

CHAPTER 2012-222

Committee Substitute for House Bill No. 7079

An act relating to state retirement; creating s. 121.012, F.S.; providing applicability; amending s. 121.021, F.S.; clarifying the definitions of the terms “normal retirement date” and “vesting”; amending s. 121.0515, F.S.; correcting a cross-reference; amending s. 121.055, F.S.; authorizing distributions to a member who is terminated from employment for 1 calendar month if the member has reached the normal retirement date; providing rulemaking authority to the Department of Management Services; clarifying provisions related to the prohibition of hardship loans or payments; clarifying that a retiree who is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member; amending s. 121.071, F.S.; clarifying provisions related to the prohibition of hardship loans or payments; amending s. 121.091, F.S.; making conforming changes to the Deferred Retirement Option Program regarding deferral age; amending s. 121.122, F.S.; clarifying that a retiree who is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member; amending s. 121.35, F.S.; providing that a benefit for the purposes of the optional retirement program for the State University System includes a certain distribution; authorizing distributions to a member who is terminated from employment for 1 calendar month if the member has reached the normal retirement date; providing rulemaking authority to the Department of Management Services; clarifying provisions related to the prohibition of hardship loans or payments; clarifying when voluntary contributions may be paid out; amending s. 121.4501, F.S.; specifying that the definition of the term “eligible employee” does not include certain members reemployed in regularly established positions; clarifying that a retiree who is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member; amending s. 121.591, F.S.; clarifying provisions related to the prohibition of hardship loans or payments; amending s. 1012.875, F.S.; authorizing distributions to a member who is terminated from employment for 1 calendar month if the member has reached the normal retirement date; providing rulemaking authority to the boards of trustees for colleges; clarifying provisions related to the prohibition of hardship loans or payments; providing an effective date.

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

Section 1. Section 121.012, Florida Statutes, is created to read:

121.012 Inclusive provisions.—The provisions of part I of this chapter shall be applicable to parts II and III to the extent such provisions are not inconsistent with, or duplicative of, the provisions of parts II and III.

Section 2. Subsection (29) and paragraph (b) of subsection (45) 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:

(29) “Normal retirement date” means the date a member attains normal retirement age and is vested, which is determined as follows:

(a)~~1.~~ If a Regular Class member, a Senior Management Service Class member, or an Elected Officers’ Class member initially enrolled;

1. Before July 1, 2011:

- a. The first day of the month the member attains age 62; or
- b. The first day of the month following the date the member completes 30 years of creditable service, regardless of age.

~~2. If a Regular Class member, a Senior Management Service Class member, or an Elected Officers’ Class member initially enrolled~~ On or after July 1, 2011:

- a. The first day of the month the member attains age 65; or
- b. The first day of the month following the date the member completes 33 years of creditable service, regardless of age.

(b)~~1.~~ If a Special Risk Class member initially enrolled;

1. Before July 1, 2011:

- a. The first day of the month the member attains age 55 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

- b. The first day of the month following the date the member completes 25 years of creditable service in the Special Risk Class, regardless of age; or

- c. The first day of the month following the date the member completes 25 years of creditable service and attains age 52, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

~~2. If a Special Risk Class member initially enrolled~~ On or after July 1, 2011:

- a. The first day of the month the member attains age 60 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

b. The first day of the month following the date the member completes 30 years of creditable service in the Special Risk Class, regardless of age; or

c. The first day of the month following the date the member completes 30 years of creditable service and attains age 57, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

For pension plan members, “normal retirement age” is attained on the “normal retirement date.” For investment plan members, normal retirement age is the date a member attains his or her normal retirement date as provided in this section, or the date a member is vested under the investment plan as provided in s. 121.4501(6), whichever is later.

(45) “Vested” or “vesting” means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee’s class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under s. 121.091(4).

(b) Any member initially enrolled in the Florida Retirement System on or after July 1, 2011, shall be vested in the pension plan upon completion of 8 years of creditable service.

Section 3. Paragraph (k) of subsection (3) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special Risk Class.—

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

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

1. The ability to qualify for the class of membership defined in paragraph ~~(2)(i)~~ (2)(f) occurs when two licensed medical physicians, one of whom is a primary treating physician of the member, certify the existence of the physical injury and medical condition that constitute a qualifying injury as defined in this paragraph and that the member has reached maximum medical improvement after August 1, 2008. The certifications from the licensed medical physicians must include, at a minimum, that the injury to the special risk member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and:

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

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

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

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

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

2. For the purposes of this paragraph, "qualifying injury" means an injury sustained in the line of duty, as certified by the member's employing agency, by a special risk member that does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

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

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

Section 4. Paragraph (f) of subsection (1) and paragraph (e) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be

known as the “Senior Management Service Class,” which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997:

1. Except as provided in subparagraph 3., an elected state officer eligible for membership in the Elected Officers’ Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraph 3., an elected officer of a local agency employer eligible for membership in the Elected Officers’ Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, as an elected official eligible for the Elected Officers’ Class may not be enrolled in renewed renew membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class.

(6)

(e) Benefits.—

1. Benefits under the Senior Management Service Optional Annuity Program are payable only to members of the program, or their beneficiaries as designated by the member in the contract with the provider company, and must be paid by the designated company in accordance with the terms of the annuity contract applicable to the member. A member must be terminated from all employment relationships with Florida Retirement System employers for 3 calendar months to begin receiving the employer-funded and employee-funded benefit. The department may authorize a distribution of up to 10 percent of the member’s account after being terminated from employment with all participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. The department may adopt rules to implement this subparagraph. The member

must meet the definition of termination in s. 121.021(39) beginning the month after receiving a benefit, including a distribution. Benefits funded by employer and employee contributions are payable under the terms of the contract to the member, his or her beneficiary, or his or her estate, in addition to:

- a. A lump-sum payment to the beneficiary upon the death of the member;
- b. A cash-out of a de minimis account upon the request of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation. Such cash-out must be a complete liquidation of the account balance with that company and is subject to the Internal Revenue Code;
- c. A mandatory distribution of a de minimis account of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation as authorized by the department; or
- d. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member'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 member.

2. Under the Senior Management Service Optional Annuity Program, benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code before termination from all employment relationships with participating employers for 3 calendar months.

3. The benefits payable to any person under the Senior Management Service Optional Annuity Program, and any contribution accumulated under such program, are not subject to assignment, execution, or attachment or to any legal process whatsoever.

4. Except as provided in subparagraph 5., a member who terminates employment and receives a distribution, including a rollover or trustee-to-trustee transfer, funded by employer and required employee contributions is a retiree of ~~deemed to be retired from~~ a state-administered retirement system. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, is not eligible to be enrolled in renewed membership if the member is subsequently employed with an employer that participates in the Florida Retirement System.

5. A member who receives optional annuity program benefits funded by employer and employee contributions as a mandatory distribution of a de minimis account authorized by the department is not considered a retiree.

As used in this paragraph, a “de minimis account” means an account with a provider company containing employer and employee contributions and accumulated earnings of not more than \$5,000 made under this chapter.

Section 5. Subsection (7) of section 121.071, Florida Statutes, is amended to read:

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

(7) ~~Before termination of employment,~~ Benefits, including employee contributions, are not payable under the pension plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee’s principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers.~~

Section 6. Paragraph (a) 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 this section, the Deferred Retirement Option Program, hereinafter referred to as 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 Florida Retirement System on behalf of the member, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the member 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. Participation in DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

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

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

2. Except as provided in subparagraph 6., for members initially enrolled before July 1, 2011, election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 57, or age 52 for Special Risk Class members. Except as provided in subparagraph 6., for members initially enrolled on or after July 1, 2011, election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 65, or age 60 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 60, or age 55 for Special Risk Class members. A member who delays DROP participation during the 12-month period immediately following his or her maximum DROP deferral date, except as provided in subparagraph 6., loses a month of DROP participation for each month delayed. A member who fails to make an election within the 12-month limitation period forfeits all rights to participate in DROP. The member shall advise his or her employer and the division in writing of the date DROP begins. The beginning date may be subsequent to the 12-month election period but must be within the original 60-month participation period provided in subparagraph (b)1. When establishing eligibility to participate in DROP, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in DROP after attaining normal retirement date in either class.

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

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

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

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

b. The member and new employer notify the division of the identity of the new employer on forms required by the division.

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

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

Section 7. Subsection (2) of section 121.122, Florida Statutes, is amended to read:

121.122 Renewed membership in system.—

(2) A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member is not eligible for renewed membership.

Section 8. Paragraphs (a), (b), and (g) of subsection (5) of section 121.35, Florida Statutes, are amended to read:

121.35 Optional retirement program for the State University System.

(5) BENEFITS.—

(a) Benefits are payable under the optional retirement program only to vested members participating in the program, or their beneficiaries as designated by the member 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 the terms of the annuity contract or investment contracts applicable to the member. A benefit under the optional retirement program is a distribution requested by the member or surviving beneficiary funded in part or in whole by employer or required employee contributions, plus earnings, and includes rolling a distribution over to another qualified plan. Benefits accrue in individual accounts that are member-directed, portable, and funded by employer and employee contributions and the earnings thereon. The member must be terminated for 3 calendar months from all employment relationships with all Florida Retirement System employers to begin receiving the benefit. The department may authorize a distribution of up to 10 percent of the member's account after being terminated from employment with all participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. The department may adopt rules to implement this paragraph. Benefits funded by employer and required employee contributions are payable in accordance with the following terms and conditions:

1. Benefits shall be paid only to a participating member, to his or her beneficiaries, or to his or her estate, as designated by the member.

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

3. In the event of a member's death, moneys accumulated by, or on behalf of, the member, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the member's designated beneficiary or beneficiaries, or to the member's estate, as if the member retired on the date of death, as provided in paragraph (d). No other death benefits are available to survivors of members 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) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de

minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code before termination from all employment relationships with participating employers for 3 calendar months.

(g) Benefits funded by the participating member's voluntary personal contributions may be paid out after termination from employment with all participating employers for 3 calendar months at any time and in any form within the limits provided in the contract between the member and the provider company. The member 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.

Section 9. Paragraph (e) of subsection (2) and paragraph (f) of subsection (4) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

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

(e) “Eligible employee” means an officer or employee, as defined in s. 121.021, 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 initially enrolled before July 1, 2010; or

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or 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), a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(4) PARTICIPATION; ENROLLMENT.—

(f) A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed in a regularly established position on or after July 1, 2010, is not eligible to be enrolled in ~~for~~ renewed membership.

Section 10. Section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has

terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. ~~Before termination of employment,~~ Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code prior to termination from all employment relationships with participating employers. The state board or department, as appropriate, may cancel an application for retirement benefits if 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, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member 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 and employee contributions and accumulated earnings of not more than \$5,000 made under the provisions of this chapter. Such cash-out must 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 member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. 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 shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any 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 attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

- (1) NORMAL BENEFITS.—Under the investment plan:

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

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a 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. The member 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 member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

5. If a member or former member of the Florida Retirement System receives an invalid distribution, such person must either repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, the member must terminate employment from all participating employers. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the investment plan by the state board and is subject to s. 121.122. If such person is deemed retired, any joint and several liability set out in s. 121.091(9)(d)2. is void, and the state board, the department, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the investment plan, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the state board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(g)3. As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the investment plan which is taken in violation of this section, s. 121.091(9), or s. 121.4501.

(b) If a member elects to receive his or her benefits upon termination of employment as defined in s. 121.021, the member must submit a written application or an application by electronic means 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 member 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 is

payable to the member pro rata across all Florida Retirement System benefit sources as:

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

2. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member'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 member; or

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

(d) The distribution payment method selected by the member or beneficiary, and the retirement of the member or beneficiary, is final and irrevocable at the time a benefit distribution payment is cashed, deposited, or transferred to another financial institution. Any additional service that remains unclaimed at retirement may not be claimed or purchased, and the type of retirement may not be changed, except that if a member recovers from a disability, the member may subsequently request benefits under subsection (2).

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

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

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

1. All moneys accumulated in the member's account, including vested and nonvested accumulations as described in s. 121.4501(6), must be transferred from such individual accounts to the division for deposit in the disability account of the Florida Retirement System Trust Fund. Such moneys must be accounted for separately. Earnings must 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 trust fund.

2. If the member has retained retirement credit earned under the pension plan as provided in s. 121.4501(3), a sum representing the actuarial present value of such credit within the Florida Retirement System Trust Fund shall be reassigned by the division from the pension plan to the disability program as implemented under this subsection and shall be deposited in the disability account of the trust fund. Such moneys must be accounted for separately.

(b) Disability retirement; entitlement.—

1. A member of the investment plan who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

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

a. The member's period of service under the investment plan shall be considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service under the pension plan as provided under s. 121.4501(3), all such service shall be considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred shall be considered creditable service, except as provided in subparagraph d.

d. If a member 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 member 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 member 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.— Before approving payment of any disability retirement benefit, the division shall require proof that the member is totally and permanently disabled as provided under s. 121.091(4)(c).

(f) Disability retirement benefit.—Upon the disability retirement of a member under this subsection, the member shall receive a monthly benefit that begins accruing on the first day of the month of disability retirement, as approved by the division, and is payable on the last day of that month and each month thereafter during his or her lifetime and continued disability. All

disability benefits must 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 must be calculated as provided under s. 121.091(4)(f). Creditable service under both the pension plan and the investment plan shall be applicable as provided under paragraph (b).

(h) Reapplication.—A member whose initial application for disability retirement is denied may reapply for disability benefits as provided in s. 121.091(4)(g).

(i) Membership.—Upon approval of a member's application for disability benefits, the member shall be transferred to the pension plan, effective upon his or her disability retirement effective date.

(j) Option to cancel.—A member whose application for disability benefits is approved may cancel the application if the cancellation request is received by the division before a disability retirement warrant has been deposited, cashed, or received by direct deposit. Upon cancellation:

1. The member's transfer to the pension plan under paragraph (i) shall be nullified;

2. The member shall be retroactively reinstated in the investment plan without hiatus;

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

4. The member may elect to receive the benefit payable under subsection (1) in lieu of disability benefits.

(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 provided in subparagraph 2., all other matters relating to recovery from disability shall be as provided under s. 121.091(4)(h).

2. Upon recovery from disability, the recipient of disability retirement benefits under this subsection shall be a compulsory member of the investment plan. The net difference between the recipient's original account balance transferred to the Florida Retirement System Trust Fund, including earnings 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 be subtracted from any remaining nonvested accumulations.

b. Amounts subtracted under sub-subparagraph a. must 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 must be deposited in individual accounts under the investment plan, as directed by the member. Vested and nonvested amounts shall be accounted for separately 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 must be deposited in individual accounts under the investment plan, as directed by the member, and is payable as provided in subsection (1).

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

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

(l) Nonadmissible causes of disability.—A member is not entitled to a disability retirement benefit if the disability results from any injury or disease as described in s. 121.091(4)(i).

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

1. If a member 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 the years equal to, or greater than, the vesting requirement in s. 121.021(45) 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 pursuant to s. 12, Art. V of the State Constitution, the member'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 member's disability retirement date. The member 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 subsection (1).

2. If any justice or judge who is a member of the investment plan is retired for disability pursuant to s. 12, 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 investment plan account and all employer and employee contributions made to such account on his or her behalf, plus interest and earnings thereon, must be transferred to and deposited in the disability account of the Florida Retirement System Trust Fund; and

b. The monthly disability benefits payable under this paragraph 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 of the retiree who is receiving monthly disability 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 may adopt rules necessary to administer this paragraph.

(3) DEATH BENEFITS.—Under the Florida Retirement System Investment Plan:

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

1. To the extent vested, benefits are payable only to a member's beneficiary or beneficiaries as designated by the member as provided in s. 121.4501(20).

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

3. To receive benefits, the member must be deceased.

(b) In the event of a member'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), as if the member retired on the date of death. No other death benefits are available for survivors of members, except for benefits, or coverage for benefits, as are otherwise provided by law or separately provided 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 is payable by the third-party administrator to the member's surviving beneficiary or beneficiaries, as:

1. A lump-sum distribution payable to the beneficiary or beneficiaries, or to the deceased member's estate;
2. An eligible rollover distribution, if permitted, on behalf of the surviving spouse of a deceased member, whereby all accrued benefits, plus interest and investment earnings, are paid from the deceased member'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 member'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, if permitted, 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 member 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 Florida Retirement System Investment Plan, and any contributions accumulated under the plan, 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 11. Paragraph (b) of subsection (5) and subsection (7) of section 1012.875, Florida Statutes, are amended to read:

1012.875 **State Community College System Optional Retirement Program.**—Each Florida College System institution may implement an optional retirement program, if such program is established therefor pursuant to s. 1001.64(20), under which annuity or other contracts providing retirement and death benefits may be purchased by, and on behalf of, eligible employees who participate in the program, in accordance with s. 403(b) of the Internal Revenue Code. Except as otherwise provided herein, this retirement program, which shall be known as the State Community College System Optional Retirement Program, may be implemented and administered only by an individual Florida College System institution or by a consortium of Florida College System institutions.

(5)

(b) Benefits are payable under the optional retirement program to program participants or their beneficiaries and paid only by the designated company in accordance with the terms of the contracts applicable to the program participant. Benefits shall accrue in individual accounts that are participant-directed, portable, and funded by employer and employee contributions and the earnings thereon. Benefit payments may not be

made until the member has been terminated for 3 calendar months, except the college may authorize a distribution of up to 10 percent of the member's account after the member is terminated from employment with all Florida Retirement System participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. The board of trustees for the college may adopt rules to implement this paragraph. Benefits funded by employer and employee contributions are payable in accordance with the following terms and conditions:

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 employer 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 (d). No other death benefits are 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.

(7) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers for 3 calendar months.~~

Section 12. This act shall take effect July 1, 2012.

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.