~~participant~~ accounts a sum
 4377 representing the present value of his or her retirement credit
 4378 under the pension plan defined benefit program as provided under
 4379 s. 121.4501(3) ~~(c)~~, the period of service under the pension plan
 4380 ~~defined benefit program~~ represented in the present value amounts
 4381 transferred shall ~~will~~ be considered creditable service ~~for~~
 4382 ~~purposes of vesting for disability benefits~~, except as provided
 4383 in subparagraph d.

4384 d. Whenever a member ~~participant~~ has terminated employment
 4385 and has taken distribution of his or her funds as provided in
 4386 subsection (1), all creditable service represented by such
 4387 distributed funds is forfeited for purposes of this subsection.

4388 (c) Disability retirement effective date.—The effective
 4389 retirement date for a member ~~participant~~ who applies and is
 4390 approved for disability retirement shall be established as
 4391 provided under s. 121.091(4)(a)2. and 3.

4392 (d) Total and permanent disability.—A member ~~participant~~
 4393 shall be considered totally and permanently disabled if, in the
 4394 opinion of the division, he or she is prevented, by reason of a
 4395 medically determinable physical or mental impairment, from
 4396 rendering useful and efficient service as an officer or

4397 employee.

4398 (e) Proof of disability.—~~The division,~~ Before approving
 4399 payment of any disability retirement benefit, the division shall
 4400 require proof that the member participant is totally and
 4401 permanently disabled ~~in the same manner as provided for members~~
 4402 ~~of the defined benefit program of the Florida Retirement System~~
 4403 under s. 121.091(4)(c).

4404 (f) Disability retirement benefit.—Upon the disability
 4405 retirement of a member participant under this subsection, the
 4406 member participant shall receive a monthly benefit that begins
 4407 accruing ~~shall begin to accrue~~ on the first day of the month of
 4408 disability retirement, as approved by the division, and is ~~shall~~
 4409 ~~be~~ payable on the last day of that month and each month
 4410 thereafter during his or her lifetime and continued disability.
 4411 All disability benefits must ~~payable to such member~~ shall be
 4412 paid out of the disability account of the Florida Retirement
 4413 System Trust Fund established under this subsection.

4414 (g) Computation of disability retirement benefit.—The
 4415 amount of each monthly payment must ~~shall~~ be calculated ~~in the~~
 4416 ~~same manner as provided for members of the defined benefit~~
 4417 ~~program of the Florida Retirement System~~ under s. 121.091(4)(f).
 4418 ~~For such purpose,~~ Creditable service under both the pension plan
 4419 ~~defined benefit program~~ and the investment plan ~~Public Employee~~
 4420 ~~Optional Retirement Program of the Florida Retirement System~~
 4421 shall be applicable as provided under paragraph (b).

4422 (h) Reapplication.—A member participant whose initial
 4423 application for disability retirement is ~~has been~~ denied may
 4424 reapply for disability benefits ~~in the same manner, and under~~

4425 ~~the same conditions,~~ as provided for members ~~of the defined~~
 4426 ~~benefit program of the Florida Retirement System~~ under s.
 4427 121.091(4)(g).

4428 (i) Membership.—Upon approval of a member's ~~an~~ application
 4429 for disability benefits ~~under this subsection,~~ the member
 4430 ~~applicant~~ shall be transferred to the pension plan defined
 4431 ~~benefit program of the Florida Retirement System,~~ effective upon
 4432 his or her disability retirement effective date.

4433 (j) Option to cancel.—A member ~~Any participant~~ whose
 4434 application for disability benefits is approved may cancel the
 4435 ~~his or her application if for disability benefits,~~ provided that
 4436 the cancellation request is received by the division before a
 4437 disability retirement warrant has been deposited, cashed, or
 4438 received by direct deposit. Upon ~~such~~ cancellation:

4439 1. The member's ~~participant's~~ transfer to the pension plan
 4440 ~~defined benefit program~~ under paragraph (i) shall be nullified;

4441 2. The member ~~participant~~ shall be retroactively
 4442 reinstated in the investment plan ~~Public Employee Optional~~
 4443 ~~Retirement Program~~ without hiatus;

4444 3. All funds transferred to the Florida Retirement System
 4445 Trust Fund under paragraph (a) must ~~shall~~ be returned to the
 4446 member ~~participant~~ accounts from which the ~~such~~ funds were
 4447 drawn; and

4448 4. The member ~~participant~~ may elect to receive the benefit
 4449 payable under ~~the provisions of~~ subsection (1) in lieu of
 4450 disability benefits ~~as provided under this subsection.~~

4451 (k) Recovery from disability.—

4452 1. The division may require periodic reexaminations at the

4453 expense of the disability program account of the Florida
 4454 Retirement System Trust Fund. Except as ~~otherwise~~ provided in
 4455 subparagraph 2., ~~the requirements, procedures, and restrictions~~
 4456 ~~relating to the conduct and review of such reexaminations,~~
 4457 ~~discontinuation or termination of benefits, reentry into~~
 4458 ~~employment, disability retirement after reentry into covered~~
 4459 ~~employment, and all other matters relating to recovery from~~
 4460 disability shall be ~~the same~~ as provided ~~are set forth~~ under s.
 4461 121.091(4) (h).

4462 2. Upon recovery from disability, the ~~any~~ recipient of
 4463 disability retirement benefits under this subsection shall be a
 4464 compulsory member of the investment plan ~~Public Employee~~
 4465 ~~Optional Retirement Program of the Florida Retirement System.~~
 4466 The net difference between the recipient's original account
 4467 balance transferred to the Florida Retirement System Trust Fund,
 4468 including earnings, ~~under paragraph (a)~~ and total disability
 4469 benefits paid to such recipient, if any, shall be determined as
 4470 provided in sub-subparagraph a.

4471 a. An amount equal to the total benefits paid shall be
 4472 subtracted from that portion of the transferred account balance
 4473 consisting of vested accumulations as described under s.
 4474 121.4501(6), if any, and an amount equal to the remainder of
 4475 benefit amounts paid, if any, shall ~~then~~ be subtracted from any
 4476 remaining ~~portion consisting of~~ nonvested accumulations ~~as~~
 4477 ~~described under s. 121.4501(6).~~

4478 b. Amounts subtracted under sub-subparagraph a. must ~~shall~~
 4479 be retained within the disability account of the Florida
 4480 Retirement System Trust Fund. Any remaining account balance

4481 shall be transferred to the third-party administrator for
 4482 disposition as provided under sub-subparagraph c. or sub-
 4483 subparagraph d., as appropriate.

4484 c. If the recipient returns to covered employment,
 4485 transferred amounts must ~~shall~~ be deposited in individual
 4486 accounts under the investment plan ~~Public Employee Optional~~
 4487 ~~Retirement Program~~, as directed by the member ~~participant~~.
 4488 Vested and nonvested amounts shall be separately accounted for
 4489 as provided in s. 121.4501(6).

4490 d. If the recipient fails to return to covered employment
 4491 upon recovery from disability:

4492 (I) Any remaining vested amount must ~~shall~~ be deposited in
 4493 individual accounts under the investment plan ~~Public Employee~~
 4494 ~~Optional Retirement Program~~, as directed by the member
 4495 ~~participant~~, and is ~~shall~~ be payable as provided in subsection
 4496 (1).

4497 (II) Any remaining nonvested amount must ~~shall~~ be held in
 4498 a suspense account and is ~~shall~~ be forfeitable after 5 years as
 4499 provided in s. 121.4501(6).

4500 3. If present value was reassigned from the pension plan
 4501 ~~defined benefit program~~ to the disability program ~~of the Florida~~
 4502 ~~Retirement System~~ as provided under subparagraph (a)2., the full
 4503 present value amount must ~~shall~~ be returned to the defined
 4504 benefit account within the Florida Retirement System Trust Fund
 4505 and the member's ~~affected individual's~~ associated retirement
 4506 credit under the pension plan ~~must~~ ~~defined benefit program~~ shall
 4507 be reinstated in full. Any benefit based upon such credit must
 4508 ~~shall~~ be calculated as provided in s. 121.091(4)(h)1.

4509 (l) Nonadmissible causes of disability.—A member is
 4510 ~~participant shall not be~~ entitled to receive a disability
 4511 retirement benefit if the disability results from any injury or
 4512 disease ~~sustained or inflicted~~ as described in s. 121.091(4)(i).

4513 (m) Disability retirement of justice or judge by order of
 4514 Supreme Court.—

4515 1.a. If a member participant is a justice of the Supreme
 4516 Court, judge of a district court of appeal, circuit judge, or
 4517 judge of a county court who has served for 6 years or more as an
 4518 elected constitutional judicial officer, including service as a
 4519 judicial officer in any court abolished pursuant to Art. V of
 4520 the State Constitution, and who is retired for disability ~~by~~
 4521 ~~order of the Supreme Court upon recommendation of the Judicial~~
 4522 ~~Qualifications Commission~~ pursuant to s. 12, ~~the provisions of~~
 4523 Art. V of the State Constitution, the member's participant's
 4524 Option 1 monthly disability benefit amount as provided in s.
 4525 121.091(6)(a)1. shall be two-thirds of his or her monthly
 4526 compensation as of the member's participant's disability
 4527 retirement date. The member ~~Such a participant~~ may alternatively
 4528 elect to receive an actuarially adjusted disability retirement
 4529 benefit under any other option as provided in s. 121.091(6)(a),
 4530 or to receive the normal benefit payable under ~~the Public~~
 4531 ~~Employee Optional Retirement Program as set forth in~~ subsection
 4532 (1). This sub-subparagraph applies to any member retiring prior
 4533 to July 1, 2011.

4534 b. Effective July 1, 2011, and applicable to any member
 4535 retiring on or after July 1, 2011, if a member is a justice of
 4536 the Supreme Court, judge of a district court of appeal, circuit

4537 | judge, or judge of a county court who has served for 6 years or
 4538 | more as an elected constitutional judicial officer, including
 4539 | service as a judicial officer in any court abolished pursuant to
 4540 | Art. V of the State Constitution, and who is retired for
 4541 | disability pursuant to s. 12, Art. V of the State Constitution,
 4542 | the member's Option 1 monthly disability benefit amount as
 4543 | provided in s. 121.091(6)(a)1. shall be one-third of his or her
 4544 | monthly compensation as of the member's disability retirement
 4545 | date. The member may alternatively elect to receive an
 4546 | actuarially adjusted disability retirement benefit under any
 4547 | other option as provided in s. 121.091(6)(a), or to receive the
 4548 | normal benefit payable under subsection (1).

4549 | 2. If any justice or judge who is a member participant of
 4550 | the investment plan ~~Public Employee Optional Retirement Program~~
 4551 | ~~of the Florida Retirement System~~ is retired for disability by
 4552 | ~~order of the Supreme Court upon recommendation of the Judicial~~
 4553 | ~~Qualifications Commission pursuant to s. 12, the provisions of~~
 4554 | Art. V of the State Constitution and elects to receive a monthly
 4555 | disability benefit under the provisions of this paragraph:

4556 | a. Any present value amount that was transferred to his or
 4557 | her investment plan ~~program~~ account and all employee and
 4558 | employer contributions made to such account on his or her
 4559 | behalf, plus interest and earnings thereon, must ~~shall~~ be
 4560 | transferred to and deposited in the disability account of the
 4561 | Florida Retirement System Trust Fund; and

4562 | b. The monthly disability benefits payable under this
 4563 | paragraph ~~for any affected justice or judge retired from the~~
 4564 | ~~Florida Retirement System pursuant to Art. V of the State~~

4565 ~~Constitution~~ shall be paid from the disability account of the
 4566 Florida Retirement System Trust Fund.

4567 (n) Death of retiree or beneficiary.—Upon the death of a
 4568 disabled retiree or beneficiary of the retiree ~~thereof~~ who is
 4569 receiving monthly disability benefits under this subsection, the
 4570 monthly benefits shall be paid through the last day of the month
 4571 of death and shall terminate, or be adjusted, if applicable, as
 4572 of that date in accordance with the optional form of benefit
 4573 selected at the time of retirement. The department ~~of Management~~
 4574 ~~Services~~ may adopt rules necessary to administer this paragraph.

4575 (3) DEATH BENEFITS.—Under the investment plan ~~Public~~
 4576 ~~Employee Optional Retirement Program~~:

4577 (a) Survivor benefits are ~~shall be~~ payable in accordance
 4578 with the following terms and conditions:

4579 1. To the extent vested, benefits are ~~shall be~~ payable
 4580 only to a member's ~~participant's~~ beneficiary or beneficiaries as
 4581 designated by the member ~~participant~~ as provided in s.

4582 121.4501(20).

4583 2. Benefits shall be paid by the third-party administrator
 4584 or designated approved providers in accordance with the law, the
 4585 contracts, and any applicable state board rule or policy.

4586 3. To receive benefits under this subsection, the member
 4587 ~~participant~~ must be deceased.

4588 (b) In the event of a member's ~~participant's~~ death, all
 4589 vested accumulations as described in s. 121.4501(6), less
 4590 withholding taxes remitted to the Internal Revenue Service,
 4591 shall be distributed, as provided in paragraph (c) or as
 4592 described in s. 121.4501(20), as if the member ~~participant~~

4593 retired on the date of death. No other death benefits are ~~shall~~
 4594 ~~be~~ available for survivors of members ~~participants~~ ~~under the~~
 4595 ~~Public Employee Optional Retirement Program~~, except for such
 4596 benefits, or coverage for ~~such~~ benefits, as are otherwise
 4597 provided by law or ~~are~~ separately provided ~~afforded~~ by the
 4598 employer, at the employer's discretion.

4599 (c) Upon receipt by the third-party administrator of a
 4600 properly executed application for distribution of benefits, the
 4601 total accumulated benefit is ~~shall be~~ payable by the third-party
 4602 administrator to the member's ~~participant's~~ surviving
 4603 beneficiary or beneficiaries, as:

4604 1. A lump-sum distribution payable to the beneficiary or
 4605 beneficiaries, or to the deceased member's ~~participant's~~ estate;

4606 2. An eligible rollover distribution, if permitted, on
 4607 behalf of the surviving spouse of a deceased member ~~participant~~,
 4608 whereby all accrued benefits, plus interest and investment
 4609 earnings, are paid from the deceased member's ~~participant's~~
 4610 account directly to the custodian of an eligible retirement
 4611 plan, as described in s. 402(c)(8)(B) of the Internal Revenue
 4612 Code, on behalf of the surviving spouse; or

4613 3. A partial lump-sum payment whereby a portion of the
 4614 accrued benefit is paid to the deceased member's ~~participant's~~
 4615 surviving spouse or other designated beneficiaries, less
 4616 withholding taxes remitted to the Internal Revenue Service, and
 4617 the remaining amount is transferred directly to the custodian of
 4618 an eligible retirement plan, if permitted, as described in s.
 4619 402(c)(8)(B) of the Internal Revenue Code, on behalf of the
 4620 surviving spouse. The proportions must be specified by the

4621 member participant or the surviving beneficiary.

4622

4623 This paragraph does not abrogate other applicable provisions of
4624 state or federal law providing for payment of death benefits.

4625 (4) LIMITATION ON LEGAL PROCESS.—The benefits payable to
4626 any person under the investment plan ~~Public Employee Optional~~
4627 ~~Retirement Program~~, and any contributions accumulated under the
4628 investment plan ~~such program~~, are not subject to assignment,
4629 execution, attachment, or any legal process, except for
4630 qualified domestic relations orders by a court of competent
4631 jurisdiction, income deduction orders as provided in s. 61.1301,
4632 and federal income tax levies.

4633 Section 24. Section 121.5911, Florida Statutes, is amended
4634 to read:

4635 121.5911 Disability retirement program; qualified status;
4636 rulemaking authority.—It is the intent of the Legislature that
4637 the disability retirement program for members ~~participants~~ of
4638 the investment plan ~~Public Employee Optional Retirement Program~~
4639 ~~as created in this act must~~ meet all applicable requirements of
4640 federal law for a qualified plan. The department ~~of Management~~
4641 ~~Services~~ shall seek a private letter ruling from the Internal
4642 Revenue Service on the disability retirement program ~~for~~
4643 ~~participants of the Public Employee Optional Retirement Program~~.
4644 Consistent with the private letter ruling, the department ~~of~~
4645 ~~Management Services~~ shall adopt ~~any necessary~~ rules necessary
4646 ~~required~~ to maintain the qualified status of the disability
4647 retirement program and the Florida Retirement System pension
4648 ~~defined benefit~~ plan.

4649 Section 25. Section 121.70, Florida Statutes, is amended
 4650 to read:

4651 121.70 Legislative purpose and intent.—

4652 (1) This part provides for a uniform system for funding
 4653 benefits provided under the Florida Retirement System Pension
 4654 Plan ~~defined benefit program~~ established under part I of this
 4655 chapter (referred to in this part as the pension plan ~~defined~~
 4656 ~~benefit program~~) and under the Florida Retirement System
 4657 Investment Plan ~~Public Employee Optional Retirement Program~~
 4658 established under part II of this chapter (referred to in this
 4659 part as the investment plan ~~optional retirement program~~). The
 4660 Legislature recognizes and declares that the Florida Retirement
 4661 System is a single retirement system, consisting of two
 4662 retirement plans and other nonintegrated programs. Employees and
 4663 employers participating in the Florida Retirement System
 4664 collectively shall be responsible for making contributions to
 4665 support the benefits provided ~~afforded~~ under both plans. The
 4666 employees and ~~As provided in this part,~~ employers ~~participating~~
 4667 ~~in the Florida Retirement System~~ shall make contributions based
 4668 upon uniform contribution rates determined as a percentage of
 4669 the employee's gross monthly compensation ~~total payroll~~ for the
 4670 employee's ~~each~~ class or subclass of Florida Retirement System
 4671 membership, irrespective of the ~~which~~ retirement plan in which
 4672 the individual employee is enrolled ~~employees may elect~~. This
 4673 shall be known as a uniform or blended contribution rate system.

4674 (2) In establishing a uniform contribution rate system, it
 4675 is the intent of the Legislature to:

4676 (a) Provide greater stability and certainty in financial

4677 | planning and budgeting for Florida Retirement System employers
 4678 | by eliminating the fiscal instability that would be caused by
 4679 | dual rates coupled with employee-selected plan participation;

4680 | (b) Provide greater fiscal equity and uniformity for
 4681 | system employers by effectively distributing the financial
 4682 | burden and benefit of short-term system deficits and surpluses,
 4683 | respectively, in proportion to total system payroll; and

4684 | (c) Allow employees to make their retirement plan
 4685 | selection decisions free of circumstances that may cause
 4686 | employers to favor one plan choice over another.

4687 | Section 26. Section 121.71, Florida Statutes, is amended
 4688 | to read:

4689 | 121.71 Uniform rates; process; calculations; levy.—

4690 | (1) In conducting the system actuarial study required
 4691 | under s. 121.031, the actuary shall follow all requirements
 4692 | specified ~~thereunder~~ to determine, by Florida Retirement System
 4693 | employee membership class, the dollar contribution amounts
 4694 | necessary for the next ~~forthcoming~~ fiscal year for the pension
 4695 | plan ~~defined benefit program~~. In addition, the actuary shall
 4696 | determine, by Florida Retirement System membership class, based
 4697 | on an estimate for the next ~~forthcoming~~ fiscal year of the gross
 4698 | compensation of employees participating in the investment plan
 4699 | ~~optional retirement program~~, the dollar contribution amounts
 4700 | necessary to make the allocations required under ss. 121.72 and
 4701 | 121.73. For each employee membership class and subclass, the
 4702 | actuarial study must ~~shall~~ establish a uniform rate necessary to
 4703 | fund the benefit obligations under both Florida Retirement
 4704 | System retirement plans by dividing the sum of total dollars

4705 | required by the estimated gross compensation of members in both
 4706 | plans.

4707 | (2) Based on the uniform rates set forth in subsections
 4708 | ~~subsection~~ (3), (4), and (5), employees and employers shall make
 4709 | monthly contributions to the Division of Retirement as required
 4710 | in s. 121.061(1), which shall initially deposit the funds into
 4711 | the Florida Retirement System Contributions Clearing Trust Fund.
 4712 | A change in a contribution rate is effective the first day of
 4713 | the month for which a full month's employee and employer
 4714 | contribution may be made on or after the beginning date of the
 4715 | change. Beginning July 1, 2011, each employee shall contribute
 4716 | the contributions required in subsection (3). The employer shall
 4717 | deduct the contribution from the employee's monthly salary, and
 4718 | the contribution shall be submitted to the Division of
 4719 | Retirement. These contributions shall be reported as employer-
 4720 | paid employee contributions, and shall be credited to the
 4721 | account of the employee. The contributions shall be deducted
 4722 | from the employee's salary before the computation of applicable
 4723 | federal taxes and shall be treated as employer contributions
 4724 | under 26 U.S.C. s. 414(h) (2). The contributions, although
 4725 | designated as employee contributions, are being paid by the
 4726 | employers in lieu of contributions by the employee. The employee
 4727 | shall not have the option of choosing to receive the contributed
 4728 | amounts directly instead of having them paid by the employer to
 4729 | the plan. Such contributions are mandatory and each employee
 4730 | shall be considered to consent to payroll deductions. Payment of
 4731 | an employee's salary or wages, less the contribution, is a full
 4732 | and complete discharge and satisfaction of all claims and

HB 1405

2011

4733 demands for the service rendered by employees during the period
 4734 covered by the payment, except their claims to the benefits to
 4735 which they may be entitled under the provisions of this chapter.

4736 (3) Required employee retirement contribution rates for
 4737 each membership class of the Florida Retirement System for both
 4738 retirement plans are as follows:

<u>Membership Class</u>	<u>Percentage of Gross Compensation, Effective July 1, 2011</u>
4739 <u>Regular Class</u>	<u>5.00%</u>
4740 <u>Special Risk Class</u>	<u>5.00%</u>
4741 <u>Special Risk Administrative Support Class</u>	<u>5.00%</u>
4742 <u>Elected Officers' Class</u>	<u>5.00%</u>
4743 <u>Senior Management Class</u>	<u>5.00%</u>
4744 <u>DROP</u>	<u>0.00%</u>

4745
 4746 (4) ~~(3)~~ Required employer retirement contribution rates for
 4747 each membership class and subclass of the Florida Retirement
 4748 System for both retirement plans are as follows:
 4749

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 1405

2011

	Membership Class	Percentage of Gross Compensation, Effective July 1, <u>2011</u> 2009	Percentage of Gross Compensation, Effective July 1, 2010
4750			
4751	Regular Class	<u>5.23%</u> 8.69%	9.63%
4752	Special Risk Class	<u>11.63%</u> 19.76%	22.11%
4753	Special Risk Administrative Support Class	<u>6.39%</u> 11.39%	12.10%
4754	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	<u>5.95%</u> 13.32%	15.20%
4755	Elected Officers' Class— Justices, Judges	<u>7.26%</u> 18.40%	20.65%
4756			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 1405

2011

4757	Elected Officers' Class— County Elected Officers	<u>7.09%</u> 15.37%	17.50%
4758	Senior Management Class	<u>5.63%</u> 11.96%	13.43%
4759	DROP	<u>11.14%</u> 9.80%	11.14%
4760	<u>(5) In order to address unfunded actuarial liabilities of</u>		
4761	<u>the system, the required employer retirement contribution rates</u>		
4762	<u>for each membership class and subclass of the Florida Retirement</u>		
4763	<u>System for both retirement plans are as follows:</u>		
4764			
4765	<u>Membership Class</u>	<u>Percentage of</u> <u>Gross</u> <u>Compensation,</u> <u>Effective</u> <u>July 1, 2011</u>	<u>Percentage of</u> <u>Gross</u> <u>Compensation,</u> <u>Effective</u> <u>July 1, 2013</u>
4766	<u>Regular Class</u>	<u>0.00%</u>	<u>1.94%</u>
4767	<u>Special Risk Class</u>	<u>0.00%</u>	<u>5.80%</u>
4768	<u>Special Risk Administrative</u>		
4769	<u>Support Class</u>	<u>0.00%</u>	<u>5.80%</u>

HB 1405

2011

4770	<u>Elected Officers' Class—</u> <u>Legislators, Governor,</u> <u>Lt. Governor,</u> <u>Cabinet Officers,</u> <u>State Attorneys,</u> <u>Public Defenders</u>	<u>0.00%</u>	<u>19.39%</u>
4771	<u>Elected Officers' Class—</u> <u>Justices, Judges</u>	<u>0.00%</u>	<u>11.74%</u>
4772	<u>Elected Officers' Class—</u> <u>County Elected Officers</u>	<u>0.00%</u>	<u>19.71%</u>
4773	<u>Senior Management Class</u>	<u>0.00%</u>	<u>9.93%</u>
4774	<u>DROP</u>	<u>0.00%</u>	<u>0.00%</u>
4775	<u>(6) If a member is reported under an incorrect membership</u>		
4776	<u>class and the amount of contributions reported and remitted are</u>		
4777	<u>less than the amount required, the employer shall owe the</u>		
4778	<u>difference, plus the delinquent fee, of 1 percent for each</u>		
4779	<u>calendar month or part thereof that the contributions should</u>		
4780	<u>have been paid. This delinquent assessment may not be waived. If</u>		
4781	<u>the contributions reported and remitted are more than the amount</u>		
4782	<u>required, the employer shall receive a credit to be applied</u>		
4783	<u>against future contributions owed.</u>		
4784	<u>(7)-(4) The state actuary shall recognize and use an</u>		
4785	<u>appropriate level of available excess assets of the Florida</u>		

4786 Retirement System Trust Fund to offset the difference between
 4787 the normal costs of the Florida Retirement System and the
 4788 statutorily prescribed contribution rates.

4789 Section 27. Section 121.72, Florida Statutes, is amended
 4790 to read:

4791 121.72 Allocations to investment plan member ~~optional~~
 4792 ~~retirement program participant~~ accounts; percentage amounts.—

4793 (1) The allocations established in subsection (4) shall
 4794 fund retirement benefits under the investment plan ~~optional~~
 4795 ~~retirement program~~ and shall be transferred monthly by the
 4796 Division of Retirement from the Florida Retirement System
 4797 Contributions Clearing Trust Fund to the third-party
 4798 administrator for deposit in each participating employee's
 4799 individual account based on the membership class of the
 4800 participant.

4801 (2) The allocations are stated as a percentage of each
 4802 investment plan member's ~~optional retirement program~~
 4803 ~~participant's~~ gross compensation for the calendar month. A
 4804 change in a contribution percentage is effective the first day
 4805 of the month for which retirement contributions ~~a full month's~~
 4806 ~~employer contribution~~ may be made on or after the beginning date
 4807 of the change. Contribution percentages may be modified by
 4808 general law.

4809 (3) Employer and employee ~~participant~~ contributions to
 4810 member ~~participant~~ accounts shall be accounted for separately.
 4811 ~~Participant contributions may be made only if expressly~~
 4812 ~~authorized by law.~~ Interest and investment earnings on
 4813 contributions shall accrue on a tax-deferred basis until

HB 1405

2011

4814 | proceeds are distributed.

4815 | (4) (a) Effective July 1, 2002, through June 30, 2011,
 4816 | allocations from the Florida Retirement System Contributions
 4817 | Clearing Trust Fund to investment plan member ~~optional~~
 4818 | ~~retirement program participant~~ accounts shall be as follows:
 4819 |

Membership Class	Percentage of Gross Compensation
4820	
4821 Regular Class	9.00%
4822 Special Risk Class	20.00%
4823 Special Risk Administrative Support Class	11.35%
4824 Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.40%
4825 Elected Officers' Class— Justices, Judges	18.90%
4826 Elected Officers' Class—	16.20%

County Elected Officers

4827

Senior Management Service Class 10.95%

4828

4829 (b) Effective July 1, 2011, allocations from the Florida
 4830 Retirement System Contributions Clearing Trust Fund to
 4831 investment plan member accounts, which includes employee
 4832 contributions as required in s. 121.71(3), shall be 11.25
 4833 percent of gross compensation for a member in the Special Risk
 4834 Class and 9 percent of gross compensation for members in all
 4835 other classes.

4836

Section 28. Section 121.73, Florida Statutes, is amended to read:

4837

4838 121.73 Allocations for member ~~optional retirement program~~
 4839 ~~participant~~ disability coverage; percentage amounts.-

4840

4841 (1) The allocations established in subsection (3) shall be
 4842 used to provide disability coverage for members ~~participants~~ in
 4843 the investment plan ~~optional retirement program~~ and shall be
 4844 transferred monthly by the Division of Retirement from the
 4845 Florida Retirement System Contributions Clearing Trust Fund to
 4846 the disability account of the Florida Retirement System Trust
 4847 Fund.

4847

4848 (2) The allocations are stated as a percentage of each
 4849 investment plan member's ~~optional retirement program~~
 4850 ~~participant's~~ gross compensation for the calendar month. A
 4851 change in a contribution percentage is effective the first day
 4852 of the month for which retirement contributions ~~a full month's~~
~~employer contribution~~ may be made on or after the beginning date

HB 1405

2011

4853 of the change. Contribution percentages may be modified by
 4854 general law.

4855 (3)(a) Effective July 1, 2002, through June 30, 2011,
 4856 allocations from the Florida Retirement System Contributions ~~FRS~~
 4857 ~~Contribution~~ Clearing Trust Fund to provide disability coverage
 4858 for members ~~participants~~ in the investment plan ~~optional~~
 4859 ~~retirement program~~, and to offset the costs of administering
 4860 said coverage, shall be as follows:

4861

Membership Class	Percentage of Gross Compensation
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4862

4863

Regular Class	0.25%
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4864

Special Risk Class	1.33%
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4865

Special Risk Administrative Support Class	0.45%
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4866

Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
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4867

Elected Officers' Class—	0.73%
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HB 1405

2011

Justices, Judges

4868

Elected Officers' Class- 0.41%
 County Elected Officers

4869

Senior Management Service Class 0.26%

4870

4871 (b) Effective July 1, 2011, allocations from the Florida
 4872 Retirement System Contributions Clearing Trust Fund to provide
 4873 disability coverage for participants in the investment plan and
 4874 to offset the costs of administering such coverage shall be the
 4875 actuarially indicated amount necessary to fund the statutorily
 4876 authorized benefit for the plan year as determined by the state
 4877 actuary.

4878 Section 29. Section 121.74, Florida Statutes, is amended
 4879 to read:

4880 121.74 Administrative and educational expenses.—In
 4881 addition to contributions required under ss. ~~s.~~ 121.71 and
 4882 121.73, effective July 1, 2010, through June 30, 2013 ~~2014~~,
 4883 employers participating in the Florida Retirement System shall
 4884 contribute an amount equal to 0.03 percent of the payroll
 4885 reported for each class or subclass of Florida Retirement System
 4886 membership. ~~Effective July 1, 2013~~ 2014, the contribution rate
 4887 shall be 0.04 percent of the payroll reported for each class or
 4888 subclass of membership. The amount contributed shall be
 4889 transferred by the Division of Retirement from the Florida
 4890 Retirement System Contributions Clearing Trust Fund to the State
 4891 Board of Administration's Administrative Trust Fund to offset

4892 the costs of administering the investment plan ~~optional~~
 4893 ~~retirement program~~ and the costs of providing educational
 4894 services to members of the Florida Retirement System
 4895 ~~participants in the defined benefit program and the optional~~
 4896 ~~retirement program~~. Approval of the trustees is required before
 4897 the expenditure of these funds. Payments for third-party
 4898 administrative or educational expenses shall be made only
 4899 pursuant to the terms of the approved contracts for such
 4900 services.

4901 Section 30. Section 121.75, Florida Statutes, is amended
 4902 to read:

4903 121.75 Allocation for pension plan ~~defined benefit~~
 4904 ~~program~~.—After making the transfers required pursuant to ss.
 4905 121.71, 121.72, 121.73, and 121.74, the monthly balance of funds
 4906 in the Florida Retirement System Contributions Clearing Trust
 4907 Fund shall be transferred to the Florida Retirement System Trust
 4908 Fund to pay the costs of providing pension plan ~~defined benefit~~
 4909 ~~program~~ benefits and plan administrative costs under the pension
 4910 plan ~~defined benefit program~~.

4911 Section 31. Section 121.77, Florida Statutes, is amended
 4912 to read:

4913 121.77 Deductions from member ~~participant~~ accounts.—The
 4914 State Board of Administration may authorize the third-party
 4915 administrator to deduct reasonable fees and apply appropriate
 4916 charges to investment plan member ~~optional retirement program~~
 4917 ~~participant~~ accounts. In no event may ~~shall~~ administrative and
 4918 educational expenses exceed the portion of employer
 4919 contributions earmarked for such expenses under this part,

4920 except for reasonable administrative charges assessed against
 4921 ~~member participant~~ accounts of persons for whom no employer
 4922 contributions are made during the calendar quarter. Investment
 4923 management fees shall be deducted from member ~~participant~~
 4924 accounts, pursuant to the terms of the contract between the
 4925 provider and the board.

4926 Section 32. Section 121.78, Florida Statutes, is amended
 4927 to read:

4928 121.78 Payment and distribution of contributions.—

4929 (1) Contributions made pursuant to this part shall be paid
 4930 by the employer, including the employee contribution, to the
 4931 Division of Retirement by electronic funds transfer no later
 4932 than the 5th working day of the month immediately following the
 4933 month during which the payroll period ended. Accompanying
 4934 payroll data must be transmitted to the division concurrent with
 4935 the contributions.

4936 (2) The division, the State Board of Administration, and
 4937 the third-party administrator, as applicable, shall ensure that
 4938 the contributions are distributed to the appropriate trust funds
 4939 or participant accounts in a timely manner.

4940 (3) (a) Employee and employer contributions and
 4941 accompanying payroll data received after the 5th working day of
 4942 the month are considered late. The employer shall be assessed by
 4943 the Division of Retirement a penalty of 1 percent of the
 4944 contributions due for each calendar month or part thereof that
 4945 the contributions or accompanying payroll data are late.
 4946 Proceeds from the 1-percent assessment against contributions
 4947 made on behalf of members ~~participants~~ of the pension plan must

4948 ~~defined benefit program shall~~ be deposited in the Florida
 4949 Retirement System Trust Fund, and proceeds from the 1-percent
 4950 assessment against contributions made on behalf of members
 4951 ~~participants~~ of the investment plan ~~optional retirement program~~
 4952 shall be transferred to the third-party administrator for
 4953 deposit into member ~~participant~~ accounts, as provided in
 4954 paragraph (c) ~~(b)~~.

4955 (b) Retirement contributions paid for a prior period shall
 4956 be charged a delinquent fee of 1 percent for each calendar month
 4957 or part thereof that the contributions should have been paid.
 4958 This includes prior period contributions due to incorrect wages
 4959 and contributions from an earlier report or wages and
 4960 contributions that should have been reported but were not. The
 4961 delinquent assessments may not be waived.

4962 (c) ~~(b)~~ If employee contributions or contributions made by
 4963 an employer on behalf of members ~~participants~~ of the investment
 4964 plan ~~optional retirement program~~ or accompanying payroll data
 4965 are not received within the calendar month they are due,
 4966 including, but not limited to, contribution adjustments as a
 4967 result of employer errors or corrections, and if that
 4968 delinquency results in market losses to members ~~participants~~,
 4969 the employer shall reimburse each member's ~~participant's~~ account
 4970 for market losses resulting from the late contributions. If a
 4971 member ~~participant~~ has terminated employment and taken a
 4972 distribution, the member ~~participant~~ is responsible for
 4973 returning any excess contributions erroneously provided by
 4974 employers, adjusted for any investment gain or loss incurred
 4975 during the period such excess contributions were in the member's

4976 ~~participant's~~ account. The state board or its designated agent
 4977 shall communicate to terminated members ~~participants~~ any
 4978 obligation to repay such excess contribution amounts. However,
 4979 the state board, its designated agents, the Florida Retirement
 4980 System Investment Plan ~~Public Employee Optional Retirement~~
 4981 ~~Program~~ Trust Fund, the department, or the Florida Retirement
 4982 System Trust Fund may not incur any loss or gain as a result of
 4983 an employer's correction of such excess contributions. The
 4984 third-party administrator, hired by the state board pursuant to
 4985 s. 121.4501(8), shall calculate the market losses for each
 4986 affected member ~~participant~~. If contributions made on behalf of
 4987 members ~~participants~~ of the investment plan ~~optional retirement~~
 4988 ~~program~~ or accompanying payroll data are not received within the
 4989 calendar month due, the employer shall also pay the cost of the
 4990 third-party administrator's calculation and reconciliation
 4991 adjustments resulting from the late contributions. The third-
 4992 party administrator shall notify the employer of the results of
 4993 the calculations and the total amount due from the employer for
 4994 such losses and the costs of calculation and reconciliation. The
 4995 employer shall remit to the Division of Retirement the amount
 4996 due within 30 working days after the date of the penalty notice
 4997 sent by the division. The division shall transfer that amount to
 4998 the third-party administrator, which shall deposit proceeds from
 4999 the 1-percent assessment and from individual market losses into
 5000 member ~~participant~~ accounts, as appropriate. The state board may
 5001 adopt rules to administer the provisions regarding late
 5002 contributions, late submission of payroll data, the process for
 5003 reimbursing member ~~participant~~ accounts for resultant market

5004 losses, and the penalties charged to the employers.

5005 (d) If employee contributions reported by an employer on
 5006 behalf of members are reduced as a result of employer errors or
 5007 corrections, and the member has terminated employment and taken
 5008 a refund or distribution, the employer shall be billed and is
 5009 responsible for recovering from the member any excess
 5010 contributions erroneously provided by the employer.

5011 (e)-(e) Delinquency fees specified in paragraph (a) may be
 5012 waived by the Division of Retirement, with regard to pension
 5013 plan defined benefit program contributions, and by the state
 5014 board, with regard to investment plan optional retirement
 5015 program contributions, only if, in the opinion of the division
 5016 or the board, as appropriate, exceptional circumstances beyond
 5017 the employer's control prevented remittance by the prescribed
 5018 due date notwithstanding the employer's good faith efforts to
 5019 effect delivery. Such a waiver of delinquency may be granted an
 5020 employer only once each plan state fiscal year.

5021 (f) If the employer submits excess employer or employee
 5022 contributions, the employer shall receive a credit to be applied
 5023 against future contributions owed. The employer is responsible
 5024 for reimbursing the member for any excess contributions
 5025 submitted if any return of such an erroneous excess pretax
 5026 contribution by the program is made within 1 year after making
 5027 erroneous contributions or such other period allowed under
 5028 applicable Internal Revenue guidance.

5029 (g)-(d) If contributions made by an employer on behalf of
 5030 members participants in the investment plan optional retirement
 5031 program are delayed in posting to member participant accounts

5032 | due to acts of God beyond the control of the Division of
 5033 | Retirement, the state board, or the third-party administrator,
 5034 | as applicable, market losses resulting from the late
 5035 | contributions are not payable to the ~~members~~ ~~participants~~.

5036 | Section 33. (1) Effective upon this act becoming a law,
 5037 | the State Board of Administration and the Department of
 5038 | Management Services shall request, as soon as practicable, a
 5039 | determination letter and private letter ruling from the United
 5040 | States Internal Revenue Service. If the United States Internal
 5041 | Revenue Service refuses to act upon a request for a private
 5042 | letter ruling, then a legal opinion from a qualified tax
 5043 | attorney or firm may be substituted for such private letter
 5044 | ruling.

5045 | (2) If the board or the department receives notification
 5046 | from the United States Internal Revenue Service that this act or
 5047 | any portion of this act will cause the Florida Retirement
 5048 | System, or a portion thereof, to be disqualified for tax
 5049 | purposes under the Internal Revenue Code, then the portion that
 5050 | will cause the disqualification does not apply. Upon such
 5051 | notice, the state board and the department shall notify the
 5052 | presiding officers of the Legislature.

5053 | Section 34. The Legislature finds that a proper and
 5054 | legitimate state purpose is served when employees and retirees
 5055 | of the state and its political subdivisions, and the dependents,
 5056 | survivors, and beneficiaries of such employees and retirees, are
 5057 | extended the basic protections afforded by governmental
 5058 | retirement systems. These persons must be provided benefits that
 5059 | are fair and adequate and that are managed, administered, and

HB 1405

2011


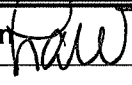
5060 funded in an actuarially sound manner, as required by s. 14,
 5061 Article X of the State Constitution and part VII of chapter 112,
 5062 Florida Statutes. Therefore, the Legislature determines and
 5063 declares that this act fulfills an important state interest.

5064 Section 35. For the 2011-2012 fiscal year, the sums of
 5065 \$93,103 of recurring funds and \$534,000 of nonrecurring funds
 5066 from the Florida Retirement System Operating Trust Fund are
 5067 appropriated to, and two full-time equivalent positions are
 5068 authorized for, the Division of Retirement within the Department
 5069 of Management Services for the purpose of implementing this act.

5070 Section 36. Except as otherwise expressly provided in this
 5071 act, this act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1405 Retirement
SPONSOR(S): Workman and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Meadows 	Williamson 
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multi-employer, non-contributory plan that provides retirement income benefits to 655,367 active members, 304,337 retired members and beneficiaries, and 33,577 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 182 cities and 231 independent special districts that have elected to join the system.

Members of the FRS have two plan options available for participation: the defined benefit plan, also known as the pension plan; and the defined contribution plan, also known as the investment plan.

This bill makes several changes to the FRS; however, changes impacting member benefits do not apply to those persons who have already retired from FRS employment. Benefits already earned are not impacted by the changes in this bill.

The bill changes the name of the FRS defined benefit program to the Florida Retirement System Pension Plan (pension plan). It also changes the name of the defined contribution program from the Public Employee Optional Retirement Program to the Florida Retirement System Investment Plan (investment plan).

Effective July 1, 2011, the bill:

- Requires a 5 percent employee contribution for members of all classes of the FRS pension plan and investment plan.
- Reduces the accrual rate for all membership classes in the FRS to 1.6 percent, with the exception of members of the Special Risk Class who maintain a 3.0 percent accrual rate.
- Closes the Deferred Retirement Option Program to new participants.
- Eliminates prospectively the cost of living adjustment.
- Eliminates prospectively the retiree health insurance subsidy.
- Reduces the minimum disability retirement benefit awarded to judges from two-thirds to one-third of their salary.

The bill has a significant fiscal impact on state and local governments. See Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ Prior to 1975, members of the FRS were required to make employee contributions. Regular Class members contributed 4 percent of their salary while Special Risk Class members contributed 6 percent.

Today, the Florida Retirement System Act² governs the FRS, which is a multi-employer, non-contributory plan that provides retirement income benefits to 655,367 active members,³ 304,337 retired members and beneficiaries,⁴ and 33,577 members of the Deferred Retirement Option Program.⁵ It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 182 cities and 231 independent special districts that have elected to join the system.⁶

The membership of the FRS is divided into five membership classes:

- Regular Class⁷ consists of 570,198 members (87.00 percent of the membership);
- Special Risk Class⁸ includes 75,066 members (11.46 percent);
- Special Risk Administrative Support Class⁹ has 71 members (0.01 percent);
- Elected Officers' Class¹⁰ has 2,284 members (0.35 percent); and
- Senior Management Service Class¹¹ has 7,748 members (1.18 percent).¹²

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two plan options available for participation:

- The defined benefit plan, also known as the pension plan; and
- The defined contribution plan, also known as the investment plan.

¹ The Florida Retirement System Annual Report, July 1, 2009 – June 30, 2010, at 60.

² Chapter 121, F.S.

³ As of June 30, 2010, the FRS defined benefit plan, also known as the pension Plan, had 557,585 members, and the defined contribution plan, also known as the investment plan, had 97,782 members. The Florida Retirement System Annual Report, July 1, 2009 – June 30, 2010, at 1 and 43.

⁴ *Id.* at 52.

⁵ *Id.* at 1.

⁶ *Id.* at 92.

⁷ Regular Class members are those members who do not qualify for membership in the other classes within the FRS. *See s.* 121.021(12), F.S.

⁸ Members include law enforcement officers, firefighters, correctional officers, correctional probation officers, paramedics, emergency medical technicians, certain professional health care workers within the Department of Corrections and the Department of Children and Family Services, and certain forensic employees. *See s.* 121.0515, F.S.

⁹ Members are former members of the special risk class who are transferred or reassigned to an administrative support position in certain circumstances. *See s.* 121.0515(7), F.S.

¹⁰ Membership is comprised of those participants who hold specified elective offices in either state or local government. *See s.* 121.052, F.S.

¹¹ Members generally are high level executive and legal staff or as specifically provided in law. *See s.* 121.055, F.S.

¹² DRAFT analysis of HB 1405, Department of Management Services, March 9, 2011, at 3 (on file with the Government Operations Subcommittee).

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan),¹³ a defined contribution plan offered to eligible employees as an alternative to the FRS pension plan. The earliest that any member could participate in the investment plan was July 1, 2002.

Benefits under the investment plan accrue in individual member accounts funded entirely by employer contributions and earnings.¹⁴ Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests in the investment plan after completing one work year with an FRS employer.¹⁵ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution. In addition to normal benefits and death benefits, the investment plan also provides disability coverage.¹⁶

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁷ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁸

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁹ Investment management is handled by the State Board of Administration.

A member vests in the pension plan after completing six years of service with an FRS employer.²⁰ Benefits payable under the pension plan are calculated based on years of service X accrual rate X average final compensation.²¹ For most members of the pension plan, normal retirement occurs at the earlier attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earlier attainment of 25 years of service or age 55.²³

¹³ Part II, chapter 121, F.S.

¹⁴ Section 121.4501(7), F.S.

¹⁵ Section 121.4501(6)(a), F.S.

¹⁶ See s. 121.4501, F.S.

¹⁷ See s. 121.4501(8), F.S.

¹⁸ Established by Article IV, s. 4(e) of the State Constitution.

¹⁹ Section 121.025, F.S.

²⁰ Section 121.021(45), F.S.

²¹ Section 121.021(23), F.S., defines "average final compensation to mean:

[T]he average of the 5 highest fiscal years of compensation for creditable service prior to retirement, termination, or death. For in-line-of-duty disability benefits, if less than 5 years of creditable service have been completed, the term "average final compensation" means the average annual compensation of the total number of years of creditable service. Each year used in the calculation of average final compensation shall commence on July 1.

(a) The average final compensation shall include:

1. Accumulated annual leave payments, not to exceed 500 hours; and
2. All payments defined as compensation in subsection (22).

(b) The average final compensation shall not include:

1. Compensation paid to professional persons for special or particular services;
2. Payments for accumulated sick leave made due to retirement or termination;
3. Payments for accumulated annual leave in excess of 500 hours;
4. Bonuses as defined in subsection (47);
5. Third party payments made on and after July 1, 1990; or
6. Fringe benefits (for example, automobile allowances or housing allowances).

²² Section 121.021(29)(a), F.S.

²³ Section 121.021(29)(b), F.S.

Optional Retirement Programs

Eligible employees may choose to participate in one of three optional retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program.²⁴
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program.²⁵
- Members of a Florida college may elect to enroll in the State Community College System Optional Retirement Program.²⁶

Accrual Rate

Members earn retirement credit for each year of covered service at different rates depending on their membership class at the time of such service. The FRS accrual rates are as follows:²⁷

Membership Class	Service Accrual Rate
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%, 1.63%, 1.65%, or 1.68%
Elected Officer's Class <ul style="list-style-type: none">• Justices and Judges• All others	3.33% 3.00%
Senior Management Service Class	2.00%
Regular Class	1.60%, 1.63%, 1.65%, or 1.68%

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund.²⁸ The employer contribution rate is a "blended contribution rate" set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan. The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.²⁹

The following are the current employer contribution rates for each class:³⁰

Membership Class	Effective July 1, 2010
Regular Class	9.63%
Special Risk Class	22.11%
Special Risk Administrative Support Class	12.10%
Elected Officer's Class <ul style="list-style-type: none">• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders• Justices and Judges• County Officers	15.20% 20.65% 17.50%
Senior Management Service Class	13.43%

After employer contributions are placed into the FRS Contributions Clearing Trust Fund, benefits under the investment plan are transferred to third-party administrators to be placed in the employee's

²⁴ Section 121.055(6), F.S.

²⁵ Section 121.35, F.S.

²⁶ Section 1012.875, F.S.

²⁷ Section 121.091, F.S.

²⁸ Section 121.78, F.S.

²⁹ See ss. 121.031 and 121.71, F.S.

³⁰ Section 121.71(3), F.S.

individual investment accounts, whereas benefits under the pension plan are placed into the FRS Trust Fund.³¹

Disability Coverage

Current law also provides for the following allocations from the FRS Contributions Clearing Trust Fund to provide disability coverage:³²

Membership Class	Percentage of Gross Compensation
Regular Class	0.25%
Special Risk Class	1.33%
Special Risk Administrative Support Class	0.45%
Elected Officers' Class – Legislature, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
Elected Officers' Class – Justices, Judges	0.73%
Elected Officers' Class – County Elected Officers	0.41%
Senior Management Service Class	0.26%

Deferred Retirement Option Program

The Deferred Retirement Option Program (DROP) allows a member of the pension plan to retire while continuing employment for up to 60 months. Certain instructional personnel may participate in DROP up to an additional 36 months. While in DROP, the member's retirement benefits accumulate in the FRS Trust Fund, increased by a cost of living adjustment each July, and earn a monthly interest equivalent to an annual rate of 6.50 percent. Upon termination, the member receives a lump sum DROP payment as a direct payment, a rollover, or a combination partial lump sum payment and rollover.³³

Cost of Living Adjustment

Current law provides that the benefit received by a retiree or beneficiary is increased by a 3 percent cost of living adjustment (COLA) each July based on the June benefit amount. For a retiree who has been retired for less than 12 months on July 1, the first COLA increase is prorated. The COLA applies to all continuing monthly retirement benefits paid under the pension plan.³⁴

Retiree Health Insurance Subsidy

Current law provides a retiree health insurance subsidy to assist retirees of all state-administered pension plan systems in paying health insurance costs. An eligible retiree currently receives an extra \$5 per month for each year of creditable service completed at retirement, with a minimum monthly payment of \$30 and a maximum monthly payment of \$150. A retiree must satisfy the vesting requirements for his or her membership class, unless that person retired due to an in-line-of-duty disability, in order to receive the health insurance subsidy. Also, the retiree must have proof of coverage for eligibility to receive such subsidy.³⁵

Effect of the Bill

The bill makes several changes to the FRS; however, changes impacting member benefits do not apply to those persons who have already retired from FRS employment. Benefits already earned are not impacted by the changes in this bill.

³¹ See ss. 121.4503 and 121.72, F.S.

³² Section 121.73(3), F.S.

³³ See s. 121.091(13), F.S.

³⁴ See s. 121.101, F.S.

³⁵ See s. 112.363, F.S.

Overview

The bill changes the name of the FRS defined benefit program to the Florida Retirement System Pension Plan (pension plan). It also changes the name of the defined contribution program from the Public Employee Optional Retirement Program to the Florida Retirement System Investment Plan (investment plan).

Effective July 1, 2011, the bill:

- Requires a 5 percent employee contribution for members of all classes of the FRS pension plan and investment plan.
- Reduces the accrual rate for all membership classes to 1.6 percent, with the exception of members of the Special Risk Class who maintain a 3.0 percent accrual rate.
- Closes DROP to new participants.
- Eliminates prospectively the COLA.
- Eliminates prospectively the retiree health insurance subsidy.

Contributions, Generally

The bill defines the terms "participant contributions," "member contributions," and/or "employee contributions." These contributions are defined as the sum of all amounts deducted from the salary of a member and credited to the member's individual investment accounts by the employer in accordance with s. 121.71(2), F.S. The contributions also include any earnings on these amounts and any other contributions as specified.

Employee Contributions

The bill requires each member of the FRS to contribute 5 percent of his or her gross compensation to the FRS, prior to federal tax withholdings. The contribution is treated as an employer-paid employee contribution. The member must consent to the deduction as a condition of employment. A member is fully and immediately vested in all employee contributions paid to the investment plan or pension plan, plus interest and earnings thereon.

The bill specifies that if a member terminates employment for three consecutive months for any reason, other than retirement, the member is eligible for a refund in the amount of his or her accumulated contributions as of the date of termination. If a member elects to receive a refund, he or she is considered to have waived all rights under the FRS and to the health insurance subsidy; however, the member does retain the right to purchase his or her prior service credit in accordance with chapter 121, F.S. The refund may not include any interest that the contributions earned, and employer contributions made on behalf of the member are not refundable. A partial refund is prohibited, and a member may not receive a refund if there is a pending or approved qualified domestic relations order filed against the member's account.

The bill amends s. 121.4501, F.S., to provide that a member of the pension plan who chooses to take a refund of employee contributions on or after July 1, 2011, retains his or her prior plan choice upon returning to employment with an FRS employer.

If a member chooses to switch from the pension plan to the investment plan, then a refund is not permitted for any employee contributions or additional payments which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan. The same applies for a member who chooses to switch from the investment plan to the pension plan.

If a member chooses to switch retirement plans and contribution adjustments are required due to employer errors or corrections, the member is entitled to the additional contributions. However, the member is responsible for returning any excess contributions resulting from the correction. This return must be made within the period allowed by the United States Internal Revenue Service. The present value of the member's accumulated benefit remains the same.

The bill also provides for a procedure for the repayment of an invalid refund. If a member receives an invalid refund, the member must repay the amount of the invalid refund plus 6.5 percent interest

compounded annually on June 30 from the date of the refund until the invalid refund is fully satisfied. The invalid refund must be repaid before the member retires or transfers to the investment plan.

Employer Contributions

The bill also establishes employer contribution rates as follows:

Membership Class	Effective July 1, 2011
Regular Class	5.23%
Special Risk Class	11.63%
Special Risk Administrative Support Class	6.39%
Elected Officer's Class	
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	5.95%
• Justices and Judges	7.26%
• County Officers	7.09%
Senior Management Service Class	5.63%

Investment Plan Contributions

Effective July 1, 2011, the bill provides that allocations from the Florida Retirement System Contributions Clearing Trust Fund to provide disability coverage will be the actuarially indicated amount necessary to fund the statutorily authorized benefit for the plan year as determined by the state actuary. The allocations will be utilized to offset administration cost for the disability benefit.

The bill reduces the total contribution to a member's account from the current level to 11.25 percent for the Special Risk Class and 9.00 percent for all other classes.

Special Risk Class

The bill relocates the membership requirements for qualification in the Special Risk Class from the definition section to the section of law relating to special risk class membership. It also revises the procedure for applying for designation as a member of the Special Risk Class.

An employee seeking to have his or her position designated as a Special Risk Class position must request the employer to complete an Application for Special Risk Membership provided in Form FRS-400 or Form FRS-405. The employer must submit a copy of the job description of the member's duties and a breakdown of the percentage of time spent performing such duties. Additionally, a personnel action form must be submitted that shows an effective date for membership in that position. The Department of Management Services must review the application and either approve or disapprove the application for Special Risk Class membership. If the employer refuses to certify the application for Special Risk Class membership, the employer is required to notify the member of the refusal and state the reasons for refusal.

The bill also provides that any member who is a Special Risk Class member and who fails to meet the Special Risk Class criteria must have his or her Special Risk Class designation removed and thereafter be moved to the Regular Class. The Department of Management Services has the ability to review the Special Risk Class designation of a member to determine whether or not the member continues to meet the criteria for the Special Risk Class.

Incorrect Membership Classification

The bill amends section 121.71(6), F.S., to provide that if a member is reported to FRS under an incorrect membership by the employer and the contribution is less than the requirement, the employer must pay the difference, plus a delinquent fee of 1 percent for each calendar month, or part thereof, that the contribution should have been made. If the contribution is more than the required contribution, the employer shall receive a credit toward future contributions.

Disability Retirement of Justice or Judge

The bill reduces the minimum disability benefit for judges determined disabled by the Supreme Court. The benefit is reduced from two-thirds to one-third of the monthly compensation at the time of disability for retirements effective on or after July 1, 2011.

Deferred Retirement Option Program

Effective July 1, 2011, the bill closes DROP to new participants; however, any member entering DROP prior to that date may continue participation in DROP until completion.

Cost of Living Adjustment

The bill revises the COLA formula for pension plan retirement effective on or after July 1, 2011, to be a proportional amount of 3 percent excluding service credit earned on and after July 1, 2011.

Payment of Benefits

Under the investment plan, Senior Management Service Optional Annuity Program, State University System Optional Retirement Program, or State Community College System Optional Retirement Program, the bill prohibits the payment of benefits before termination of employment in certain instances. Benefits may not be payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason prior to termination from all employment relationships with participating employers.

Miscellaneous Provisions

The bill provides a statement of important state interest. It also directs the State Board of Administration and the Department of Management Services to request a private letter ruling and determination letter from the Federal Internal Revenue Service (IRS) upon the bill becoming a law. If the IRS refuses to act on the private letter ruling request, a legal opinion from a tax attorney can be substituted. It also provides that if any portion of the bill would cause the FRS to be disqualified for tax purposes under the Internal Revenue Code, then that portion of the bill would not apply. The State Board of Administration and the Department of Management Services must notify the Legislature if any portion of the bill cannot be implemented.

B. SECTION DIRECTORY:

Section 1 amends s. 110.123, F.S., to make conforming changes.

Section 2 amends s. 112.0801, F.S., to make conforming changes.

Section 3 amends s. 112.363, F.S., to modify provisions relating to retiree health insurance subsidies; to revise provisions relating to those subsidies; to provide that no additional service credit for the health insurance subsidy can be earned after July 1, 2011.

Section 4 amends s. 112.65, F.S., to make conforming changes.

Section 5 amends s. 121.021, F.S., to revise definitions.

Section 6 amends s. 121.051, F.S., to require a local governmental entity or the governing body of a charter school or charter technical career center to make certain elections regarding benefits at the time of joining the FRS; to provide that employer-paid employee contributions are subject to certain taxes.

Section 7 amends s. 121.0515, F.S., to modify the qualifications and criteria for membership in the Special Risk Class; to provide procedures for designation and removal of designation of Special Risk Class membership; to provide that employee contributions are to be used, if applicable, when purchasing credit for past service.

Section 8 amends s. 121.052, F.S., to revise provisions related to the Elected Officers' Class; to make conforming changes; to require member contributions; to provide for a refund of contributions under

certain circumstances for an officer who leaves office; to provide that a member who obtains a refund of contributions waives certain rights; to reduce the accrual rate for each year of service earned after July 1, 2011.

Section 9 amends s. 121.053, F.S., to clarify the employer contributions required for Elected Officers' Class members who participate in DROP.

Section 10 amends s. 121.055, F.S., to revise provisions related to the Senior Management Service Class; to make conforming changes; to require employee contributions; to provide for a refund of contributions under certain circumstances for a member who terminates employment; to provide that a member who obtains a refund of contributions waives certain rights under the FRS; to reduce the accrual value for each year of service earned after July 1, 2011.

Section 11 amends s. 121.071, F.S., to require employer and employee contributions to the retirement system effective July 1, 2011; to provide for a refund of contributions under certain circumstances following termination of employment; to prohibit such refund if an approved qualified domestic relations order is filed against the member's account; to require repayment plus interest of an invalid refund.

Section 12 amends s. 121.081, F.S., to provide and revise certain requirements for contributions for prior service performed on or after July 1, 2011.

Section 13 amends s. 121.091, F.S., to set the annual service accrual rates for the membership classes for service earned after July 1, 2011; to reduce the minimum disability retirement benefit for certain judges; to provide for the refund of accumulated contributions if a member's employment is terminated for any reason other than retirement; to close DROP to new participants on July 1, 2011.

Section 14 amends s. 121.101, F.S., to provide a calculation for cost of living adjustments for service earned after July 1, 2011.

Section 15 amends s. 121.121, F.S., to modify provisions related to the purchase of creditable service following an authorized leave of absence; to require that service credit be purchased at the employee and employer contribution rates in effect during the leave of absence.

Section 16 amends s. 121.125, F.S., to require that certain employers make the required employee and employer contributions following an employee's workers' compensation injury or illness; to require that a penalty be assessed against certain employers that fail to pay the required contributions.

Section 17 reenacts s. 121.161, F.S., which relates to references of other laws as amended.

Section 18 amends s. 121.35, F.S., to limit the payment of benefits prior to a participant's termination of employment under the optional retirement program for the State University System.

Section 19 amends s. 121.4501, F.S., to change the name of the Public Employee Optional Retirement Program to the FRS Investment Plan; to require members of the investment plan to make certain contributions to the FRS Investment Plan Trust Fund based on the employee's membership class; to revise and provide definitions; to provide for contribution adjustments as a result of employer errors or corrections; to require an employer to receive a credit for excess contributions and to reimburse an employee for excess contributions, subject to certain limitations; to provide for a pension plan participant to retain his or her prior plan choice following a return to employment; to limit certain refunds of contributions that exceed the amount that would have accrued had the member remained in the defined benefit program; to provide certain requirements and limitations with respect to contributions; to clarify that participant and employer contributions are earmarked for specified purposes; to provide duties of the third-party administrator; to provide that a member is fully and immediately vested with respect to employee contributions paid by the member; to provide for forfeiture of nonvested employer contributions and service credit under certain circumstances.

Section 20 amends s. 121.4502, F.S., to change the name of the Public Employee Optional Retirement Program Trust Fund to the FRS Investment Plan Trust Fund.

Section 21 amends s. 121.4503, F.S., to provide for deposit of participant contributions into the FRS Contributions Clearing Trust Fund.

Section 22 amends s. 121.571, F.S., to provide the requirements for submitting employee contributions.

Section 23 amends s. 121.591, F.S., to limit the payment of benefits prior to a participant's termination of employment; to provide for forfeiture of nonvested accumulations and service credits upon payment of certain vested benefits; to provide that the distribution payment method selected by the participant or beneficiary is final and irrevocable at the time of benefit distribution; to prohibit a distribution of employee contributions if a qualified domestic relations order is filed against the participant's account.

Section 24 amends s. 121.5911, F.S., to make conforming changes.

Section 25 amends s. 121.70, F.S., to revise legislative intent.

Section 26 amends s. 121.71, F.S., to require that employee contributions be deducted from the employee's monthly salary, beginning on a specified date, and treated as employer contributions under certain provisions of federal law; to clarify that an employee may not receive such contributions directly; to specify the required employee and employer retirement contribution rates for the membership of each class and subclass of the FRS; to require an assessment to be imposed if the employee contributions remitted are less than the amount required under certain circumstances; to provide for the employer to receive a credit for excess contributions remitted and to apply such credit against future contributions owed.

Section 27 amends s. 121.72, F.S., to revise certain requirements governing allocations to optional retirement program participant accounts; to set the allocation into retirement accounts for members of each class.

Section 28 amends s. 121.73, F.S., to provide a process for determining the amount for disability coverage for members in the investment plan effective July 1, 2011.

Section 29 amends s. 121.74, F.S., to make conforming changes.

Section 30 amends s. 121.75, F.S., to make conforming changes.

Section 31 amends s. 121.77, F.S., to make conforming changes.

Section 32 amends s. 121.78, F.S., to revise certain requirements for administering the payment and distribution of contributions; to require certain fees be imposed for delinquent payments; to provide that an employer is responsible for recovering any refund provided to an employee in error; to revise the terms of an authorized waiver of delinquency; to require an employer to receive a credit for excess contributions and to reimburse an employee for excess contributions, subject to certain limitations.

Section 33 requires the SBA and the Department of Management Services to request a determination letter and a private letter ruling from the United State Internal Revenue Service; to provide for severability.

Section 34 provides legislative findings and provides that the act fulfills an important state interest.

Section 35 provides appropriations to and authorizes additional positions for the Division of Retirement within the Department of Management Services.

Section 36 provides an effective date of July 1, 2011, unless otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments section.
2. Expenditures:
See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments section.
2. Expenditures:
See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The following fiscal comments were provided by the Department of Management Services:³⁶

Costs based upon HB 1405: Proposed Rates for FY 11-12 and FY 12-13 and Proposed Rates with UAL Rates for FY 13-14			
	FY 11-12	FY 12-13	FY 13-14
State	\$434,535,000	\$451,916,000	\$713,739,000
Local	\$1,582,968,000	\$1,646,286,000	\$2,372,507,000
Total	\$2,017,503,000	\$2,098,202,000	\$3,086,246,000

The bill requires eight additional positions to be added to the Division of Retirement in order to provide the services associated with calculating and distributing refunds.

Amount and Description:	Year 1 FY 11-12	Year 2 FY 12-13	Year 3 FY 13-14
Based upon the estimation of salary, benefits and expense for these positions at the Division of Retirement.	\$414,140.78	\$414,140.78	\$414,140.78

As it is currently written, the bill does not provide sufficient recurring funds for the Division of Retirement to provide the services associated with calculating and distributing refunds. An additional \$321,037.78 would be required.

The bill would require non-recurring costs involved with the creation of new positions needed to provide the services associated with calculating and distributing refunds. These costs are estimated to be

³⁶ DRAFT analysis of HB 1405, Department of Management Services, March 9, 2011, at 11 and 12 (on file with the Government Operations Subcommittee).

\$31,184.00 for FY 2011-12. As it is currently written, the bill provides an additional \$502,816 above what is required in non-recurring funds for the Division of Retirement.

The bill contains provisions for which actuarial special studies are completed. Special studies have been performed for requiring 5 percent employee contributions, closing of the DROP to new participants effective July 1, 2011, and eliminating the cost-of-living adjustment on defined benefits earned after June 30, 2011.

The bill also has provisions that require actuarial special studies. The provisions to change the contribution rates to Investment Plan members' accounts to be 11.25 percent for the Special Risk Class and 9 percent for all other classes effective July 1, 2011, and the reduction of the accrual values for Pension Plan members in the Senior Management Service Class and Elected Officers' Class need actuarial special studies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill requires cities and/or counties to spend money or take action that requires the expenditure of money; however an exception applies as the Legislature has determined that this bill satisfies an important state interest. In addition, similarly situated persons are all required to comply.

2. Other:

Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

This bill appears to meet the requirements of Article X, s. 14 of the State Constitution; however, it is unclear as to whether it is in compliance with the requirements of part VII of chapter 112, F.S.

Contractual Obligations

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid

contractual rights and may not be abridged in any way.³⁷ This “preservation of rights” provision³⁸ was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.³⁹ The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member’s retirement vest.⁴⁰

The Florida Supreme Court further held that the “preservation of rights” provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.⁴¹

This bill does not change any benefits that a member has earned prior to July 1, 2011. The bill only makes changes prospectively. As such, it does not appear to impair the contractual obligation between the FRS employer and the FRS member.

B. RULE-MAKING AUTHORITY:

The bill does not appear to authorize nor require any additional grants of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Management Services provided the following statement regarding recommended changes:⁴²

- Based on our initial review of the changes proposed in this bill to make the FRS an employee contributory system, we have determined the following sections of chapter 121, F.S., would need to be amended: 121.051 (2)(c)6a and 6b, 121.0515(3)(a), 121.052(4)(a),(b),(d)1 and (5)(d), 121.055 (6)(a), 121.091(13)(i), 121.1001(3)(b), 121.591(2)(m)2a.
- On pages 20-21 of the bill, in lines 560-561 it states “A leave of absence for less than 3 calendar months constitutes a continuation of the employment relationship.” The phrase “for less than 3 calendar months” should be removed from the bill because it could imply that a leave of absence more than 3 months would constitute termination, which is not the case.
- Based on advice from tax counsel, it is recommended a definition for “Normal retirement” for the Investment Plan be added. This could be added to s. 121.4501(2) and would read as follows:

“Normal retirement date” means the date on which a member attains age 62 or completes 1 year of service, whichever occurs first.”

Our tax counsel also advises adding the phrase “The employer specifies that the” before “The contributions, although...” on page 169, line 4724.

- HB 1405 would amend s. 121.0515(10)(c) by adding text. However, line 1368 of page 49 has been incorrectly worded to read *through June 30, 2005*. It should be corrected to read *through June 30, 2008*.

³⁷ Section 121.011(3)(d), F.S.

³⁸ The “preservation of rights” provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So.2d 1033, 1037 (Fla. 1981).

³⁹ *Id.* at 1035.

⁴⁰ *Id.* at 1036. See also Internal Revenue Code, s. 441(e)(2) and Rev. Rul. 69-421, Part 5.

⁴¹ *Id.* at 1037.

⁴² DRAFT analysis of HB 1405, Department of Management Services, March 9, 2011, at 14 and 15 (on file with the Government Operations Subcommittee).

- HB 1405 would amend s. 121.4501(20) by rewording existing text. However, line 4033 of page 145 has been incorrectly reworded to read *beneficiary's* death. It should be corrected to read *participant's* death as intended in current statute.
- HB 1405 would amend the definition of retiree contained within s.112.0801, F.S., to be the same as the definition of retiree in s. 110.123(2), F.S. As Chapter 112 of the Florida Statutes applies to all public officers and employees and Chapter 110 is only specific to State employment, the definition of retiree under s. 112.0801 should not be amended, but left as it is currently in statute within the applicable chapter of statute.
- The addition of section (5) to s. 121.71 should be clarified to more accurately state the intent of requiring additional employer contributions to address unfunded actuarial liabilities. We would recommend clarifying the language to state the required employer contribution amounts in section (5) are in addition to the required employer contributions stated in section (4). Another possible option would be to create a new section within the Florida Statutes (s. 121.715) to specifically address any required employer contributions to cover unfunded actuarial liabilities.
- A July 1, 2011, effective date may not provide enough time to make the necessary programmatic changes required by this bill. Allowing changes except for the employer and employee contribution rates to become effective January 1, 2012, would provide enough time to program and test the changes for implementation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to public records; amending s. 11.51,
 3 F.S.; creating an exemption from public records
 4 requirements for work papers held by the Office of Program
 5 Policy Analysis and Government Accountability that relate
 6 to an authorized project or a research product; providing
 7 for retroactive application; providing a statement of
 8 public necessity; providing a contingent effective date.

9

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

11

12 Section 1. Subsection (7) is added to section 11.51,
 13 Florida Statutes, to read:

14 11.51 Office of Program Policy Analysis and Government
 15 Accountability.—

16 (7) Work papers held by the Office of Program Policy
 17 Analysis and Government Accountability that relate to an
 18 authorized project or a research product are exempt from s.
 19 24(a), Art. I of the State Constitution. The exemption applies
 20 to work papers held by the Office of Program Policy Analysis and
 21 Government Accountability before, on, or after the effective
 22 date of the exemption.

23 Section 2. The Legislature finds that it is a public
 24 necessity that certain work papers held by the Office of Program
 25 Policy Analysis and Government Accountability (OPPAGA) be made
 26 exempt from s. 24(a), Article I of the State Constitution. As
 27 required by the Legislature, OPPAGA may provide independent
 28 evaluative research and objective analyses to promote government

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29 accountability and the efficient and effective use of public
 30 resources. In order for OPPAGA to accomplish this mission, it is
 31 necessary that individuals and businesses share information with
 32 OPPAGA staff without concerns of competitive disadvantage,
 33 disclosure, or reprisals. Private sector business entities have
 34 legitimate concerns that information provided to assist the
 35 Legislature in directing policy initiatives has protection from
 36 those in the marketplace who could gain financially from the
 37 ability to access information collected by OPPAGA. In addition,
 38 supervisors and others often want to know the information given
 39 by their employees as part of an OPPAGA project for the
 40 Legislature. If such information were available as a public
 41 record, fewer people would be willing to provide information
 42 needed by the Legislature to evaluate ongoing programs. Also,
 43 during the project process, much information is collected that
 44 must be validated before it is relied upon by OPPAGA and some
 45 information is not validated. Without a public record exemption,
 46 any person could inspect and copy the record containing the
 47 unverified information and risk placing on the public record
 48 unproven allegations that could harm, embarrass, humiliate, or
 49 cause serious personal or commercial consequences to the
 50 individual or business as a result of their discussions with
 51 OPPAGA. Providing a public record exemption for OPPAGA work
 52 papers will facilitate the ability of OPPAGA to acquire
 53 important project information for the Legislature and protect
 54 the public from inappropriate disclosure of proprietary and
 55 confidential information and from allegations that may not be
 56 proven with further investigation. An exemption of limited

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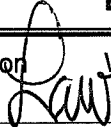
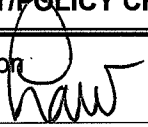
YEAR

57 duration would not be sufficient to protect the previously
 58 identified interests. Thus, the Legislature finds that it is a
 59 public necessity to make exempt from the public records
 60 requirements of the State Constitution work papers held by
 61 OPPAGA that relate to an authorized project or to a research
 62 product.

63 Section 3. This act shall take effect on the same date
 64 that SB 1204 or similar legislation takes effect, if such
 65 legislation is adopted in the same legislative session, or an
 66 extension thereof, and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-10 OPPAGA Work Papers
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: SB 1204 IDEN./SIM. BILLS: CS/SB 1970

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson 	Williamson 

SUMMARY ANALYSIS

The Office of Program Policy Analysis and Government Accountability (OPPAGA or office) is a unit within the Office of the Auditor General. It is a staff unit of the Legislature that performs independent examinations, program reviews, and other projects.

Current law provides that audit work papers and notes of the Auditor General are not public records. This exemption also applies to OPPAGA work papers and notes, because OPPAGA is a unit within the Office of the Auditor General.

Senate Bill 1204 amends current law to provide that the term "OPPAGA" means an entity designated by joint rule of the Legislature or by agreement between the President of the Senate and the Speaker of the House of Representatives. As such, it deletes provisions relating to the creation and duties of OPPAGA. Removal of OPPAGA from within the Office of the Auditor General appears to remove the public record exemption currently afforded the office.

The bill creates a public record exemption for OPPAGA. Work papers that relate to an authorized project or a research product are exempt from the public records requirements of the State Constitution. The bill provides for retroactive application of the exemption, a statement of public necessity, and an effective date that is contingent upon the passage of Senate Bill 1204.

The bill does not appear to have a fiscal impact on state or local government.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption for OPPAGA; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in chapter 119, F.S., also known as the Public Records Act. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Legislative Records

Article I, s. 24(a) of the State Constitution applies to records of the legislative branch; however, the Public Records Act does not apply to such records. In addition, the Open Government Sunset Review Act does not apply to an exemption that applies solely to the Legislature.³

Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA or office) is a unit within the Office of the Auditor General.⁴ It is a staff unit of the Legislature that performs independent examinations, program reviews, and other projects.⁵

The Legislative Auditing Committee appoints the director of OPPAGA by majority vote of the committee, subject to confirmation by a majority vote of the Senate and the House of Representatives.⁶ Current law sets forth the qualifications of the director and the process for reappointment and termination of the director. It also sets forth qualifications for staff of OPPAGA and the duties of the office.⁷

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ Section 119.15(2)(b), F.S.

⁴ OPPAGA is independent of the Auditor General for purposes of general policies established by the Legislative Auditing Committee. Subsections 11.51(1) and (2), F.S.

⁵ Section 11.51(1), F.S.

⁶ Section 11.511(1)(a), F.S.

⁷ See s. 11.511, F.S.

Public Record Exemption

Current law provides that audit work papers and notes of the Auditor General are not public records.⁸ This exemption also applies to OPPAGA work papers and notes, because OPPAGA is a unit within the Office of the Auditor General.

Senate Bill 1204

Senate Bill 1204 amends s. 1.01, F.S., to provide that the term "OPPAGA" means an entity designated by joint rule of the Legislature or by agreement between the President of the Senate and the Speaker of the House of Representatives. As such, it deletes provisions in s. 11.51, F.S., relating to the creation and duties of OPPAGA. Removal of OPPAGA from within the Office of the Auditor General appears to remove the public record exemption currently afforded the office.

On March 8, 2011, Senate Bill 1204 passed the Senate (37-0). On March 9, 2011, Senate Bill 1204 was substituted for House Bill 7017, and on March 10, 2011, passed the House of Representatives (96-20).

Article III, s. 8(a) of the State Constitution provides that:

Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation.

Senate Bill 1204 has not been presented to the Governor.

Effect of Bill

The bill creates a public record exemption for OPPAGA. Work papers that relate to an authorized project or a research product are exempt⁹ from Article I, s. 24(a) of the State Constitution. In essence, the bill recreates the public record exemption currently afforded OPPAGA as a unit within the Office of the Auditor General.

The records are not made exempt from s. 119.07(1), F.S., and the exemption is not made subject to review and repeal pursuant to the Open Government Sunset Review Act, because the Legislature is not subject to chapter 119, F.S.

The bill provides for retroactive application of the public record exemption.¹⁰ It also provides a public necessity statement, as required by the State Constitution,¹¹ and an effective date that is contingent upon passage of Senate Bill 1204.

B. SECTION DIRECTORY:

Section 1 amends s. 11.51, F.S., to create a public record exemption for OPPAGA.

Section 2 provides a public necessity statement.

Section 3 provides an effective date that is contingent upon passage of SB 1204.

⁸ Section 11.45(4)(c), F.S.

⁹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁰ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

¹¹ Article I, s. 24(c) of the State Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption for OPPAGA; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for OPPAGA; thus, it requires a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.