

## CHAPTER 98-18

### Committee Substitute for Committee Substitute for House Bill No. 3131

An act relating to the Florida Retirement System; amending s. 121.091, F.S.; revising criteria, limitations, and restrictions for eligibility, participation, and benefits payable under the Deferred Retirement Option Program; providing conditions for payment of annual leave; amending s. 121.1122, F.S., relating to provisions for purchase of retirement credit for in-state-service in accredited nonpublic schools and colleges; providing an effective date.

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

Section 1. Paragraphs (a), (b), and (c) of subsection (13) of section 121.091, Florida Statutes, are amended to read:

121.091 Benefits payable under the system.—No benefits shall be paid under this section unless the member has terminated employment as provided in s. 121.021(39) and a proper application has been filed in the manner prescribed by the division.

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter referred to as the DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the System Trust Fund on behalf of the participant, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the participant shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation ~~Employment~~ in the DROP does not guarantee employment for the specified period of DROP.

(a) Eligibility of member to participate in the DROP.—All active Florida Retirement System members in a regularly established position, and all active members of either the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122 which systems are consolidated within the Florida Retirement System under s. 121.011, are eligible to elect participation in the DROP provided that:

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

2.1. Election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date or age, or for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains 57, or age 50 for Special Risk Class members. For a member who first reached normal retirement date or the deferred eligibility date described above age prior to the effective date of this section, election to participate shall be is made within 12 months of the effective date of this section. A member who fails to make an election within such 12-month limitation period shall forfeit all rights to participate in the DROP. The member shall advise his employer and the division in writing of the date on which the DROP shall begin. Such beginning date may be subsequent to the 12-month election period but must be within the 60-month limitation period as provided in subparagraph (b)1. When establishing eligibility of the member to participate in the DROP or the 60-month maximum participation period, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member with dual normal retirement dates shall be eligible to elect to participate in DROP within 12 months after attaining normal retirement date in either class.

3.2. The retiring member's employer of a member electing to participate in the DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in the DROP begins and the date the member's employment and DROP participation will terminate.

4.3. Simultaneous employment of a participant by additional Florida Retirement System employers subsequent to the commencement of participation in the DROP shall be permissible provided such employers acknowledge in writing a DROP termination date no later than the participant's existing termination date or the 60-month limitation period as provided in subparagraph (b)1.

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

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

b. Such participant and new employer shall notify the division on forms required by the division as to the identity of the new employer.

c. The new employer shall acknowledge, in writing, the participant's DROP termination date, which may be extended but not beyond the original 60-month period provided in subparagraph (b)1., shall acknowledge liability for any additional retirement contributions and interest required if the participant fails to timely terminate employment, and shall be subject to the adjustment required in sub-subparagraph (c)4.d.

(b) Participation in the DROP.—

1. An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 60 calendar months immediately following the date on which the member first reaches normal retirement age or date or the date to which he or she is eligible to defer his or her election to participate as provided in subparagraph (a)2, including a member who first reaches normal retirement age or date prior to the effective date of this section. Any member who has exceeded the 60-month limitation shall not be eligible to participate in the DROP. However, a member who has reached normal retirement date prior to the effective date of the DROP shall be eligible to participate in the DROP for a period of time not to exceed 60 calendar months immediately following the effective date of the DROP, except a member of the Special Risk Class who has reached normal retirement date prior to the effective date of the DROP and whose total accrued value exceeds 75 percent of average final compensation as of his or her effective date of retirement shall be eligible to participate in the DROP for no more than 36 calendar months immediately following the effective date of the DROP.

2. Upon deciding to participate in the DROP, the member shall submit, on forms required by the division:

a. A written election to participate in the DROP;

b. Selection of the DROP participation and termination dates, which satisfy the limitations stated in paragraph (a) and subparagraph 1. Such termination date shall be in a binding letter of resignation with the employer, establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of his employer;

c. A properly completed DROP application for service retirement as provided in this section; and

d. Any other information required by the division.

3. The DROP participant shall be a retiree under the Florida Retirement System for all purposes, except for paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053, and 121.122. However, participation in the DROP does not alter the participant's employment status and such employee shall not be deemed retired from employment until his or her deferred resignation is effective and termination occurs as provided in s. 121.021(39).

~~4. A reemployed retiree with renewed membership is not eligible for DROP participation.~~

~~4.5.~~ Elected officers shall be eligible to participate in the DROP subject to the following:

a. An elected officer who reaches normal retirement date during a term of office may defer the election to participate in the DROP until the next

succeeding term in that office. Such elected officer who exercises this option may participate in the DROP for up to 60 calendar months or a period of no longer than such succeeding term of office, whichever is less.

b.a. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly, except, however, if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within such 60-month limitation, the retirement and the participant's DROP shall be null and void as provided in subparagraph (c)4.d.

c.b. An elected officer who is dually employed and elects to participate in DROP shall be required to satisfy the definition of termination within the 60-month limitation period as provided in subparagraph 1. for the nonelected position and may continue employment as an elected officer as provided in s. 121.053. The elected officer will be enrolled as a renewed member in the Elected State and County Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.22, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

(c) Benefits payable under the DROP.—

1. Effective with the date of DROP participation, the member's initial normal monthly benefit, including creditable service, optional form of payment, and average final compensation, and the effective date of retirement shall be fixed. The beneficiary established under the Florida Retirement System shall be the beneficiary eligible to receive any DROP benefits payable if the DROP participant dies prior to the completion of the period of DROP participation. In the event a joint annuitant predeceases the member, the member may name a beneficiary to receive accumulated DROP benefits payable. Such retirement benefit, the annual cost of living adjustments provided in s. 121.101, and interest shall accrue monthly in the System Trust Fund. Such interest shall accrue at an effective annual rate of 6.5 percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death.

2. Each employee who elects to participate in the DROP shall be allowed to elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in the DROP. Such accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing such lump-sum payment upon beginning participation in DROP will not be eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which combined with the original payment does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. Such early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in the DROP. If the member elects to wait and receive such lump-sum payment

upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time cannot be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in the DROP.

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

4.3. Normal retirement benefits and interest thereon shall continue to accrue in the DROP until the established termination date of the DROP, or until the participant terminates employment or dies prior to such date. Although individual DROP accounts shall not be established, a separate accounting of each participant's accrued benefits under the DROP shall be calculated and provided to participants annually.

5.4. At the conclusion of the participant's DROP, the division shall distribute the participant's total accumulated DROP benefits, subject to the following provisions:

a. The division shall receive verification by the participant's employer or employers that such participant has terminated employment as provided in s. 121.021(39)(b).

b. The terminated DROP participant or, if deceased, such participant's named beneficiary, shall elect on forms provided by the division to receive payment of the DROP benefits in accordance with one of the options listed below. For a participant or beneficiary who fails to elect a method of payment within 60 days of termination of the DROP, the division will pay a lump sum as provided in sub-sub-subparagraph(I).

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

(II) Direct rollover.—All accrued DROP benefits, plus interest, shall be paid from the DROP directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code.

(III) Partial lump sum.—A portion of the accrued DROP benefits shall be paid to the DROP participant or surviving spouse, less withholding taxes remitted to the Internal Revenue Service, and the remaining DROP benefits shall be transferred directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account

or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code. The proportions shall be specified by the DROP participant or surviving beneficiary.

c. The form of payment selected by the DROP participant or surviving beneficiary complies with the minimum distribution requirements of the Internal Revenue Code and ~~payments begin no later than the date on which the participant reaches age 70 years and 6 months.~~

d. ~~For~~ A DROP participant who fails to terminate employment as defined in s. 121.021(39)(b), ~~the member~~ shall be deemed not to be retired and the DROP election shall be null and void. Florida Retirement System membership shall be reestablished retroactively to the date of the commencement of the DROP, and each the employer with whom the participant continues employment shall be required to pay to the System Trust Fund the difference between the DROP contributions paid in paragraph (i) and the contributions required for the applicable Florida Retirement System class of membership during the period the member participated in the DROP, plus 6.5 percent interest compounded annually.

6.5. The accrued benefits of any DROP participant, and any contributions accumulated under such program, shall not be subject to assignment, execution, attachment, or to any legal process whatsoever, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

7.6. DROP participants shall not be eligible for disability retirement benefits as provided in subsection (4).

Section 2. Section 121.1122, Florida Statutes, is amended to read:

121.1122 Purchase of retirement credit for in-state public service and in-state service in accredited nonpublic, ~~nonsectarian~~ schools and colleges, including charter schools.—Effective January 1, 1998, a member of the Florida Retirement System may purchase creditable service for periods of certain public or nonpublic, ~~nonsectarian~~ employment performed in this state, as provided in this section.

(1) PURCHASE OF RETIREMENT CREDIT AUTHORIZED.—Subject to the provisions of subsections (2) and (3), a member of the Florida Retirement System may purchase up to 5 years of retirement credit for:

(a) Periods of public employment in this state; or

(b) Periods of employment in charter schools or in any nonpublic, ~~nonsectarian~~ school or college in this state that is accredited by the Southern Association of Colleges and Schools.

Credit for 1 year of such service may be purchased for each year of creditable service a member completes under the Florida Retirement System.

(2) LIMITATIONS AND CONDITIONS.—

(a) A member is not eligible to receive credit for in-state service under this section until he or she has completed 10 years of creditable service under the Florida Retirement System, excluding service purchased under this section and out-of-state service claimed and purchased under s. 121.1115.

(b) A member may not purchase and receive credit for more than 5 years of creditable service aggregated under the provisions of this section and s. 121.1115.

(c) Service credit claimed under this section shall be credited only as service in the Regular Class of membership and shall be subject to the provisions of s. 112.65.

(d) A member shall be eligible to receive service credit for in-state service performed after leaving the Florida Retirement System only upon returning to membership and completing at least 1 year of creditable service in the Florida Retirement System following the in-state service.

(e) The service claimed must have been service covered by a retirement or pension plan provided by the employer.

(3) COST.—The cost to purchase retirement credit under this section shall be calculated in the same manner as set forth in s. 121.1115(2) for purchase of credit for out-of-state service.

Section 3. This act shall take effect July 1 of the year in which enacted.

Became a law without the Governor's approval April 22, 1998.

Filed in Office Secretary of State April 21, 1998.