

House Bill No. 1973

An act relating to the Florida Retirement System; creating part III of chapter 121, F.S., consisting of ss. 121.70, 121.71, 121.72, 121.73, 121.74, 121.75, 121.76, 121.77, 121.78, F.S.; providing legislative purpose and intent to establish a uniform contribution rate system for the Florida Retirement System; providing for establishment of uniform rates; providing allocations to Public Employee Optional Retirement Program accounts; providing for allocations to provide disability coverage for Public Employee Optional Retirement Program participants; providing administrative and educational expenses; providing for transfer of remaining balance to Florida Retirement System Trust Fund to fund the benefit costs under the Florida Retirement System Pension Plan and administrative costs authorized under part I of chapter 121, F.S.; providing for contributions for Social Security and for the retiree health insurance subsidy; granting the State Board of Administration authority to allow the third-party administrator to make deductions from participant accounts; providing for payment and distribution of contributions; amending ss. 121.052, 121.055, 121.071, 121.571, F.S., to conform to the uniform contribution rate system; amending s. 121.091, F.S.; reducing contribution rates for DROP payroll; amending s. 121.4501, F.S.; conforming references; providing guidance to assist employers and the State Board of Administration in maintaining compliance with section 404(c) of ERISA; providing a directive to statute editors; amending section 11 of chapter 2001-235, Laws of Florida, to revise annual payment amount to cover the cost for the special January 2002 benefit increase provided for certain retirees and DROP participants; repealing section 23 of chapter 2000-169, Laws of Florida, relating to contribution rate increases scheduled to take effect on July 1, 2002, which are redundant; providing legislative intent regarding other rate changes; providing a declaration of important state interest; revising provisions governing contributions to the Senior Management Service Optional Annuity Program; providing an effective date.

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

Section 1. Part III of chapter 121, Florida Statutes, consisting of sections 121.70, 121.71, 121.72, 121.73, 121.74, 121.75, 121.76, 121.77, and 121.78, Florida Statutes, is created to read:

Part III

Florida Retirement System Contribution Rates

121.70 Legislative purpose and intent.—

(1) This part provides for a uniform system for funding benefits provided under the Florida Retirement System defined benefit program established under part I of this chapter (referred to in this part as the defined benefit

program) and under the Public Employee Optional Retirement Program established under part II of this chapter (referred to in this part as the optional retirement program). The Legislature recognizes and declares that the Florida Retirement System is a single retirement system, consisting of two retirement plans and other nonintegrated programs. Employers participating in the Florida Retirement System collectively shall be responsible for making contributions to support the benefits afforded under both plans. As provided in this part, employers participating in the Florida Retirement System shall make contributions based upon uniform contribution rates determined as a percentage of the total payroll for each class or subclass of Florida Retirement System membership, irrespective of which retirement plan individual employees may elect. This shall be known as a uniform or blended contribution rate system.

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

(a) Provide greater stability and certainty in financial planning and budgeting for Florida Retirement System employers by eliminating the fiscal instability that would be caused by dual rates coupled with employee-selected plan participation;

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

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

121.71 Uniform rates; process; calculations; levy.—

(1) In conducting the system actuarial study required under s. 121.031, the actuary shall follow all requirements specified thereunder to determine, by Florida Retirement System employee membership class, the dollar contribution amounts necessary for the forthcoming fiscal year for the defined benefit program. In addition, the actuary shall determine, by Florida Retirement System membership class, based on an estimate for the forthcoming fiscal year of the gross compensation of employees participating in the optional retirement program, the dollar contribution amounts necessary to make the allocations required under ss. 121.72 and 121.73. For each employee membership class and subclass, the actuarial study shall establish a uniform rate necessary to fund the benefit obligations under both Florida Retirement System retirement plans, by dividing the sum of total dollars required by the estimated gross compensation of members in both plans.

(2) Based on the uniform rates set forth in subsection (3), employers shall make monthly contributions to the Division of Retirement, which shall initially deposit the funds into the Florida Retirement System Contributions Clearing Trust Fund. A change in a contribution rate is effective the first day of the month for which a full month's employer contribution may be made on or after the beginning date of the change.

(3) Required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows. Rates effective July 1, 2002, reflect an offset to normal employer costs of \$1,237,000,000, resulting from recognition and usage of current available excess assets of the Florida Retirement System Trust Fund as determined pursuant to s. 121.031. Contribution rates that become effective July 1, 2003, reflect normal system costs.

<u>Membership Class</u>	<u>Percentage of Gross Compensation, Effective July 1, 2002</u>	<u>Percentage of Gross Compensation, Effective July 1, 2003</u>
<u>Regular Class</u>	<u>4.50%</u>	<u>9.87%</u>
<u>Special Risk Class</u>	<u>14.75%</u>	<u>22.89%</u>
<u>Special Risk Administrative Support Class</u>	<u>5.30%</u>	<u>12.58%</u>
<u>Elected Officers' Class – Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders</u>	<u>8.15%</u>	<u>15.43%</u>
<u>Elected Officers' Class – Justices, Judges</u>	<u>14.60%</u>	<u>20.54%</u>
<u>Elected Officers' Class – County Elected Officers</u>	<u>10.60%</u>	<u>17.52%</u>
<u>Senior Management Class</u>	<u>4.80%</u>	<u>11.68%</u>
<u>DROP</u>	<u>8.00%</u>	<u>11.56%</u>

121.72 Allocations to optional retirement program participant accounts; percentage amounts.—

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

(2) The allocations are stated as a percentage of each optional retirement program participant's gross compensation for the calendar month. A change in a contribution percentage is effective the first day of the month for which a full month's employer contribution may be made on or after the beginning date of the change. Contribution percentages may be modified by general law.

(3) Employer and participant contributions to participant accounts shall be accounted for separately. Participant contributions may be made only if expressly authorized by law. Interest and investment earnings on contributions shall accrue on a tax-deferred basis until proceeds are distributed.

(4) Effective July 1, 2002, allocations from the Florida Retirement System Contributions Clearing Trust Fund to optional retirement program participant accounts shall be as follows:

<u>Membership Class</u>	<u>Percentage of Gross Compensation</u>
<u>Regular Class</u>	<u>9.00%</u>
<u>Special Risk Class</u>	<u>20.00%</u>
<u>Special Risk Administrative Support Class</u>	<u>11.35%</u>
<u>Elected Officers' Class –</u> <u>Legislators, Governor,</u> <u>Lt. Governor, Cabinet Officers,</u> <u>State Attorneys, Public Defenders</u>	<u>13.40%</u>
<u>Elected Officers' Class –</u> <u>Justices, Judges</u>	<u>18.90%</u>
<u>Elected Officers' Class –</u> <u>County Elected Officers</u>	<u>16.20%</u>
<u>Senior Management Service Class</u>	<u>10.95%</u>

121.73 Allocations for optional retirement program participant disability coverage; percentage amounts.—

(1) The allocations established in subsection (3) shall be used to provide disability coverage for participants in the optional retirement program and shall be transferred monthly by the Division of Retirement from the Florida Retirement System Contributions Clearing Trust Fund to the disability account of the Florida Retirement System Trust Fund.

(2) The allocations are stated as a percentage of each optional retirement program participant's gross compensation for the calendar month. A change in a contribution percentage is effective the first day of the month for which a full month's employer contribution may be made on or after the beginning date of the change. Contribution percentages may be modified by general law.

(3) Effective July 1, 2002, allocations from the FRS Contribution Clearing Fund to provide disability coverage for participants in the optional retirement program, and to offset the costs of administering said coverage, shall be as follows:

<u>Membership Class</u>	<u>Percentage of Gross Compensation</u>
<u>Regular Class</u>	<u>0.25%</u>
<u>Special Risk Class</u>	<u>1.33%</u>
<u>Special Risk Administrative Support Class</u>	<u>0.45%</u>
<u>Elected Officers' Class –</u> <u>Legislators, Governor,</u> <u>Lt. Governor, Cabinet Officers,</u> <u>State Attorneys, Public Defenders</u>	<u>0.41%</u>
<u>Elected Officers' Class –</u> <u>Justices, Judges</u>	<u>0.73%</u>
<u>Elected Officers' Class –</u>	

<u>Membership Class</u>	<u>Percentage of Gross Compensation</u>
<u>County Elected Officers</u>	<u>0.41%</u>
<u>Senior Management Service Class</u>	<u>0.26%</u>

121.74 Administrative and educational expenses.—Effective July 1, 2002, in addition to contributions required under s. 121.71, employers participating in the Florida Retirement System shall contribute an amount equal to 0.15 percent of the payroll reported for each class or subclass of Florida Retirement System membership, which amount shall be transferred by the Division of Retirement from the Florida Retirement System Contribution Clearing Trust Fund to the State Board of Administration’s Administrative Trust Fund to offset the costs of administering the optional retirement program and the costs of providing educational services to participants in the defined benefit program and the optional retirement program. Approval of the Trustees of the State Board of Administration is required prior to the expenditure of these funds. Payments for third-party administrative or educational expenses shall be made only pursuant to the terms of the approved contracts for such services.

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

121.76 Contributions for social security and for retiree health insurance subsidy.—Contributions required under this part shall be made or deducted, as may be appropriate, for each pay period and are in addition to employer and member contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund as provided under parts I and II of this chapter.

121.77 Deductions from participant accounts.—The State Board of Administration may authorize the third-party administrator to deduct reasonable fees and apply appropriate charges to optional retirement program participant accounts. In no event shall administrative and educational expenses exceed the portion of employer contributions earmarked for such expenses under this part, except for reasonable administrative charges assessed against participant accounts of persons for whom no employer contributions are made during the calendar quarter. Investment management fees shall be deducted from participant accounts, pursuant to the terms of the contract between the provider and the board.

121.78 Payment and distribution of contributions.—

(1) Contributions made pursuant to this part shall be paid by the employer to the Division of Retirement by electronic funds transfer no later than the 5th working day of the month immediately following the month during which the payroll period ended. Accompanying payroll data must be transmitted to the Division concurrent with the contributions.

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

(3)(a) Employer contributions and accompanying payroll data received after the 5th working day of the month shall be considered late. The employer shall be assessed by the Division a penalty of 1 percent of the contributions due for each calendar month or part thereof that the contributions or accompanying payroll data are late. Proceeds from the 1-percent assessment against contributions made on behalf of participants of the defined benefit program shall be deposited in the Florida Retirement System Trust Fund, and proceeds from the 1-percent assessment against contributions made on behalf of participants of the optional retirement program shall be transferred to the third party administrator for deposit into participant accounts, as provided in paragraph (b).

(b) If contributions made by an employer on behalf of participants of the optional retirement program or accompanying payroll data are not received within the calendar month they are due and if that delinquency results in market losses to participants, the employer shall reimburse each participant's account for market losses resulting from the late contributions. The third-party administrator, hired by the board pursuant to s. 121.4501(8), shall calculate the market losses for each affected participant. When contributions made on behalf of participants of the optional retirement program or accompanying payroll data are not received within the calendar month due, the employer shall also pay the cost of the third-party administrator's calculation and reconciliation adjustments resulting from the late contributions. The third-party administrator shall notify the employer of the results of the calculations and the total amount due from the employer for such losses and the costs of calculation and reconciliation. The employer shall remit to the Division the amount due within 10 working days after the date of the penalty notice sent by the Division. The Division shall transfer said amount to the third-party administrator, who shall deposit proceeds from the 1-percent assessment and from individual market losses into participant accounts, as appropriate. The board is authorized to adopt rules to implement the provisions regarding late contributions, late submission of payroll data, the process for reimbursing participant accounts for resultant market losses, and the penalties charged to the employers.

(c) Delinquency fees may be waived by the division, with regard to defined benefit program contributions, and by the State Board of Administration, with regard to optional retirement program contributions, only when, in the opinion of the division or the board, as appropriate, exceptional circumstances beyond the employer's control prevented remittance by the prescribed due date notwithstanding the employer's good faith efforts to effect delivery. Such a waiver of delinquency may be granted an employer only one time each state fiscal year.

Section 2. Subsection (7) of section 121.052, Florida Statutes, is amended to read:

121.052 Membership class of elected officers.—

(7) CONTRIBUTIONS.—

(a) The following table states the required retirement contribution rates for members of the Elected Officers' Class and their employers in terms of a percentage of the member's gross compensation. A change in a contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made or deducted as may be appropriate for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

Dates of Contribution Rate Changes	Members	Employers
<u>1. Effective July 1, 2001, through June 30, 2002</u>		
Legislators	0%	15.14%
Governor, Lt. Governor, Cabinet Officers	0%	15.14%
State Attorneys, Public Defenders	0%	15.14%
Justices, Judges	0%	20.61%
County Elected Officers	0%	17.61%

2. Effective July 1, 2002, the required retirement contribution rates shall be specified in s. 121.71.

(b) The employer paying the salary of a member of the Elected Officers' Class shall contribute an amount as specified in this subsection or s. 121.71, as appropriate, which shall constitute the entire employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage.

(c) The following table states the required employer contribution on behalf of each member of the Elected Officers' Class in terms of a percentage of the member's gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to each such the member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
Effective July 1, 2001	1.11%

Such contributions shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

Section 3. Subsection (3) of section 121.055, Florida Statutes, is amended to read:

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

(3)(a) The following table states the required retirement contribution rates for members of the Senior Management Service Class and their employers in terms of a percentage of the member’s gross compensation. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

Dates of Contribution Rate Changes	Members	Employers
<u>1. Effective July 1, 2001, through June 30, 2002</u>	0%	11.73%
<u>2. Effective July 1, 2002, the required retirement contribution rate shall be as specified in s. 121.71.</u>		

(b) The employer paying the salary of a member of the Senior Management Service Class shall contribute an amount as specified in this section or s. 121.71, as appropriate, which shall constitute the entire employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage.

(c) The following table states the required employer contribution on behalf of each member of the Senior Management Service Class in terms of a percentage of the member’s gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to each such ~~the~~ member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
Effective July 1, 2001	1.11%

Such contributions shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

Section 4. Subsections (1), (2), (3), (4), and (5) of section 121.071, Florida Statutes, are amended to read:

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

(1) The following tables state the required retirement contribution rates for members of the Regular Class, Special Risk Class, or Special Risk Administrative Support Class and their employers in terms of a percentage of the member's gross compensation. A change in a contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made or deducted as may be appropriate for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

(a)1. Retirement contributions for regular members are as follows:

Dates of Contribution Rate Changes	Members	Employers
<u>Effective July 1, 2001, through June 30, 2002</u>	0%	9.91%

2. Effective July 1, 2002, the retirement contributions for regular members shall be specified in s. 121.71.

(b)1. Retirement contributions for special risk members are as follows:

Dates of Contribution Rate Changes	Members	Employers
<u>Effective July 1, 2001, through June 30, 2002</u>	0%	22.07%

2. Effective July 1, 2002, retirement contributions for special risk members shall be specified in s. 121.71.

(c)1. Retirement contributions for special risk administrative support members are as follows:

Dates of Contribution Rate Changes	Members	Employers
<u>Effective July 1, 2001, through June 30, 2002</u>	0%	12.55%

2. Effective July 1, 2002, retirement contributions for special risk administrative support members shall be specified in s. 121.71.

(2)(a) Effective January 1, 1975, or October 1, 1975, as applicable, each employer shall accomplish the ~~increased~~ contribution required by subsection (1) by a procedure in which no employee's gross salary shall be reduced.

(b) Upon termination of employment for any reason other than retirement, a member shall be entitled to a full refund of the contributions he or

she has made prior or subsequent to participation in the noncontributory plan, subject to the restrictions otherwise provided in this chapter.

(3) The employer paying the salary of a member shall contribute an amount as specified in this section or s. 121.71, as appropriate, which shall constitute the entire employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage. Contributions for social security by each member and each employer, in the amount required for social security coverage as now or hereafter provided by the federal Social Security Act, shall be in addition to contributions specified in subsection (1).

(4) The following table states the required employer contribution on behalf of each member of the Regular Class, Special Risk Class, or Special Risk Administrative Support Class in terms of a percentage of the member's gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to each such ~~the~~ member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
Effective July 1, 2001	1.11%

Such contributions shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

(5) Contributions made in accordance with subsections (1), (2), (3), and (4), and s. 121.71 shall be paid by the employer into the system trust funds in accordance with rules adopted by the administrator pursuant to chapter 120. ~~Such contributions are due and payable no later than the 25th day of the month immediately following the month during which the payroll period ended. The department may, by rule, establish a different due date, which shall supersede the date specified herein; however, such due date may not be established earlier than the 20th day of the month immediately following the month during which the payroll period ended. Effective January 1, 1984, contributions made in accordance with subsection (3) shall be paid by the employer into the system trust fund in accordance with rules adopted by the administrator pursuant to chapter 120. For any payroll period ending any day of the month before the 16th day of the month, such contributions are due and payable no later than the 20th day of the month; and, for any payroll periods ending any day of the month after the 15th day of the month, such contributions are due and payable no later than the 5th day of the next month. Contributions received in the offices of the department after the~~

~~prescribed date shall be considered delinquent unless, in the opinion of the department, exceptional circumstances beyond an employer's control prevented remittance by the prescribed due date notwithstanding such employer's good faith efforts to effect delivery; and, with respect to retirement contributions due under subsections (1) and (4), each employer shall be assessed a delinquent fee of 1 percent of the contributions due for each calendar month or part thereof that the contributions are delinquent. Such a waiver of the delinquency fee by the department may be granted an employer only one time each fiscal year. Delinquent social security contributions shall be assessed a delinquent fee as authorized by s. 650.05(4). The delinquent fee assessable for an employer's first delinquency after July 1, 1984, shall be as specified in s. 650.05(4), and, beginning with the second delinquency in any fiscal year by the employer subsequent to July 1, 1984, all subsequent delinquency fees shall be assessed against the employer at twice the applicable percentage rate specified in s. 650.05(4).~~

Section 5. Effective July 1, 2002, paragraph (i) of subsection (13) of section 121.091, Florida Statutes, is amended to read:

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

(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 in the DROP does not guarantee employment for the specified period of DROP.

(i) Contributions.—

1. All employers paying the salary of a DROP participant filling a regularly established position shall contribute ~~8.0~~ 11.56 percent of such participant's gross compensation for the period of July 1, 2002, through June 30, 2003, and 11.56 percent of such compensation thereafter, which shall constitute the entire employer DROP contribution with respect to such participant. Such contributions, payable to the System Trust Fund in the same

manner as required in s. 121.071, shall be made as appropriate for each pay period and are in addition to contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund. Such employer, social security, and health insurance subsidy contributions are not included in the DROP.

2. The employer shall, in addition to subparagraph 1., also withhold one-half of the entire social security contribution required for the participant. Contributions for social security by each participant and each employer, in the amount required for social security coverage as now or hereafter provided by the federal Social Security Act, shall be in addition to contributions specified in subparagraph 1.

3. All employers paying the salary of a DROP participant filling a regularly established position shall contribute the percent of such participant's gross compensation required in s. 121.071(4), which shall constitute the employer's health insurance subsidy contribution with respect to such participant. Such contributions shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

Section 6. Subsections (1), (5), and (15) of section 121.4501, Florida Statutes, is amended to read:

121.4501 Public Employee Optional Retirement Program.—

(1) The Trustees of the State Board of Administration shall establish an optional defined contribution retirement program for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program. The benefits to be provided for or on behalf of participants in such optional retirement program shall be provided through employee-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and its related regulations. The employers shall contribute, as provided in this section s. 121.71, and s. 121.571, to the Public Employee Optional Retirement Program Trust Fund toward the funding of such optional benefits.

(5) CONTRIBUTIONS.—

(a) Each employer shall contribute on behalf of each participant in the Public Employee Optional Retirement Program, as provided in part III of this chapter ~~an amount based on a percentage of the employee's monthly compensation as set forth in s. 121.571.~~ The state board, acting as plan fiduciary, shall ensure that all plan assets are held in a trust, pursuant to s. 401 of the Internal Revenue Code. ~~The employer shall forward all contributions under this program to the third-party administrator.~~ The fiduciary shall ensure that said contributions are allocated as follows:

1. The portion earmarked for participant accounts shall be used to purchase interests in the appropriate investment vehicles for the accounts of each participant as specified by the participant, or in accordance with paragraph (4)(d).

2. The portion earmarked for administrative and educational expenses shall be transferred to the board.

3. The portion earmarked for disability benefits shall be transferred to the department.

(b) Employers are responsible for notifying participants regarding maximum contribution levels permitted under the Internal Revenue Code. If a participant contributes to any other tax-deferred plan, he or she is responsible for ensuring that total contributions made to the optional program and to any other such plan do not exceed federally permitted maximums.

(15) STATEMENT OF FIDUCIARY STANDARDS AND RESPONSIBILITIES.—

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

(b) If a participant or beneficiary of the Public Employee Optional Retirement Program exercises control over the assets in his or her account, as determined by reference to regulations of the United States Department of Labor under s. 404(c) of the Employee Retirement Income Security Act of 1974 and all applicable laws governing the operation of the program, no program fiduciary shall be liable for any loss to a participant's or beneficiary's account which results from such participant's or beneficiary's exercise of control.

(c) Subparagraph (8)(b)4. and paragraph (15)(b) incorporate the federal law concept of participant control, established by regulations of the U.S. Department of Labor under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA). The purpose of this paragraph is to assist employers and the State Board of Administration in maintaining compliance with section 404(c), while avoiding unnecessary costs and eroding participant benefits under the Public Employee Optional Retirement Program. Pursuant to 29 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(1)(viii), the State Board of Administration or its designated agents shall deliver to participants of the Public Employee Optional Retirement Program a copy of the prospectus most recently provided to the plan, or shall provide such participants an opportunity to obtain this information, except that:

1. The requirement to deliver a prospectus shall be deemed to be satisfied by delivery of a fund profile that contains the information that would be included in a summary prospectus as described by Rule 498 under the Securities Act of 1933, 17 C.F.R. s. 230.498. When the transaction fees, expense information or other information provided by a mutual fund in the prospectus does not reflect terms negotiated by the State Board of Administration or its designated agents, the aforementioned requirement is deemed

to be satisfied by delivery of a separate document described by Rule 498 substituting accurate information; and

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

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

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

c.(I) Participants have adequate access to the electronic documents, at locations such as their worksites or public facilities, and have the ability to convert the documents to paper free of charge by the State Board of Administration, and the Board or its designated agents take appropriate and reasonable measures to ensure that the system for furnishing electronic documents results in actual receipt, or

(II) Participants have provided consent to receive information in electronic format, which consent may be revoked; and

d. The State Board of Administration, or its designated agent, actually provides paper copies of the documents free of charge, upon request.

Section 7. Section 121.571, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 121.571, F.S., for present text.)

121.571 Contributions.—Contributions to the Public Employee Optional Retirement Program shall be made as follows:

(1) NONCONTRIBUTORY PLAN.—Each employer shall accomplish the contributions required by s. 121.71 by a procedure in which no employee's gross salary shall be reduced.

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

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

Section 8. Section 11 of chapter 2001-235, Laws of Florida, is amended to read:

Section 11. It is the intent of the Legislature that the costs attributable to the additional cost-of-living increase for special risk retirees and Deferred Retirement Option Program participants as provided under section 2 shall be funded by recognition of excess actuarial assets, amortized over 30 years with the payments assumed to remain relatively stable when expressed as a percentage of payroll. For fiscal year 2001-2002, the payment shall be \$9.3 million. For fiscal year 2002-2003, the payment shall be ~~\$15.1~~ \$19 million, and, thereafter, payments shall increase by 5 percent per year. If insufficient funds are available to fund this additional cost through recognition of excess actuarial assets in fiscal year 2002-2003 and any year thereafter, and there remains an unfunded actuarial liability attributable to the one-time cost-of-living increase provided under section 2, the payroll contribution rate for the Special Risk Class of the Florida Retirement System shall be increased by .93 percent effective July 1 of that year, unless the Legislature provides an alternative funding mechanism before that date.

Section 9. Section 23 of chapter 2000-169, Laws of Florida, is hereby repealed.

Section 10. The contribution rates proposed in this act shall be in addition to all other changes to such contribution rates which may be enacted into law to take effect on July 1, 2002. The Division of Statutory Revision is directed to adjust the contribution rates set forth herein accordingly.

Section 11. The Legislature finds that a proper and legitimate state purpose is served when employees, officers, retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees, officers, and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner, as required by Section 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature hereby determines and declares that the provisions of this act fulfill an important state interest.

Section 12. Paragraph (h) of subsection (1), subsection (3), and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, as amended by chapter 2001-262, Laws of Florida, are amended to read:

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

(1)

(h)1. Except as provided in subparagraph 3., effective January 1, 1994, participation in the Senior Management Service Class shall be compulsory for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the Capital Collateral Regional Counsels, the clerks of the district courts of appeals,

the marshals of the district courts of appeals, and the trial court administrator and the Chief Deputy Court Administrator in each judicial circuit. Effective January 1, 1994, additional positions in the offices of the state attorney and public defender in each judicial circuit may be designated for inclusion in the Senior Management Service Class of the Florida Retirement System, provided that:

a. Positions to be included in the class shall be designated by the state attorney or public defender, as appropriate. Notice of intent to designate positions for inclusion in the class shall be published once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in chapter 50.

b. One nonelective full-time position may be designated for each state attorney and public defender reporting to the Department of Management Services; for agencies with 200 or more regularly established positions under the state attorney or public defender, additional nonelective full-time positions may be designated, not to exceed 0.5 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who serves at the pleasure of the state attorney or public defender without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any judicial employee who holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position. Effective January 1, 2001, participation in this class is compulsory for assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsels. Effective January 1, 2002, participation in this class is compulsory for assistant attorneys general.

3. In lieu of participation in the Senior Management Service Class, such members, excluding assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsels, may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

(3)(a) The following table states the required retirement contribution rates for members of the Senior Management Service Class and their employers in terms of a percentage of the member's gross compensation. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

Dates of Contribution Rate Changes	Members	Employers
Effective July 1, 2001	0%	11.73%

(b) The employer paying the salary of a member of the Senior Management Service Class shall contribute an amount as specified in this section which shall constitute the entire employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage.

(c) The following table states the required employer contribution on behalf of each member of the Senior Management Service Class in terms of a percentage of the member's gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to the member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
Effective July 1, 2001	1.11%

Such contributions and accompanying payroll data are due and payable no later than the 5th working day of the month immediately following the month during which the payroll period ended and shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

(6)

(c) Participation.—

1. Any eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participation in the Senior Management Service Class. Such election shall be made in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. Any eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, shall be deemed to have elected membership in the Senior Management Service Class.

2. Any employee who becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencement of employment, elect to participate in the optional annuity program. Such election shall be made in writing and filed with the personnel officer of the employer. Any eligible employee who does not within 90 days after commencement of

such employment elect to participate in the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participation in the Senior Management Service Class or optional annuity program. Such election shall be made in writing and filed with the department and the personnel officer of the employer within 90 days of such appointment. Any eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable as long as such employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, any active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System defined benefit program.

a. The election must be made in writing and must be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee will receive service credit under the defined benefit program of the Florida Retirement System equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit shall be an amount representing the present value of that employee's accumulated benefit obligation for the affected period of service.

c. The employee must transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee must pay a sum representing the remainder of the amount due. In no case may the employee retain any employer contributions or earnings thereon from the Senior Management Service Optional Annuity Program account.

Section 13. Except as otherwise provided herein, this act shall take effect June 1, 2002.

Approved by the Governor April 24, 2002.

Filed in Office Secretary of State April 24, 2002.