

Committee Substitute for
Committee Substitute for Senate Bill No. 1446

An act relating to state financial matters; amending s. 121.021, F.S.; clarifying that the State Board of Administration may require that a member of the Florida Retirement System provide evidence of termination; amending s. 121.091, F.S.; providing that a member of the Public Employee Optional Retirement Program may not return to employment with an employer under the Florida Retirement System until after being terminated for 3 calendar months; providing an exception for those members who have reached the normal retirement requirements of the defined benefit plan; amending s. 121.35, F.S.; changing the requirements of the Department of Management Services' designation of a fifth company to provide services under the state university optional retirement program; amending s. 121.4501, F.S.; redefining the terms "eligible employee" and "participant" for purposes of the Public Employee Optional Retirement Program; prescribing certain conditions on participation in the program; deleting references to the program's advisory committees; prescribing procedures for, and certain presumptions relating to, designation of beneficiaries; providing for participation by terminated DROP participants; amending s. 121.591, F.S.; providing for cancellation of certain payment instruments under the program when not presented for payment; providing for payment upon subsequent application and for forfeiture when not claimed within a certain period; providing that members of the Public Employee Optional Retirement Program may not receive a distribution from their account until after being terminated for 3 calendar months; providing an exception; providing for designation of beneficiaries for death benefits; amending s. 215.47, F.S.; authorizing investments in asset-backed securities; providing an effective date.

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

Section 1. Subsection (39) of section 121.021, Florida Statutes, is 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:

(39)(a) "Termination" occurs, except as provided in paragraph (b), when a member ceases all employment relationships with employers under this system, as defined in subsection (10), but in the event a member should be employed by any such employer within the next calendar month, termination shall be deemed not to have occurred. A leave of absence shall constitute a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination for a member, if such member makes application for and is approved for disability

retirement in accordance with s. 121.091(4). The department or board may require other evidence of termination as it deems necessary.

(b) "Termination" for a member electing to participate under the Deferred Retirement Option Program occurs when the Deferred Retirement Option Program participant ceases all employment relationships with employers under this system in accordance with s. 121.091(13), but in the event the Deferred Retirement Option Program participant should be employed by any such employer within the next calendar month, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence shall constitute a continuation of the employment relationship.

Section 2. Subsection (9) 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.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(a) Any person who is retired under this chapter, except under the disability retirement provisions of subsection (4), may be employed by an employer that does not participate in a state-administered retirement system and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable to that person.

(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). A district school board may reemploy a retired member as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any other 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.

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.

(c) The provisions of this subsection apply to retirees, as defined in s. 121.4501(2)(j), of the Public Employee Optional Retirement Program created in part II, subject to the following conditions:

1. Such retirees may not be reemployed with an employer participating in the Florida Retirement System as provided in paragraph (b) until such person has been retired for 3 calendar months, unless the participant has reached the normal retirement requirements of the defined benefit plan as provided in s. 121.021(29).

2. Such retiree employed in violation of this subsection and any employing agency that knowingly employs or appoints such person shall be jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid, including the Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, as appropriate. To avoid liability, such employing agency must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.

Section 3. Paragraph (b) of subsection (6) of section 121.35, Florida Statutes, is amended to read:

121.35 Optional retirement program for the State University System.—

(6) ADMINISTRATION OF PROGRAM.—

(b) After receiving and considering the recommendations of the State Board of Education, the department shall designate no more than ~~five~~ four companies from which contracts may be purchased under the program and shall approve the form and content of the optional retirement program contracts. Any domestic company that has been designated as of July 1, 2005, shall be included in the five companies until expiration of its existing contract with the department. The domestic company may assign its contract with the department to an affiliated qualified company that is wholly owned by the domestic company's parent company and has assumed 100 percent of the responsibility for the contracts purchased from the domestic company. ~~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 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, the department shall so designate one of such companies as the fifth company from which such contracts may be purchased.~~

Section 4. Paragraphs (f) and (h) of subsection (2), paragraph (e) of subsection (4), paragraph (c) of subsection (8), and subsection (12) of section 121.4501, Florida Statutes, are amended, and subsections (20) and (21) are added to that section, to read:

121.4501 Public Employee Optional Retirement Program.—

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

(f) “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 the State Community College Optional Retirement Program as established under s. 121.051(2)(c); or

3. Is eligible to participate in, but does not participate in, the State University System Optional Retirement Program established under s. 121.35.

The term does not include 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)(e)~~ or s. 121.35.

(h) “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) or a terminated Deferred Retirement Option Program participant as described in subsection (21).

(4) PARTICIPATION; ENROLLMENT.—

(e) After the period during which an eligible employee had the choice to elect the defined benefit program or the Public Employee Optional Retirement Program, or the month following the receipt of the eligible employee's plan election selection effective date, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the defined benefit program to the Public Employee Optional Retirement Program or from the Public Employee Optional Retirement Program to the defined benefit program. Eligible employees may elect to move between Florida Retirement System programs only if they are earning service credit in an employer-employee relationship consistent with the requirements under s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections shall be effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except that the employee must meet the conditions of the previous sentence when the election is received by the third-party administrator. This paragraph shall be contingent upon approval from the Internal Revenue Service for including the choice described herein within the programs offered by the Florida Retirement System.

1. If the employee chooses to move to the Public Employee Optional Retirement Program, the applicable provisions of this section shall govern the transfer.

2. If the employee chooses to move to the defined benefit program, the employee must transfer from his or her Public Employee Optional Retirement Program account and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the defined benefit program and service in the Public Employee Optional Retirement Program. Benefit commencement occurs on the first date the employee would become eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System defined benefit plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the defined benefit plan, the then-present value of such accrued benefit shall be deemed part of the required transfer amount described in this subparagraph. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the defined benefit program and who became eligible to participate in the Public Employee Optional Retirement Program by reason of employment in a regularly established position with a state employer after June 1, 2002;

a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her Public Employee Optional Retirement Program account and, from other employee moneys as necessary, a sum representing that employee's actuarial accrued liability.

4. Employees' ability to transfer from the Florida Retirement System defined benefit program to the Public Employee Optional Retirement Program pursuant to paragraphs (a) through (d), and the ability for current employees to have an option to later transfer back into the defined benefit program under subparagraph 2., shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any such resulting unfunded liability arising from actual original transfers from the defined benefit program to the optional program shall be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve stabilization mechanism defined in s. 121.031(3)(f). For the first 25 years, no direct amortization payment shall be calculated for this base. During this 25-year period, such separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. It is the legislative intent that the actuarial funded status of the Florida Retirement System defined benefit plan is neither beneficially nor adversely impacted by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following this initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

(8) ADMINISTRATION OF PROGRAM.—

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

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

b. The administrator's demonstrated experience in providing daily valued recordkeeping to defined contribution plans.

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

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

e. The administrator's ability to interact with the participants, the employers, the board, the division, and the providers; the means by which participants may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available

investment vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

f. Any other factor deemed necessary by the Trustees of the State Board of Administration.

~~g. The recommendations of the Public Employee Optional Retirement Program Advisory Committee established in subsection (12).~~

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

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

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

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

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

e. Any other factor deemed necessary by the Trustees of the State Board of Administration.

~~f. The recommendations of the Public Employee Optional Retirement Program Advisory Committee established in subsection (12).~~

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

(12) ADVISORY COUNCIL COMMITTEES TO PROVIDE ADVICE AND ASSISTANCE.—The Investment Advisory Council shall assist the board in implementing and administering the Public Employee Optional Retirement Program. The Investment Advisory Council, created pursuant to s. 215.444, shall review the board's initial recommendations regarding the criteria to be used in selecting and evaluating approved providers and investment products. The council may provide comments on the recommendations to the board within 45 days after receiving the initial recommendations. The board shall make the final determination as to whether any investment provider or product, any contractor, or any and all contract provisions shall be approved for the program.

(20) DESIGNATION OF BENEFICIARIES.—

(a) Each participant may, on a form provided for that purpose, signed and filed with the third-party administrator, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary who

shall receive the benefits, if any, which may be payable pursuant to this chapter in the event of the participant's death. If no beneficiary is named in this manner, or if no beneficiary designated by the participant survives the participant, the beneficiary shall be the spouse of the deceased, if living. If the participant's spouse is not alive at his or her death, the beneficiary shall be the living children of the participant. If no children survive, the beneficiary shall be the participant's father or mother, if living; otherwise, the beneficiary shall be the participant's estate. The beneficiary most recently designated by a participant on a form or letter filed with the third-party administrator shall be the beneficiary entitled to any benefits payable at the time of the participant's death. Notwithstanding any other provision in this subsection to the contrary, for a participant who dies prior to his or her effective date of retirement, the spouse at the time of death shall be the participant's beneficiary unless such participant designates a different beneficiary as provided in this subsection subsequent to the participant's most recent marriage.

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

(c) Notwithstanding the participant's designation of benefits to be paid through a trust to a beneficiary that is a natural person, and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if such person is no longer a minor or incapacitated as defined in s. 744.102(11) and (12).

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

(a) The Public Employee Optional Retirement Program may accept such amounts for deposit into participant accounts as provided in paragraph (5)(c).

(b) The affected participant shall direct the investment of his or her investment account; however, unless he or she becomes a renewed member of the Florida Retirement System under s. 121.122 and elects to participate in the Public Employee Optional Retirement Program, employer contributions may not be made to the participant's account as provided under paragraph (5)(a).

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

Section 5. Section 121.591, Florida Statutes, is amended 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. The State Board of Administration and the Department of Management Services, as appropriate, are authorized to cash out a de minimis account of a participant who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer contributions and accumulated earnings of not more than \$5,000 made under the provisions of this chapter. Such cash-out must either be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the participant. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the State Board of Administration shall cancel the instrument and credit the amount of the instrument to the suspense account of the Public Employee Optional Retirement Program Trust Fund authorized under s. 121.4501(6). Any such amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings thereon shall be forfeited. Any such forfeited amounts are assets of the Public Employee Optional Retirement Program Trust Fund and are not subject to the provisions of chapter 717.

(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).

4. Benefit payments may not be made until the participant has been terminated for 3 calendar months, except that the board may authorize by rule for the distribution of up to 10 percent of the participant's account after being terminated for 1 calendar month if a participant has reached the normal retirement requirements of the defined benefit plan, as provided in s. 121.021(29).

(b) If a participant elects to receive his or her benefits upon termination of employment, the participant must submit a written application or an equivalent form 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 nonvested 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 Art. 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 Art. 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 Art. 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 Art. V of the State Constitution shall be paid from the disability account of the Florida Retirement System Trust Fund.

(n) Death of retiree or beneficiary.—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 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 as provided in s. 121.4501(20). ~~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) or as described in s. 121.4501(20), ~~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 6. Paragraph (k) is added to subsection (2) of section 215.47, Florida Statutes, to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(2) With no more than 25 percent of any fund in:

(k) Asset-backed securities not otherwise authorized by this section.

Section 7. This act shall take effect July 1, 2005.

Approved by the Governor June 17, 2005.

Filed in Office Secretary of State June 17, 2005.