

Council Substitute for House Bill No. 807

An act relating to the Florida Retirement System; amending s. 121.4501, F.S., relating to the Public Employee Optional Retirement Program; amending the definition of “eligible employee”; providing for an extension of time to transfer assets from the defined benefit plan in the event of market disruption; providing for acceptance of rollovers; requiring that the election be filed with the third-party administrator; amending the earnings rate for funds in the suspense account to be invested by the board; providing for spousal notification of designation of beneficiary; providing for spousal rollovers to an eligible retirement plan; providing authorization for statements under oath; amending s. 110.123, F.S.; redefining the term “retired state officer or employee” or “retiree” to include an officer or employee who retires under the Public Employee Optional Retirement Program under certain circumstances; amending s. 110.205, F.S.; granting senior management service benefits to county health department directors and administrators; amending ss. 121.052, 121.055, and 121.071, F.S.; amending s. 121.052, F.S.; revising the membership requirements of the Elected Officers’ Class of the system to include certain sheriffs and clerks of the circuit court; making the date for payment of retirement contributions consistent under the Florida Retirement System defined benefit and defined contribution programs; providing eligibility of certain officials for membership in the Senior Management Service Class of the Florida Retirement System; revising provisions governing contributions to the Senior Management Service Optional Annuity Program; amending s. 121.35, F.S.; authorizing contributions to the optional retirement program in the form of rollovers or direct trustee-to-trustee transfers; expanding the methods for disbursing benefits; amending s. 121.4501, F.S., relating to the Public Employee Optional Retirement Program; updating definitions; establishing dates on which present value calculations are based; conforming election provisions for local government employees to provisions applicable to other employees; providing for the effective date of enrollment for certain employers; providing for the transfer of contributions under certain circumstances; transferring certain provisions relating to payment of benefits to s. 121.591, F.S., as created in the act; amending s. 121.571, F.S., relating to employer contributions to the Public Employee Optional Retirement Program; adjusting rates; making the date for payment of retirement contributions consistent under the Florida Retirement System defined benefit and defined contribution programs; creating s. 121.591, F.S., relating to benefits payable under the Public Employee Optional Retirement Program; providing for payment of the normal benefit upon termination; providing for disability retirement benefits; providing for transfer of certain funds; specifying eligibility requirements; providing procedure and required documentation; providing for computation of the disability benefit; providing for reapplication; providing for membership; providing an option to cancel; providing for reexamination and other

matters relating to recovery from disability; providing nonadmissible causes of disability; providing for disability retirement of justices or judges; providing for payment of death benefits; providing for spousal notification in certain cases; updating death benefit distribution provisions to conform to recent changes in federal law; providing protection of benefits from assignment, execution, etc.; providing a declaration of important state interest; authorizing the Department of Management Services to contract with a private company to administer the disability benefit program; authorizing the department to provide for an alternative method to administer and fund disability benefits; requiring the department to seek a private letter ruling from the Internal Revenue Service with respect to the disability retirement program; providing rulemaking authority; amending s. 121.053, F.S., relating to termination requirements and benefits of elected officers participating in the Deferred Retirement Option Program termination requirements for elected officers; amending s. 121.091, F.S.; authorizing an employing agency to re-employ a retired member as a firefighter or paramedic after a specified period; eliminating an exemption from termination limitations provided for elected officers; amending s. 121.0515, F.S.; providing for including service in fire prevention or firefighter training as creditable service; authorizing certain employees to purchase additional retirement credit; providing legislative intent with respect to funding retirement benefits; amending s. 121.021, F.S.; redefining the terms “compensation” and “bonus” for purposes of the system; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2), paragraph (c) of subsection (3), paragraphs (a), (b), and (c) of subsection (4), subsection (6), paragraphs (c) and (e) of subsection (7), and paragraph (a) of subsection (8) of section 121.4501, Florida Statutes, are amended, and paragraph (c) is added to subsection (5) of said section, to read:

121.4501 Public Employee Optional Retirement Program.—

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

(d) “Eligible employee” means an officer or employee, as defined in s. 121.021(11), who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System;

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6); or

3. Is eligible to participate in, but does not participate in, the State University System Optional Retirement Program established under s. 121.35 or the State Community College System Optional Retirement Program established under s. 121.051(2)(c).

The term does not include ~~any renewed member of the Florida Retirement System~~, any member participating in the Deferred Retirement Option Program established under s. 121.091(13), or any employee participating in an optional retirement program established under s. 121.051(2)(c) or s. 121.35.

(3) ELIGIBILITY; RETIREMENT SERVICE CREDIT.—

(c)1. Notwithstanding paragraph (b), each eligible employee who elects to participate in the Public Employee Optional Retirement Program and establishes one or more individual participant accounts under the optional program may elect to transfer to the optional program a sum representing the present value of the employee's accumulated benefit obligation under the defined benefit retirement program of the Florida Retirement System. Upon such transfer, all service credit previously earned under the defined benefit program of the Florida Retirement System shall be nullified for purposes of entitlement to a future benefit under the defined benefit program of the Florida Retirement System. A participant is precluded from transferring the accumulated benefit obligation balance from the defined benefit program upon the expiration of the period afforded to enroll in the optional program.

2. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation as of midnight of the day prior to the opening of the election window for the employee. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

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

b. A benefit commencement age, based on the member's estimated creditable service as of midnight on May 31, 2002. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of midnight on May 31, 2002:

(I) Age 62; or

(II) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from May 31, 2002, and disregarding any vesting requirement that would otherwise apply under the defined benefit program of the Florida Retirement System.

c. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain special risk normal retirement date, the benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of midnight on May 31, 2002:

(I) Age 55; or

(II) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from May 31, 2002, and disregarding any vesting requirement that would otherwise apply under the defined benefit program of the Florida Retirement System.

d. The calculation shall disregard vesting requirements and early retirement reduction factors that would otherwise apply under the defined benefit retirement program.

3. For each participant who elects to transfer moneys from the defined benefit program to his or her account in the optional program, the division shall recompute the amount transferred under subparagraph 2. not later than 60 days after the actual transfer of funds based upon the participant's actual creditable service and actual final average compensation as of the initial date of participation in the optional program. If the recomputed amount differs from the amount transferred under subparagraph 2. by \$10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the participant's account in the optional program the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 8 percent effective annual interest, compounded annually.

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

4. As directed by the participant, the board shall transfer or cause to be transferred the appropriate amounts to the designated accounts. The board shall establish transfer procedures by rule, but the actual transfer shall not be later than 30 days after the effective date of the member's participation in the optional program unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event which also causes the suspension of trading on any national securities exchange in the country where the securities were issued. In that event, such 30-day period of time may be extended by a resolution of the trustees. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash as determined by the state board. Such securities shall be valued as of the date of receipt in the participant's account.

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

(4) PARTICIPATION; ENROLLMENT.—

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the ~~third-party administrator by August 31~~ department and the personnel officer of the employer within 90 days after June 1, 2002, or, in the case of an active employee who is on a leave of absence on April June 1, 2002, by August 31, 2002, or within 90 days after the conclusion of the leave of absence, whichever is later. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

b. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 90 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

2. With respect to employees who become eligible to participate in the Public Employee Optional Retirement Program by reason of employment in a regularly established position with a state employer commencing after April June 1, 2002:

a. Any such employee shall, by default, be enrolled in the defined benefit retirement program of the Florida Retirement System at the commencement of employment, and may, by the end of the fifth month following the employee's month of hire within 180 days after employment commences, elect to participate in the Public Employee Optional Retirement Program. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator ~~personnel officer of the employer~~. The election to participate in the optional program is irrevocable, except as provided in paragraph (e).

b. If the employee files such election before the initial payroll is submitted for the employee, enrollment in the Public Employee Optional Retirement Program shall be effective on the first day of employment.

c. If the employee files such election within the prescribed time period 180 days after employment commences, but after the initial payroll is submitted for the employee, enrollment in the optional program shall be effective on the first day of the month for which a full month's employer contribution is made to the optional program.

d. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 180 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

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

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30 ~~department and the personnel officer of the employer within 90 days after September 1, 2002, or, in the case of an active employee who is on a leave of absence on July September 1, 2002, by November 30, 2002, or within 90 days after the conclusion of the leave of absence, whichever is later.~~ This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

b. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 90 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

2. With respect to employees who become eligible to participate in the Public Employee Optional Retirement Program by reason of employment in a regularly established position with a district school board employer commencing after July September 1, 2002:

a. Any such employee shall, by default, be enrolled in the defined benefit retirement program of the Florida Retirement System at the commencement of employment, and may, by the end of the fifth month following the employee's month of hire within 180 days after employment commences, elect to participate in the Public Employee Optional Retirement Program. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator ~~personnel officer of the employer.~~

The election to participate in the optional program is irrevocable, except as provided in paragraph (e).

b. If the employee files such election before the initial payroll is submitted for the employee, enrollment in the Public Employee Optional Retirement Program shall be effective on the first day of employment.

c. If the employee files such election within the prescribed time period 180 days after employment commences, but after the initial payroll is submitted for the employee, enrollment in the optional program shall be effective on the first day of the month for which a full month's employer contribution is made to the optional program.

d. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 180 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

3. For purposes of this paragraph, "district school board employer" means any district school board that participates in the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2)(d).

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by February 28, 2003 ~~department and the personnel officer of the employer within 90 days after December 1, 2002~~, or, in the case of an active employee who is on a leave of absence on October December 1, 2002, by February 28, 2003, or within 90 days after the conclusion of the leave of absence, whichever is later. This election is irrevocable. Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

b. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 90 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

2. With respect to employees who become eligible to participate in the Public Employee Optional Retirement Program by reason of employment in a regularly established position with a local employer commencing after October December 1, 2002:

a. Any such employee shall, by default, be enrolled in the defined benefit retirement program of the Florida Retirement System at the commencement of employment, and may, by the end of the fifth month following the employee's month of hire within 180 days after employment commences, elect to participate in the Public Employee Optional Retirement Program. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator personnel officer of the employer. The election to participate in the optional program is irrevocable, except as provided in paragraph (e).

b. If the employee files such election before the initial payroll is submitted for the employee, enrollment in the Public Employee Optional Retirement Program shall be effective on the first day of employment.

c. If the employee files such election within the prescribed time period 180 days after employment commences, but after the initial payroll is submitted for the employee, enrollment in the optional program shall be effective on the first day of the month for which a full month's employer contribution is made to the optional program.

d. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 180 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

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

(5) CONTRIBUTIONS.—

(c) The Public Employee Optional Retirement Program may accept for deposit into participant accounts contributions in the form of rollovers or direct trustee-to-trustee transfers by or on behalf of participants, reasonably determined by the board to be eligible for rollover or transfer to the optional retirement program pursuant to the Internal Revenue Code, if such contributions are made in accordance with rules as may be adopted by the board. Such contributions shall be accounted for in accordance with any applicable Internal Revenue Code requirements and rules of the board.

(6) VESTING REQUIREMENTS.—

(a)1. With respect to employer contributions paid on behalf of the participant to the Public Employee Optional Retirement Program, plus interest and earnings thereon and less investment fees and administrative charges, a participant shall be vested after completing 1 work year, as defined in s. 121.021(54), with an employer, including any service while the participant was a member of the defined benefit retirement program or an optional retirement program authorized under s. 121.051(2)(c) or s. 121.055(6).

2. If the participant terminates employment prior to satisfying the vesting requirements, the nonvested accumulation shall be transferred from the participant's accounts to the state board for deposit and investment by the board in the suspense account of the Public Employee Optional Retirement Program Trust Fund of the board. If the terminated participant is reemployed as an eligible employee within 5 years, the state board shall transfer to the participant's account any amount of the moneys previously transferred from the participant's accounts to the suspense account of the Public Employee Optional Retirement Program Trust Fund, plus the actual earnings on such amount while in the suspense account interest calculated at 3.0 percent per annum, calculated from the date of transfer to the date of reemployment.

(b)1. A participant shall be vested in the amount transferred from the defined benefit program, plus interest and earnings thereon and less administrative charges and investment fees, upon meeting the service requirements for the participant's membership class as set forth in s. 121.021(29). The third-party administrator shall account for such amounts for each participant. The division shall notify the participant and the third-party administrator when the participant has satisfied the vesting period for Florida Retirement System purposes.

2. If the participant terminates employment prior to satisfying the vesting requirements, the nonvested accumulation shall be transferred from the participant's accounts to the state board for deposit and investment by the board in the suspense account of the Public Employee Optional Retirement Program Trust Fund of the board. If the terminated participant is reemployed as an eligible employee within 5 years, the state board shall transfer to the participant's account any amount of the moneys previously transferred from the participant's accounts to the suspense account of the Public Employee Optional Retirement Program Trust Fund, plus the actual earnings on such amount while in the suspense account interest calculated at 6.0 percent per annum, calculated from the date of transfer to the date of reemployment.

(c) Any nonvested accumulations transferred from a participant's account to the suspense account shall be forfeited by the participant if the participant is not reemployed as an eligible employee within 5 years after termination.

(7) BENEFITS.—Under the Public Employee Optional Retirement Program:

(c) Benefits shall be payable in accordance with the following terms and conditions:

1. To the extent vested, benefits shall be payable only to a participant, or to his or her beneficiaries as designated by the participant. If a participant designates a beneficiary who is not the participant's spouse, the participant's spouse shall be notified. This requirement shall not apply to the designation of a contingent beneficiary designated to receive benefits hereunder in the event the participant's spouse dies before such contingent beneficiary.

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

3. To begin receiving the benefits, the participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39), or the participant must be deceased. If a participant elects to receive his or her benefits upon termination of employment, the participant must submit a written application to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph (d). The participant may defer receipt of benefits until he or she chooses to make such application, subject to federal requirements.

4. In the event of a participant's death, moneys accumulated by, or on behalf of, the participant, less withholding taxes remitted to the Internal Revenue Service, shall be distributed to the participant's designated beneficiary or beneficiaries, or to the participant's estate, as if the participant retired on the date of death, as provided in paragraph (e). No other death benefits shall be available for survivors of participants under the Public Employee Optional Retirement Program, except for such benefits, or coverage for such benefits, as are separately afforded by the employer, at the employer's discretion.

(e) Survivor benefits shall be payable as:

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

2. An eligible rollover distribution on behalf of the surviving spouse of a deceased participant, whereby all accrued benefits, plus interest and investment earnings, are paid from the deceased participant's account directly to the custodian of an eligible retirement plan individual retirement account ~~or an individual retirement annuity~~, as described in s. 402(c)(8)(B)(9) of the Internal Revenue Code, on behalf of the surviving spouse; or

3. A partial lump-sum payment whereby a portion of the accrued benefit is paid to the deceased participant's surviving spouse or other designated beneficiaries, less withholding taxes remitted to the Internal Revenue Service, and the remaining amount is transferred directly to the custodian of an individual retirement account or an individual retirement annuity, as described in s. 402(c)(9) of the Internal Revenue Code, on behalf of the surviving spouse. The proportions must be specified by the participant or the surviving beneficiary.

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

(8) ADMINISTRATION OF PROGRAM.—

(a) The Public Employee Optional Retirement Program shall be administered by the state board and affected employers. The board is authorized to require oaths, by affidavit or otherwise, and acknowledgments from persons

in connection with the administration of its duties and responsibilities under this chapter. No oath, by affidavit or otherwise, shall be required of an employee participant at the time of election. Acknowledgement of an employee's election to participate in the program shall be no greater than necessary to confirm the employee's election. The board shall adopt rules establishing the role and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors in administering the Public Employee Optional Retirement Program. The department shall adopt rules necessary to implement the optional program in coordination with the defined benefit retirement program and the disability benefits available under the optional program.

Section 2. Paragraph (g) of subsection (2), paragraph (g) of subsection (3), and paragraph (h) of subsection (4) of section 110.123, Florida Statutes, are 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 officer or state 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 office or employment. In addition to these requirements, any state officer or state employee who retires under the 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.

(3) STATE GROUP INSURANCE PROGRAM.—

(g) Participation by individuals in the program shall be available to all state officers, full-time state employees, and part-time state employees; and such participation in the program or any plan thereof shall be voluntary. Participation in the program shall also be available to retired state officers and employees, as defined in paragraph (2)(g), who elect at the time of retirement to continue coverage under the program, but they may elect to continue all or only part of the coverage they had at the time of retirement. A surviving spouse may elect to continue coverage only under the state group health insurance plan or a health maintenance organization plan.

(4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE; LIMITATION ON ACTIONS TO PAY AND COLLECT PREMIUMS.—

~~(h) State employees may participate in the state group health insurance plan at the time of receiving their state retirement benefits.~~

Section 3. Paragraphs (j) and (q) of subsection (2) of section 110.205, Florida Statutes, are amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(j) The appointed secretaries, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all departments; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all departments; ~~and the directors of all divisions and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, program directors, assistant program directors, district administrators, deputy district administrators, the Director of Central Operations Services of the Department of Children and Family Services, and the State Transportation Planner, State Highway Engineer, State Public Transportation Administrator, district secretaries, district directors of planning and programming, production, and operations, and the managers of the offices specified in s. 20.23(3)(d)2., of the Department of Transportation. Unless otherwise fixed by law, the department shall set the salary and benefits of these positions in accordance with the rules of the Senior Management Service; and the county health department directors and county health department administrators of the Department of Health.~~

(q) The staff directors, assistant staff directors, district program managers, district program coordinators, district subdistrict administrators, district administrative services directors, district attorneys, and the Deputy Director of Central Operations Services of the Department of Children and Family Services ~~and the county health department directors and county health department administrators of the Department of Health.~~ Unless otherwise fixed by law, the department shall establish the salary range and benefits for these positions in accordance with the rules of the Selected Exempt Service.

Section 4. Paragraph (d) of subsection (2) and subsection (7) of section 121.052, Florida Statutes, as amended by chapter 2001-262, Laws of Florida, are amended to read:

121.052 Membership class of elected officers.—

(2) MEMBERSHIP.—The following holders of elective office, hereinafter referred to as “elected officers,” whether assuming elective office by election, reelection, or appointment, are members of the Elected Officers’ Class, except as provided in subsection (3):

(d) Any constitutional county elected officer assuming office on or after July 1, 1981, including any sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, county commissioner, school

board member, or elected school board superintendent, or any elected officer of any entity with countywide jurisdiction assuming office on or after July 1, 1981, who, pursuant to general or special law, exercises powers and duties that, but for such general or special law, would be exercised by any of the constitutional county elected officers set forth in this paragraph, including the sheriff and clerk of the circuit court in a consolidated government with countywide jurisdiction unless such sheriff or clerk elected to continue to participate in a local retirement system.

(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
Effective July 1, 2001		
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%

(b) The employer paying the salary of a member of the Elected Officers' Class shall contribute an amount as specified in this subsection 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 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.

Section 5. Paragraph (h) of subsection (1), subsection (3), paragraph (d) of subsection (4), and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, as amended by chapter 2001-262, Laws of Florida, are amended, and paragraph (k) is added to subsection (1) of that section, 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).

(k) Any state attorney or public defender in the Elected Officers' Class who has creditable service as an assistant state attorney or assistant public defender may upgrade retirement credit for such service in accordance with the provisions of paragraph (j).

(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%

Dates of Contribution Rate Changes	Contribution Rate
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 6. Subsection (5) of section 121.071, Florida Statutes, as amended by chapter 2001-262, Laws of Florida, is amended to read:

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

(5) Contributions made in accordance with subsections (1), (2), (3), and (4) shall be paid by the employer into the system trust funds in accordance with rules adopted by the administrator pursuant to chapter 120, except as may be otherwise specified herein.

(a)1. Effective October 1, 1978, 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.

2. Effective July 1, 2002, contributions paid under subsections (1) and (4) 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. 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.~~

(b) 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 7. Section 121.35, Florida Statutes, is amended to read:

121.35 Optional retirement program for the State University System.—

(1) **OPTIONAL RETIREMENT PROGRAM ESTABLISHED.**—The Department of Management Services shall establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for eligible members of the State University System 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 individual contracts or individual certificates issued for group annuity or other contracts, which may be fixed, variable, or a combination thereof, in accordance with s. 403(b) of the Internal Revenue Code. Any individual contract or certificate shall state the annuity plan on its face page, and shall include, but not be limited to, a statement of ownership, the contract benefits, annuity income options, limitations, expense charges, and surrender charges, if any. The state shall contribute, as provided in this section, toward the purchase of such optional benefits.

(2) **ELIGIBILITY FOR PARTICIPATION IN OPTIONAL PROGRAM.**—

(a) Participation in the optional retirement program provided by this section shall be limited to persons who are otherwise eligible for membership in the Florida Retirement System; who are employed or appointed for no less than one academic year; and who are employed in one of the following State University System positions:

1. Positions classified as instructional and research faculty which are exempt from the career service under the provisions of s. 110.205(2)(d).

2. Positions classified as administrative and professional which are exempt from the career service under the provisions of s. 110.205(2)(d).

3. The Chancellor and the university presidents.

(b) For purposes of this section, both the appointees and employees are referred to as “employees,” and the “employer” of an appointee or employee is the individual institution within the State University System or the State Board of Education Regents, whichever is appropriate with respect to the particular employee or appointee.

(c) For purposes of this section, the Department of Management Services is referred to as the “department.”

(d) For purposes of this section, the authority granted to the State Board of Education Regents may be exercised by the board or by the Chancellor of the Division of Colleges and Universities State University System.

(3) ELECTION OF OPTIONAL PROGRAM.—

(a) Any eligible employee who is employed on or before March 1, 1984, may elect to participate in the optional retirement program in lieu of participation in the Florida Retirement System. Such election shall be made in writing and filed with the division and the personnel officer of the employer on or before June 1, 1984. Upon such election, participation in the optional program will take effect July 1, 1984, and election to so participate will terminate the membership of the employee in the Florida Retirement System. Any eligible employee who is employed on or before March 1, 1984, and who fails to make an election to participate in the optional program by June 1, 1984, shall be deemed to have elected to retain membership in the Florida Retirement System.

(b)1. Any employee who becomes eligible to participate in the optional retirement program by reason of initial employment commencing after March 1, 1984, but before January 1, 1993, may, within 90 days after the date of commencement of employment, elect to participate in the optional program. Such election shall be made in writing and filed with the personnel officer of the employer. The eligible employees described in this subparagraph shall be enrolled in the Florida Retirement System at the commencement of employment, with the exception of those employees who file an election with the personnel officer of the employer prior to the submission of the initial payroll for the employee. For such employees, participation will be effective on the first day of employment or on July 1, 1984, whichever is later. If an eligible employee, as described in this subparagraph, files an election to participate in the optional program within 90 days after the commencement of employment, but after the submission by the employer of the initial payroll for the employee, the employee’s participation in the optional program will not be effective until the first day of the month for which a full month’s employer contribution may be made, or until July 1, 1984, whichever is later. Any eligible employee who does not within 90 days after commencement of such employment elect to participate in the optional program shall be deemed to have elected to retain membership in the Florida Retirement System.

2. Any employee who after March 1, 1984, but before January 1, 1993, becomes eligible to participate in the optional program by reason of a change in status due to the subsequent designation of the employee's position as one of those specified in paragraph (2)(a) or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in paragraph (2)(a) may elect to participate in the optional program. Such employee shall be notified by the employer of the change in his or her eligibility status. Such employee may, within 90 days after the date of such notification, file with the personnel officer of the employer an election in writing to participate in the optional program in lieu of participation in the Florida Retirement System. Upon such election, participation in the optional program will be effective on the first day of the month for which a full month's employer contribution may be made or on July 1, 1984, whichever is later. Election to so participate shall terminate the membership of the employee in the Florida Retirement System. Any eligible employee who does not within 90 days after notification of his or her eligibility to participate in the optional program elect to participate in the program shall be deemed to have elected to retain membership in the Florida Retirement System.

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

1. Any employee whose optional retirement program eligibility results from initial employment shall be enrolled in the program at the commencement of employment. If, within 90 days after commencement of employment, the employee elects membership in the Florida Retirement System, such membership shall be effective retroactive to the date of commencement of employment.

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

3. Notwithstanding the provisions of this paragraph, effective July 1, 1997, any employee who is eligible to participate in the Optional Retirement Program and who fails to execute ~~a an annuity~~ contract with one of the approved companies and to notify the department in writing as provided in subsection (4) within 90 days after of the date of eligibility shall be deemed to have elected membership in the Florida Retirement System, except as provided in s. 121.051(1)(a). This provision shall also apply to any employee who terminates employment in an eligible position before executing the

required annuity contract and notifying the department. Such membership shall be retroactive to the date of eligibility, and all appropriate contributions shall be transferred to the Florida Retirement System Trust Fund and the Health Insurance Subsidy Trust Fund.

(d) Participants shall be fully and immediately vested in the optional retirement program only upon execution of a ~~an annuity~~ contract.

(e) The election by an eligible employee to participate in the optional retirement program shall be irrevocable for so long as the employee continues to meet the eligibility requirements specified in subsection (2), except as provided in paragraph (h). In the event that an employee participates in the optional retirement program for 90 days or more and is subsequently employed in an administrative or professional position which has been determined by the department, under subparagraph (2)(a)2., to be not otherwise eligible for participation in the optional retirement program, the employee shall continue participation in the optional program so long as the employee meets the other eligibility requirements for the program, except as provided in paragraph (h).

(f) If an employee becomes ineligible to continue participation in the optional retirement program under subsection (2), the employee shall thereafter participate in the Florida Retirement System if he or she is otherwise eligible.

(g) An eligible employee who is a member of the Florida Retirement System at the time of election to participate in the optional retirement program shall retain all retirement service credit earned under the Florida Retirement System, at the rate earned. No additional service credit in the Florida Retirement System shall be earned while the employee participates in the optional program, nor shall the employee be eligible for disability retirement under the Florida Retirement System.

(h) A participant in the optional retirement program may not participate in more than one state-administered retirement system, plan, or class simultaneously. Except as provided in s. 121.052(6)(d), a participant who is or becomes dually employed in two or more positions covered by the Florida Retirement System, one of which is eligible for the optional program and one of which is not, may remain a member of the optional program and contributions shall be paid as required only on the salary earned in the position eligible for the optional program during such period of dual employment; or, within 90 days after becoming dually employed, he or she may elect membership in the Regular Class of the Florida Retirement System in lieu of the optional program and contributions shall be paid as required on the total salary received for all employment. At retirement, the average final compensation used to calculate any benefits for which the member becomes eligible under the Florida Retirement System shall be based on all salary reported for both positions during such period of dual employment. When such member ceases to be dually employed, he or she may, within 90 days, elect to remain in the Florida Retirement System class for which he or she is eligible or to again become a participant in the optional retirement program. Failure to elect membership in the optional program within 90 days shall result in

compulsory membership in the Florida Retirement System, except that a member filling a faculty position under a faculty practice plan at the University of Florida or the Medical Center at the University of South Florida shall again participate in the optional retirement program as required in s. 121.051(1)(a).

(4) CONTRIBUTIONS.—

(a) Through June 30, 2001, each employer shall contribute on behalf of each participant in the optional retirement program an amount equal to the normal cost portion of the employer retirement contribution which would be required if the participant were a regular member of the Florida Retirement System defined benefit program, plus the portion of the contribution rate required in s. 112.363(8) that would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund. Effective July 1, 2001, each employer shall contribute on behalf of each participant in the optional program an amount equal to 10.43 percent of the participant's gross monthly compensation. The department shall deduct an amount approved by the Legislature to provide for the administration of this program. The payment of the contributions to the optional program which is required by this paragraph for each participant shall be made by the employer to the department, which shall forward the contributions to the designated company or companies contracting for payment of benefits for the participant under the program. However, such contributions paid on behalf of an employee described in paragraph (3)(c) shall not be forwarded to a company and shall not begin to accrue interest until the employee has executed an annuity contract and notified the department.

(b) Each employer shall contribute on behalf of each participant in the optional retirement program an amount equal to the unfunded actuarial accrued liability portion of the employer contribution which would be required for members of the Florida Retirement System. This contribution shall be paid to the department for transfer to the Florida Retirement System Trust Fund.

(c) An Optional Retirement Program Trust Fund shall be established in the State Treasury and administered by the department to make payments to the provider companies on behalf of the optional retirement program participants, and to transfer the unfunded liability portion of the state optional retirement program contributions to the Florida Retirement System Trust Fund.

(d) Contributions required for social security by each employer and each participant, in the amount required for social security coverage as now or hereafter may be provided by the federal Social Security Act, shall be maintained for each participant in the optional retirement program and shall be in addition to the retirement contributions specified in this subsection.

(e) Each participant in the optional retirement program who has executed ~~a an annuity~~ contract may contribute by way of salary reduction or deduction a percentage amount of the participant's gross compensation not to exceed the percentage amount contributed by the employer to the optional program, but in no case may such contribution exceed federal limitations.

Payment of the participant's contributions shall be made by the financial officer of the employer to the division which shall forward the contributions to the designated company or companies contracting for payment of benefits for the participant under the program. A participant may not make, through salary reduction, any voluntary employee contributions to any other plan under s. 403(b) of the Internal Revenue Code, with the exception of a custodial account under s. 403(b)(7) of the Internal Revenue Code, until he or she has made an employee contribution to his or her optional program equal to the employer contribution. A participant is responsible for monitoring his or her individual tax-deferred income to ensure he or she does not exceed the maximum deferral amounts permitted under the Internal Revenue Code.

(f) The Optional Retirement Trust Fund may accept for deposit into participant contracts contributions in the form of rollovers or direct trustee-to-trustee transfers by or on behalf of participants who are reasonably determined by the department to be eligible for rollover or transfer to the optional retirement program pursuant to the Internal Revenue Code, if such contributions are made in accordance with rules adopted by the department. Such contributions shall be accounted for in accordance with any applicable requirements of the Internal Revenue Code and rules of the department.

(5) BENEFITS.—

(a) Benefits shall be payable under the optional retirement program only to vested participants in the program, or their beneficiaries as designated by the participant in the contract with a provider company, and such benefits shall be paid only by the designated company in accordance with s. 403(b) of the Internal Revenue Code and in accordance with the terms of the annuity contract or contracts applicable to the participant. Benefits shall accrue in individual accounts that are participant-directed, portable, and funded by employer contributions and the earnings thereon. The participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39), to begin receiving the employer-funded benefit. Benefits funded by employer contributions shall be payable in accordance with the following terms and conditions only as a lifetime annuity to the participant, his or her beneficiary, or his or her estate, except for:

1. Benefits shall be payable only to a participant, to his or her beneficiaries, or to his or her estate, as designated by the participant.

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

3. In the event of a participant's death, moneys accumulated by, or on behalf of, the participant, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the participant's designated beneficiary or beneficiaries, or to the participant's estate, as if the participant retired on the date of death, as provided in paragraph (c). No other death benefits shall be available for survivors of participants under the optional retirement program except for such benefits, or coverage for such

benefits, as are separately afforded by the employer, at the employer's discretion.

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

1. A lump-sum distribution to the participant;

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

3. Periodic distributions;

4. A partial lump-sum payment whereby a portion of the accrued benefit is paid to the participant and the remaining amount is transferred to an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the participant; or

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

(c) Survivor benefits shall be payable as:

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

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

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

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

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

~~1. A lump-sum payment to the beneficiary upon the death of the participant; or~~

~~2. A cash-out of a de minimis account upon the request of a former participant who has been terminated for a minimum of 6 months from the~~

employment that entitled him or her to optional retirement program participation. A de minimis account is an account with a provider company containing employer contributions and accumulated earnings of not more than \$5,000 made under the provisions of this chapter. Such cash-out must be a complete liquidation of the account balance with that company and is subject to the provisions of the Internal Revenue Code.

(d)(b) The benefits payable to any person under the optional retirement program, and any contribution accumulated under such program, shall not be subject to assignment, execution, or attachment or to any legal process whatsoever.

(e)(c) A participant who chooses to receive his or her benefits upon termination of employment shall have responsibility to notify the provider company of the date on which he or she wishes benefits ~~the annuity~~ funded by employer contributions to begin. Benefits may be deferred until such time as the participant chooses to make such application.

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

(6) ADMINISTRATION OF PROGRAM.—

(a) The optional retirement program authorized by this section shall be administered by the department. The department shall adopt rules establishing the responsibilities of the State Board of Education Regents and institutions in the State University System in administering the optional retirement program. The State Board of Education Regents shall, no more than 90 days after July 1, 1983, submit to the department its recommendations for the ~~annuity~~ contracts to be offered by the companies chosen by the department. The recommendations of the board shall include the following:

1. The nature and extent of the rights and benefits in relation to the required contributions; and
2. The suitability of the rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of eligible employees.

(b) After receiving and considering the recommendations of the State Board of Education Regents, the department shall designate no more than four companies from which ~~annuity~~ contracts may be purchased under the program and shall approve the form and content of the optional retirement program contracts. Upon application by a qualified Florida domestic company, the department shall give reasonable notice to all other such companies that it intends to designate one of such companies as a fifth company from which ~~annuity~~ contracts may be purchased pursuant to this section and that they may apply for such designation prior to the deadline established by said notice. At least 60 days after giving such notice and upon receipt of

the recommendation of the State Board of Education Regents, the department shall so designate one of such companies as the fifth company from which such contracts may be purchased.

(c) Effective July 1, 1997, the State Board of Administration shall review and make recommendations to the department on the acceptability of all investment products proposed by provider companies of the optional retirement program before they are offered through annuity contracts to the participants and may advise the department of any changes necessary to ensure that the optional retirement program offers an acceptable mix of investment products. The department shall make the final determination as to whether an investment product will be approved for the program.

(d) The provisions of each contract applicable to a participant in the optional retirement program shall be contained in a written program description which shall include a report of pertinent financial and actuarial information on the solvency and actuarial soundness of the program and the benefits applicable to the participant. Such description shall be furnished by the companies to each participant in the program and to the department upon commencement of participation in the program and annually thereafter.

(e) The department shall ensure that each participant in the optional retirement program is provided an accounting of the total contribution and the annual contribution made by and on behalf of such participant.

Section 8. Subsection (2), paragraph (c) of subsection (3), paragraphs (a), (b), and (c) of subsection (4), and subsections (7) and (16) of section 121.4501, Florida Statutes, as amended by chapter 2001-235, Laws of Florida, are amended to read:

121.4501 Public Employee Optional Retirement Program.—

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

(a) “Approved provider” or “provider” means a private sector company that is selected and approved by the state board to offer one or more investment products or services to the Public Employee Optional Retirement Program. The term includes a bundled provider that offers participants a range of individually allocated or unallocated investment products and may offer a range of administrative and customer services, which may include accounting and administration of individual participant benefits and contributions; individual participant recordkeeping; asset purchase, control, and safekeeping; direct execution of the participant’s instructions as to asset and contribution allocation; calculation of daily net asset values; direct access to participant account information; periodic reporting to participants, at least quarterly, on account balances and transactions; guidance, advice, and allocation services directly relating to its own investment options or products, but only if the bundled provider complies with the standard of care of s. 404(a)(1)(A-B) of the Employee Retirement Income Security Act of 1974 (ERISA) and if providing such guidance, advice, or allocation services does not constitute a prohibited transaction under s. 4975(c)(1) of the Internal Revenue Code or s. 406 of ERISA, notwithstanding that such prohibited

transaction provisions do not apply to the optional retirement program; a broad array of distribution options; asset allocation; and retirement counseling and education. Private sector companies include investment management companies, insurance companies, depositories, and mutual fund companies.

(b) “Average monthly compensation” means one-twelfth of average final compensation as defined in s. 121.021(24).

(c) “Covered employment” means employment in a regularly established position as defined in s. 121.021(52).

(d)~~(b)~~ “Department” means the Department of Management Services.

(e)~~(e)~~ “Division” means the Division of Retirement within the Department of Management Services.

(f)~~(d)~~ “Eligible employee” means an officer or employee, as defined in s. 121.021(11), who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System;
2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6); or
3. Is eligible to participate in, but does not participate in, the State University System Optional Retirement Program established under s. 121.35 or the State Community College System Optional Retirement Program established under s. 121.051(2)(c).

The term does not include any renewed member of the Florida Retirement System, any member participating in the Deferred Retirement Option Program established under s. 121.091(13), or any employee participating in an optional retirement program established under s. 121.051(2)(c) or s. 121.35.

(g)~~(e)~~ “Employer” means an employer, as defined in s. 121.021(10), of an eligible employee.

(h)~~(f)~~ “Participant” means an eligible employee who elects to participate in the Public Employee Optional Retirement Program and enrolls in such optional program as provided in subsection (4).

(i)~~(g)~~ “Public Employee Optional Retirement Program,” “optional program,” or “optional retirement program” means the alternative defined contribution retirement program established under this section.

(j)~~(h)~~ “State board” or “board” means the State Board of Administration.

(k)~~(i)~~ “Trustees” means Trustees of the State Board of Administration.

(l)~~(j)~~ “Vested” or “vesting” means the guarantee that a participant is eligible to receive a retirement benefit upon completion of the required years of service under the Public Employee Optional Retirement Program.

(3) ELIGIBILITY; RETIREMENT SERVICE CREDIT.—

(c)1. Notwithstanding paragraph (b), each eligible employee who elects to participate in the Public Employee Optional Retirement Program and establishes one or more individual participant accounts under the optional program may elect to transfer to the optional program a sum representing the present value of the employee's accumulated benefit obligation under the defined benefit retirement program of the Florida Retirement System. Upon such transfer, all service credit previously earned under the defined benefit program of the Florida Retirement System shall be nullified for purposes of entitlement to a future benefit under the defined benefit program of the Florida Retirement System. A participant is precluded from transferring the accumulated benefit obligation balance from the defined benefit program upon the expiration of the period afforded to enroll in the optional program.

2. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the defined benefit program, subject to recomputation under subparagraph 3. For state employees enrolling under subparagraph (4)(a)1., initial estimates will be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees enrolling under subparagraph (4)(b)1., initial estimates will be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees enrolling under subparagraph (4)(c)1., initial estimates will be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates respectively specified above shall be construed as the "estimate date" for these employees of the day prior to the opening of the election window for the employee. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

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

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date ~~midnight on May 31, 2002~~. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of the estimate date ~~midnight on May 31, 2002~~:

(I) Age 62; or

(II) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date ~~May 31, 2002~~, and disregarding any vesting requirement that would otherwise apply under the defined benefit program of the Florida Retirement System.

c. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain special risk normal retirement date, the benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of the estimate date midnight on May 31, 2002:

(I) Age 55; or

(II) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date May 31, 2002, and disregarding any vesting requirement that would otherwise apply under the defined benefit program of the Florida Retirement System.

d. The calculation shall disregard vesting requirements and early retirement reduction factors that would otherwise apply under the defined benefit retirement program.

3. For each participant who elects to transfer moneys from the defined benefit program to his or her account in the optional program, the division shall recompute the amount transferred under subparagraph 2. not later than 60 days after the actual transfer of funds based upon the participant's actual creditable service and actual final average compensation as of the initial date of participation in the optional program. If the recomputed amount differs from the amount transferred under subparagraph 2. by \$10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the participant's account in the optional program the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 8 percent effective annual interest, compounded annually.

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

4. As directed by the participant, the board shall transfer or cause to be transferred the appropriate amounts to the designated accounts. The board shall establish transfer procedures by rule, but the actual transfer shall not be later than 30 days after the effective date of the member's participation in the optional program. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash as determined by the state board. Such securities shall be valued as of the date of receipt in the participant's account.

5. If the board or the division receives notification from the United States Internal Revenue Service that this paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disquali-

fied for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

(4) PARTICIPATION; ENROLLMENT.—

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by August 31, department and the personnel officer of the employer within 90 days after June 1, 2002, or, in the case of an active employee who is on a leave of absence on April June 1, 2002, by August 31, 2002, or within 90 days after the conclusion of the leave of absence, whichever is later. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

b. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 90 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

2. With respect to employees who become eligible to participate in the Public Employee Optional Retirement Program by reason of employment in a regularly established position with a state employer commencing after April June 1, 2002:

a. Any such employee shall, by default, be enrolled in the defined benefit retirement program of the Florida Retirement System at the commencement of employment, and may, by the end of the 5th month following the employee's month of hire within 180 days after employment commences, elect to participate in the Public Employee Optional Retirement Program. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator personnel officer of the employer. The election to participate in the optional program is irrevocable, except as provided in paragraph (e).

b. ~~If the employee files such election before the initial payroll is submitted for the employee, enrollment in the Public Employee Optional Retirement Program shall be effective on the first day of employment.~~

~~b.e. If the employee files such election within the prescribed time period 180 days after employment commences, but after the initial payroll is submitted for the employee, enrollment in the optional program shall be effective on the first day of employment the month for which a full month's employer contribution is made to the optional program. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the optional program, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the optional program.~~

c.d. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 180 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

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

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30 ~~department and the personnel officer of the employer within 90 days after September 1, 2002,~~ or, in the case of an active employee who is on a leave of absence on July September 1, 2002, by November 30, 2002, or within 90 days after the conclusion of the leave of absence, whichever is later. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

b. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 90 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

2. With respect to employees who become eligible to participate in the Public Employee Optional Retirement Program by reason of employment in

a regularly established position with a district school board employer commencing after July September 1, 2002:

a. Any such employee shall, by default, be enrolled in the defined benefit retirement program of the Florida Retirement System at the commencement of employment, and may, by the end of the 5th month following the employee's month of hire within 180 days after employment commences, elect to participate in the Public Employee Optional Retirement Program. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator personnel officer of the employer. The election to participate in the optional program is irrevocable, except as provided in paragraph (e).

~~b. If the employee files such election before the initial payroll is submitted for the employee, enrollment in the Public Employee Optional Retirement Program shall be effective on the first day of employment.~~

b.e. If the employee files such election within the prescribed time period 180 days after employment commences, but after the initial payroll is submitted for the employee, enrollment in the optional program shall be effective on the first day of employment the month for which a full month's employer contribution is made to the optional program. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the optional program, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the optional program.

c.d. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 180 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

3. For purposes of this paragraph, "district school board employer" means any district school board that participates in the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2)(d).

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by February 28, 2003, department and the personnel officer of the employer within 90 days after December 1, 2002 or, in the case of an active employee who is on a leave of absence on October December 1, 2002, by February 28, 2003, or within 90 days after the conclusion of the leave of absence, whichever is later. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional

Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

b. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 90 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

2. With respect to employees who become eligible to participate in the Public Employee Optional Retirement Program by reason of employment in a regularly established position with a local employer commencing after October December 1, 2002:

a. Any such employee shall, by default, be enrolled in the defined benefit retirement program of the Florida Retirement System at the commencement of employment, and may, by the end of the 5th month following the employee's month of hire within 180 days after employment commences, elect to participate in the Public Employee Optional Retirement Program. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator personnel officer of the employer. The election to participate in the optional program is irrevocable, except as provided in paragraph (e).

~~b. If the employee files such election before the initial payroll is submitted for the employee, enrollment in the Public Employee Optional Retirement Program shall be effective on the first day of employment.~~

b.e. If the employee files such election within the prescribed time period 180 days after employment commences, but after the initial payroll is submitted for the employee, enrollment in the optional program shall be effective on the first day of employment the month for which a full month's employer contribution is made to the optional program. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the optional program, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the optional program.

~~c.d.~~ Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period 180 days is deemed to have elected to retain membership in the defined benefit program of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

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

(7) **BENEFITS.**—Under the Public Employee Optional Retirement Program:

(a) Benefits shall be provided in accordance with s. 401(a) of the Internal Revenue Code.

(b) Benefits shall accrue in individual accounts that are participant-directed, portable, and funded by employer contributions and earnings thereon.

(c) Benefits shall be payable in accordance with the provisions of s. 121.591. following terms and conditions:

1. ~~To the extent vested, benefits shall be payable only to a participant, or to his or her beneficiaries as designated by the participant.~~

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

3. ~~To begin receiving the benefits, the participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39), or the participant must be deceased. If a participant elects to receive his or her benefits upon termination of employment, the participant must submit a written application to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph (d). The participant may defer receipt of benefits until he or she chooses to make such application, subject to federal requirements.~~

4. ~~In the event of a participant's death, moneys accumulated by, or on behalf of, the participant, less withholding taxes remitted to the Internal Revenue Service, shall be distributed to the participant's designated beneficiary or beneficiaries, or to the participant's estate, as if the participant retired on the date of death, as provided in paragraph (e). No other death benefits shall be available for survivors of participants under the Public Employee Optional Retirement Program, except for such benefits, or coverage for such benefits, as are separately afforded by the employer, at the employer's discretion.~~

(d) ~~Upon receipt by the third-party administrator of a properly executed application for distribution of benefits, the total accumulated benefit shall be payable to the participant, as:~~

1. ~~A lump-sum distribution to the participant;~~

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

3. ~~Periodic distributions, as authorized by the state board.~~

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

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

2. ~~An eligible rollover distribution on behalf of the surviving spouse of a deceased participant, whereby all accrued benefits, plus interest and investment earnings, are paid from the deceased participant's account directly to the custodian of an individual retirement account or an individual retirement annuity, as described in s. 402(c)(9) of the Internal Revenue Code, on behalf of the surviving spouse; or~~

3. ~~A partial lump-sum payment whereby a portion of the accrued benefit is paid to the deceased participant's surviving spouse or other designated beneficiaries, less withholding taxes remitted to the Internal Revenue Service, and the remaining amount is transferred directly to the custodian of an individual retirement account or an individual retirement annuity, as described in s. 402(c)(9) of the Internal Revenue Code, on behalf of the surviving spouse. The proportions must be specified by the participant or the surviving beneficiary.~~

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

(f) ~~The benefits payable to any person under the Public Employee Optional Retirement Program, and any contributions accumulated under such program, are not subject to assignment, execution, attachment, or any legal process, 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.~~

(16) DISABILITY BENEFITS.—For any participant of the optional retirement program who becomes totally and permanently disabled, benefits shall be paid in accordance with the provisions of s. 121.591 as defined in s. 121.091(4)(b), the participant shall be entitled to receive those moneys that have accrued in his or her participant account. It is the intent of the Legislature to design a disability benefit for participants of the optional program similar to those disability benefits afforded defined benefit program members. The department is directed to study the potential options of such coverage, including self-insurance and commercial coverage, the alternative methods of administering such benefits, and the fiscal impacts on the employees and employers, and to make recommendations to the Legislature by January 15, 2001.

Section 9. Section 121.591, Florida Statutes, is created to read:

121.591 Benefits payable under the Public Employee Optional Retirement Program of the Florida Retirement System.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed in the manner prescribed by the state board or the department. The state board or department, as appropriate, 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 rules of the state board and department. In accordance with their respective responsibilities as provided herein, the State Board of Administration and the Department of Management Services 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.

(1) NORMAL BENEFITS.—Under the Public Employee Optional Retirement Program:

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

1. To the extent vested, benefits shall be payable only to a participant.
2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.
3. To receive benefits under this subsection, the participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

(b) If a participant elects to receive his or her benefits upon termination of employment, the participant must submit a written application to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph (c). The participant may defer receipt of benefits until he or she chooses to make such application, subject to federal requirements.

(c) Upon receipt by the third-party administrator of a properly executed application for distribution of benefits, the total accumulated benefit shall be payable to the participant, as:

1. A lump-sum distribution to the participant;
2. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the participant's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the participant; or
3. Periodic distributions, as authorized by the state board.

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

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

1. All moneys accumulated in the participant's Public Employee Optional Retirement Program accounts, including vested and nonvested accumulations as described in s. 121.4501(6), shall be transferred from such individual accounts to the Division of Retirement for deposit in the disability account of the Florida Retirement System Trust Fund. Such moneys shall be separately accounted for. Earnings shall be credited on an annual basis for amounts held in the disability accounts of the Florida Retirement System Trust Fund based on actual earnings of the Florida Retirement System Trust Fund.

2. If the participant has retained retirement credit he or she had earned under the defined benefit program of the Florida Retirement System as provided in s. 121.4501(3)(b), a sum representing the actuarial present value of such credit within the Florida Retirement System Trust Fund shall be reassigned by the Division of Retirement from the defined benefit program to the disability program as implemented under this subsection and shall be deposited in the disability account of the Florida Retirement System Trust Fund. Such moneys shall be separately accounted for.

(b) Disability retirement; entitlement.—

1. A participant of the Public Employee Optional Retirement Program who becomes totally and permanently disabled, as defined in s. 121.091(4)(b), after completing 8 years of creditable service, or a participant who becomes totally and permanently disabled in the line of duty regardless of his or her length of service, shall be entitled to a monthly disability benefit as provided herein.

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

a. The participant's period of service under the Public Employee Optional Retirement Program will be considered creditable service, except as provided in subparagraph d.

b. If the participant has elected to retain credit for his or her service under the defined benefit program of the Florida Retirement System as provided under s. 121.4501(3)(b), all such service will be considered creditable service.

c. If the participant has elected to transfer to his or her participant accounts a sum representing the present value of his or her retirement credit under the defined benefit program as provided under s. 121.4501(3)(c), the period of service under the defined benefit program represented in the present value amounts transferred will be considered creditable service for purposes of vesting for disability benefits, except as provided in subparagraph d.

d. Whenever a participant has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable

service represented by such distributed funds is forfeited for purposes of this subsection.

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

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

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

(f) Disability retirement benefit.—Upon the disability retirement of a participant under this subsection, the participant shall receive a monthly benefit that shall begin to accrue on the first day of the month of disability retirement, as approved by the division, and shall be payable on the last day of that month and each month thereafter during his or her lifetime and continued disability. All disability benefits payable to such member shall be paid out of the disability account of the Florida Retirement System Trust Fund established under this subsection.

(g) Computation of disability retirement benefit.—The amount of each monthly payment shall be calculated in the same manner as provided for members of the defined benefit program of the Florida Retirement System under s. 121.091(4)(f). For such purpose, creditable service under both the defined benefit program and the Public Employee Optional Retirement Program of the Florida Retirement System shall be applicable as provided under paragraph (b).

(h) Reapplication.—A participant whose initial application for disability retirement has been denied may reapply for disability benefits in the same manner, and under the same conditions, as provided for members of the defined benefit program of the Florida Retirement System under s. 121.091(4)(g).

(i) Membership.—Upon approval of an application for disability benefits under this subsection, the applicant shall be transferred to the defined benefit program of the Florida Retirement System, effective upon his or her disability retirement effective date.

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

1. The participant's transfer to the defined benefit program under paragraph (i) shall be nullified;

2. The participant shall be retroactively reinstated in the Public Employee Optional Retirement Program without hiatus;

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

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

(k) Recovery from disability.—

1. The division may require periodic reexaminations at the expense of the disability program account of the Florida Retirement System Trust Fund. Except as otherwise provided in subparagraph 2., the requirements, procedures, and restrictions relating to the conduct and review of such reexaminations, discontinuation or termination of benefits, reentry into employment, disability retirement after reentry into covered employment, and all other matters relating to recovery from disability shall be the same as are set forth under s. 121.091(4)(h).

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

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

b. Amounts subtracted under sub-subparagraph a. shall be retained within the disability account of the Florida Retirement System Trust Fund. Any remaining account balance shall be transferred to the third-party administrator for disposition as provided under sub-subparagraph c. or sub-subparagraph d., as appropriate.

c. If the recipient returns to covered employment, transferred amounts shall be deposited in individual accounts under the Public Employee Optional Retirement Program, as directed by the participant. Vested and non-vested amounts shall be separately accounted for as provided in s. 121.4501(6).

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

(I) Any remaining vested amount shall be deposited in individual accounts under the Public Employee Optional Retirement Program, as directed by the participant, and shall be payable as provided in subsection (1).

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

3. If present value was reassigned from the defined benefit program to the disability program of the Florida Retirement System as provided under subparagraph (a)2., the full present value amount shall be returned to the defined benefit account within the Florida Retirement System Trust Fund and the affected individual's associated retirement credit under the defined benefit program shall be reinstated in full. Any benefit based upon such credit shall be calculated as provided in s. 121.091(4)(h)1.

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

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

1. If a participant is a justice of the Supreme Court, judge of a district court of appeal, circuit judge, or judge of a county court who has served for 6 years or more as an elected constitutional judicial officer, including service as a judicial officer in any court abolished pursuant to Article V of the State Constitution, and who is retired for disability by order of the Supreme Court upon recommendation of the Judicial Qualifications Commission pursuant to the provisions of Article V of the State Constitution, the participant's Option 1 monthly disability benefit amount as provided in s. 121.091(6)(a)1. shall be two-thirds of his or her monthly compensation as of the participant's disability retirement date. Such a participant may alternatively elect to receive an actuarially adjusted disability retirement benefit under any other option as provided in s. 121.091(6)(a), or to receive the normal benefit payable under the Public Employee Optional Retirement Program as set forth in subsection (1).

2. If any justice or judge who is a participant of the Public Employee Optional Retirement Program of the Florida Retirement System is retired for disability by order of the Supreme Court upon recommendation of the Judicial Qualifications Commission pursuant to the provisions of Article V of the State Constitution and elects to receive a monthly disability benefit under the provisions of this paragraph:

a. Any present value amount that was transferred to his or her program account and all employer contributions made to such account on his or her behalf, plus interest and earnings thereon, shall be transferred to and deposited in the disability account of the Florida Retirement System Trust Fund; and

b. The monthly benefits payable under this paragraph for any affected justice or judge retired from the Florida Retirement System pursuant to Article V of the State Constitution shall be paid from the disability account of the Florida Retirement System Trust Fund.

(n) Upon the death of a disabled retiree or beneficiary thereof who is receiving monthly benefits under this subsection, the monthly benefits shall be paid through the last day of the month of death and shall terminate, or be adjusted, if applicable, as of that date in accordance with the optional form of benefit selected at the time of retirement. The deceased disabled retiree's beneficiary shall also receive the amount of the participant's remaining account balance, if any, in the Florida Retirement System Trust Fund. The Department of Management Services may adopt rules necessary to administer this paragraph.

(3) DEATH BENEFITS.—Under the Public Employee Optional Retirement Program:

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

1. To the extent vested, benefits shall be payable only to a participant's beneficiary or beneficiaries as designated by the participant. If a participant designates a primary beneficiary other than the participant's spouse, the participant's spouse shall be notified of the designation. This requirement shall not apply to the designation of one or more contingent beneficiaries to receive any benefits remaining upon the death of the primary beneficiary or beneficiaries.

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

3. To receive benefits under this subsection, the participant must be deceased.

(b) In the event of a participant's death, all vested accumulations as described in s. 121.4501(6), less withholding taxes remitted to the Internal Revenue Service, shall be distributed, as provided in paragraph (c), to the participant's designated beneficiary or beneficiaries, or to the participant's estate, as if the participant retired on the date of death. No other death benefits shall be available for survivors of participants under the Public Employee Optional Retirement Program, except for such benefits, or coverage for such benefits, as are otherwise provided by law or are separately afforded by the employer, at the employer's discretion.

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

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

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

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

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

(4) LIMITATION ON LEGAL PROCESS.—The benefits payable to any person under the Public Employee Optional Retirement Program, and any contributions accumulated under such program, are not subject to assignment, execution, attachment, or any legal process, 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.

Section 10. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and of its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Art. X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature hereby determines and declares that this act fulfills an important state interest.

Section 11. Notwithstanding any provision to the contrary and the authority of the Department of Management Services, the Department of Management Services may contract with a private-sector company selected and approved by the department for services to administer the disability benefit program. Not later than March 1, 2003, the department may provide to the Legislature for its approval an alternative method for administering and funding disability benefits for participants in the Public Employee Optional Retirement Program and the Florida Retirement System, including through commercial insurance coverage.

Section 12. It is the intent of the Legislature that the disability retirement program for participants of the Public Employee Optional Retirement Program as created in this act must meet all applicable requirements of federal law for a qualified plan. The Department of Management Services shall seek a private letter ruling from the Internal Revenue Service on the disability retirement program for participants of the Public Employee Optional Retirement Program. Consistent with the private letter ruling, the Department of Management Services shall adopt any necessary rules required to maintain the qualified status of the disability retirement program and the Florida Retirement System defined benefit plan.

Section 13. Paragraph (b) of subsection (1) of section 121.053, Florida Statutes, is amended to read:

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

(1)

(b) Any retired member of the Florida Retirement System, or any existing system as defined in s. 121.021(2), who, on or after July 1, 1990, is serving in, or is elected or appointed to, an elective office covered by the Elected Officers' Class shall be enrolled in the appropriate subclass of the Elected Officers' Class of the Florida Retirement System, and applicable contributions shall be paid into the Florida Retirement System Trust Fund as provided in s. 121.052(7). Pursuant thereto:

1. Any such retired member shall be eligible to continue to receive retirement benefits as well as compensation for the elected officer service for as long as he or she remains in an elective office covered by the Elected Officers' Class.

2. If any such member serves in an elective office covered by the Elected Officers' Class and becomes vested under that class, he or she shall be entitled to receive an additional retirement benefit for such elected officer service.

3. Such member shall be entitled to purchase additional retirement credit in the Elected Officers' Class for any postretirement service performed in an elected position eligible for the Elected Officers' Class prior to July 1, 1990, or in the Regular Class for any postretirement service performed in any other regularly established position prior to July 1, 1991, by paying the applicable Elected Officers' Class or Regular Class employee and employer contributions for the period being claimed, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded thereafter, until full payment is made to the Florida Retirement System Trust Fund. The contribution for postretirement Regular Class service between July 1, 1985, and July 1, 1991, for which the reemployed retiree contribution was paid, shall be the difference between such contribution and the total applicable contribution for the period being claimed, plus interest. The employer of such member may pay the applicable employer contribution in lieu of the member. If a member does not wish to claim credit for all of the postretirement service for which he or she is eligible, the service the member claims must be the most recent service.

4. Creditable service for which credit was received, or which remained unclaimed, at retirement may not be claimed or applied toward service credit earned following renewed membership. However, service earned in accordance with the renewed membership provisions in s. 121.122 may be used in conjunction with creditable service earned under this paragraph, provided applicable vesting requirements and other existing statutory conditions required by this chapter are met.

5. An elected officer who is elected or appointed to an elective office and is participating in the Deferred Retirement Option Program is not subject to termination as provided in s. 121.021(39)(b), or reemployment limitations

as provided in s. 121.091(9), until the end of his or her current term of office or, if the officer is consecutively elected or reelected to an elective office eligible for coverage under the Florida Retirement System, until he or she no longer holds such an elective office, as follows:

a. At the end of the 60-month DROP period:

(I) The officer's DROP account shall accrue no additional monthly benefits, but shall continue to earn interest as provided in s. 121.091(13).

(II) No retirement contributions shall be required of the employer of the elected officer and no additional retirement credit shall be earned under the Florida Retirement System.

b. Nothing herein shall prevent an elected officer from voluntarily terminating his or her elective office at any time and electing to receive his or her DROP proceeds. However, until termination requirements are fulfilled as provided in s. 121.021(39), any elected officer whose termination limitations are extended by this section shall be ineligible for renewed membership in the system and shall receive no pension payments, DROP lump sum payments, or any other state payment other than the statutorily determined salary, travel, and per diem for the elective office.

c. Upon termination, the officer shall receive his or her accumulated DROP account, plus interest, and shall accrue and commence receiving monthly retirement benefits, which shall be paid on a prospective basis only.

However, an officer electing to participate in the Deferred Retirement Option Program on or before June 30, 2002, shall not be required to terminate and shall remain subject to the provisions of this subparagraph as adopted in section 1 of chapter 2001-235, Laws of Florida. Any elected officer who is a participating member of DROP may terminate participation at any time during the 60-month DROP participation period and elect to enroll in the appropriate subclass of the Elected Officers' Class, including participating in the Senior Management Service Class, effective the first day of the following month.

Section 14. Paragraph (b) 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.

(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 his or her normal retirement 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. 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 or her 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 de-

ferred resignation is effective and termination occurs as provided in s. 121.021(39).

4. 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. 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)5.d.

c. 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 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).

~~d.—An elected officer who is elected or appointed to an elective office is not subject to termination limitations as provided in chapter 121.~~

Section 15. Paragraph (b) of subsection (9) and paragraph (b) of subsection (13) of section 121.091, Florida Statutes, are 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.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(b)1. Any person who is retired under this chapter, except under the disability retirement provisions of subsection (4), may be reemployed by any private or public employer after retirement and receive retirement benefits

and compensation from his or her employer without any limitations, except that a person may not receive both a salary from reemployment with any agency participating in the Florida Retirement System and retirement benefits under this chapter for a period of 12 months immediately subsequent to the date of retirement. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

2. Any person to whom the limitation in subparagraph 1. applies who violates such reemployment limitation and who is reemployed with any agency participating in the Florida Retirement System before completion of the 12-month limitation period shall give timely notice of this fact in writing to the employer and to the division and shall have his or her retirement benefits suspended for the balance of the 12-month limitation period. Any person employed in violation of this paragraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received while reemployed during this reemployment limitation period shall be repaid to the retirement trust fund, and retirement benefits shall remain suspended until such repayment has been made. Benefits suspended beyond the reemployment limitation shall apply toward repayment of benefits received in violation of the reemployment limitation.

3. A district school board may reemploy a retired member as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker on a noncontractual basis after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. District school boards reemploying such teachers, education paraprofessionals, transportation assistants, bus drivers, or food service workers are subject to the retirement contribution required by subparagraph 7. Reemployment of a retired member as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker is limited to 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during his or her first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of

retirement shall be repaid to the Retirement System Trust Fund, and his or her retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

4. A community college board of trustees may reemploy a retired member as an adjunct instructor, that is, an instructor who is noncontractual and part-time, or as a participant in a phased retirement program within the Florida Community College System, after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. Boards of trustees reemploying such instructors are subject to the retirement contribution required in subparagraph 7. A retired member may be reemployed as an adjunct instructor for no more than 780 hours during the first 12 months of retirement. Any retired member reemployed for more than 780 hours during the first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

5. The State University System may reemploy a retired member as an adjunct faculty member or as a participant in a phased retirement program within the State University System after the retired member has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The State University System is subject to the retired contribution required in subparagraph 7., as appropriate. A retired member may be reemployed as an adjunct faculty member or a participant in a phased retirement program for no more than 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during the first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement

benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

6. The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retired member as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The Board of Trustees of the Florida School for the Deaf and the Blind reemploying such teachers, residential instructors, or nurses is subject to the retirement contribution required by subparagraph 7. Reemployment of a retired member as a substitute teacher, substitute residential instructor, or substitute nurse is limited to 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during the first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and his or her retirement benefits shall remain suspended until payment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

7. The employment by an employer of any retiree or DROP participant of any state-administered retirement system shall have no effect on the average final compensation or years of creditable service of the retiree or DROP participant. Prior to July 1, 1991, upon employment of any person, other than an elected officer as provided in s. 121.053, who has been retired under any state-administered retirement program, the employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution which would be required for regular members of the Florida Retirement System. Effective July 1, 1991,

contributions shall be made as provided in s. 121.122 for retirees with renewed membership or subsection (13) with respect to DROP participants.

8. Any person who has previously retired and who is holding an elective public office or an appointment to an elective public office eligible for the Elected Officers' Class on or after July 1, 1990, shall be enrolled in the Florida Retirement System as provided in s. 121.053(1)(b) or, if holding an elective public office that does not qualify for the Elected Officers' Class on or after July 1, 1991, shall be enrolled in the Florida Retirement System as provided in s. 121.122, and shall continue to receive retirement benefits as well as compensation for the elected officer's service for as long as he or she remains in elective office. However, any retired member who served in an elective office prior to July 1, 1990, suspended his or her retirement benefit, and had his or her Florida Retirement System membership reinstated shall, upon retirement from such office, have his or her retirement benefit recalculated to include the additional service and compensation earned.

9. Any person who is holding an elective public office which is covered by the Florida Retirement System and who is concurrently employed in non-elected covered employment may elect to retire while continuing employment in the elective public office, provided that he or she shall be required to terminate his or her nonelected covered employment. Any person who exercises this election shall receive his or her retirement benefits in addition to the compensation of the elective office without regard to the time limitations otherwise provided in this subsection. No person who seeks to exercise the provisions of this subparagraph, as the same existed prior to May 3, 1984, shall be deemed to be retired under those provisions, unless such person is eligible to retire under the provisions of this subparagraph, as amended by chapter 84-11, Laws of Florida.

10. The limitations of this paragraph apply to reemployment in any capacity with an "employer" as defined in s. 121.021(10), irrespective of the category of funds from which the person is compensated.

11. An employing agency may reemploy a retired member as a firefighter or paramedic after the retired member has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The employing agency reemploying such firefighter or paramedic is subject to the retired contribution required in subparagraph 8. Reemployment of a retired firefighter or paramedic is limited to no more than 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during the first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the Retirement System Trust Fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall

have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

(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.

(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 his or her normal retirement 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. 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 or her 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. 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. 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)5.d.

c. 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 non-elected 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 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).

~~d.—An elected officer who is elected or appointed to an elective office is not subject to termination limitations as provided in chapter 121.~~

Section 16. Subsections (2) and (9) of section 121.0515, Florida Statutes, are amended to read:

121.0515 Special risk membership.—

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

(a) The member must be employed as a law enforcement officer and be certified, or required to be certified, in compliance with s. 943.1395; however, sheriffs and elected police chiefs shall be excluded from meeting the certification requirements of this paragraph. In addition, the member's duties and responsibilities must include the pursuit, apprehension, and arrest

of law violators or suspected law violators; or the member must be an active member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included;

(b) The member must be employed as a firefighter and be certified, or required to be certified, in compliance with s. 633.35 and be employed solely within the fire department of a local government employer or an agency of state government with firefighting responsibilities. In addition, the member's duties and responsibilities must include on-the-scene fighting of fires, fire prevention, or firefighter training; direct supervision of firefighting units, fire prevention, or firefighter training; or aerial firefighting surveillance performed by fixed-wing aircraft pilots employed by the Division of Forestry of the Department of Agriculture and Consumer Services; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included and further provided that all periods of creditable service in fire prevention or firefighter training, or as the supervisor or command officer of a member or members who have such responsibilities, and for which the employer paid the special risk contribution rate, shall be included;

(c) The member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included; however, wardens and assistant wardens, as defined by rule, shall participate in the Special Risk Class;

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

(e) The member must be employed as a community-based correctional probation officer and be certified, or required to be certified, in compliance

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

(f) The member must be employed in one of the following classes and must spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution:

1. Dietitian (class codes 5203 and 5204).
2. Public health nutrition consultant (class code 5224).
3. Psychological specialist (class codes 5230 and 5231).
4. Psychologist (class code 5234).
5. Senior psychologist (class codes 5237 and 5238).
6. Regional mental health consultant (class code 5240).
7. Psychological Services Director—DCF (class code 5242).
8. Pharmacist (class codes 5245 and 5246).
9. Senior pharmacist (class codes 5248 and 5249).
10. Dentist (class code 5266).
11. Senior dentist (class code 5269).
12. Registered nurse (class codes 5290 and 5291).
13. Senior registered nurse (class codes 5292 and 5293).
14. Registered nurse specialist (class codes 5294 and 5295).
15. Clinical associate (class codes 5298 and 5299).
16. Advanced registered nurse practitioner (class codes 5297 and 5300).
17. Advanced registered nurse practitioner specialist (class codes 5304 and 5305).
18. Registered nurse supervisor (class codes 5306 and 5307).
19. Senior registered nurse supervisor (class codes 5308 and 5309).

20. Registered nursing consultant (class codes 5312 and 5313).
21. Quality management program supervisor (class code 5314).
22. Executive nursing director (class codes 5320 and 5321).
23. Speech and hearing therapist (class code 5406); or
24. Pharmacy manager (class code 5251).

(g) The member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community.

(9) CREDIT FOR UPGRADED SERVICE.—

(a) Any member of the Special Risk Class who has earned creditable service in another membership class of the Florida Retirement System as an emergency medical technician or paramedic, which service is within the purview of the Special Risk Class, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. Contributions for upgrading such service to Special Risk Class credit under this subsection shall be equal to the difference in the contributions paid and the Special Risk Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent a year, compounded annually until the date of payment. This service credit may be purchased by the employer on behalf of the member.

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

Section 17. It is the intent of the Legislature that any additional cost attributable to the upgrade in the retirement benefits for special risk members who have provided fire prevention or firefighter training above the contributions paid at the time of service shall be funded by recognition of the necessary amount from the excess actuarial assets of the Florida Retirement System Trust Fund.

Section 18. Paragraph (a) of subsection (22) and paragraph (b) of subsection (47) of section 121.021, Florida Statutes, are amended to read:

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

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

(a) Compensation shall include:

1. Overtime payments paid from a salary fund.
2. Accumulated annual leave payments.
3. Payments in addition to the employee’s base rate of pay if all the following apply:
 - a. The payments are paid according to a formal written policy that applies to all eligible employees equally;
 - b. The policy provides that payments shall commence no later than the 11th year of employment;
 - c. The payments are paid for as long as the employee continues his or her employment; and
 - d. The payments are paid at least annually.
4. Amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.
5. Payments made in lieu of a permanent increase in the base rate of pay, whether made annually or in 12 or 26 equal payments within a 12-month period, when the member’s base pay is at the maximum of his or her pay range. When a portion of a member’s annual increase raises his or her pay range and the excess is paid as a lump sum payment, such lump sum payment shall be compensation for retirement purposes.

6. Effective July 1, 2002, salary supplements made pursuant to ss. 231.700 and 236.08106 requiring a valid National Board for Professional Standards certificate or equivalent status as provided in s. 231.700(3)(e)5., notwithstanding the provisions of subparagraph 3.

(47) “Bonus” means a payment made in addition to an employee’s regular or overtime salary. A bonus is usually nonrecurring, does not increase the employee’s base rate of pay, and includes no commitment for payment in a subsequent year. Such payments are not considered compensation. Effective July 1, 1989, employers may not report such payments to the division as salary, and may not make retirement contributions on such payments.

(b) Bonuses shall include, but not be limited to, the following:

1. Exit bonus or severance pay.
2. Longevity payments in conformance with the provisions of paragraph (a).
3. Salary increases granted pursuant to an employee's agreement to retire, including increases paid over several months or years prior to retirement.
4. Payments for accumulated overtime or compensatory time, reserve time, or holiday time worked, if not made within 11 months of the month in which the work was performed.
5. ~~Quality Instruction Incentives Program (QUIIP) Payments.~~
- 5.6. Lump sum payments in recognition of employees' accomplishments.

Section 19. This act shall take effect June 1, 2002.

Approved by the Governor May 23, 2002.

Filed in Office Secretary of State May 23, 2002.