

## Committee Substitute for Senate Bill No. 1650

An act relating to state financial matters; amending s. 112.363, F.S.; providing that the spouse at the time of a Florida Retirement System participant's death is considered the beneficiary for purposes of the retiree health insurance subsidy unless a different beneficiary has been designated; amending s. 121.4501, F.S.; defining the term "retiree" for purposes of the Public Employee Optional Retirement Program; changing the dates for election to participate in the program; prescribing the obligation of system employers to communicate the existence of both retirement plans; amending s. 121.591, F.S.; providing for cashing out de minimis accounts; amending s. 121.78, F.S.; providing the participant's obligation to return excess contributions; amending s. 215.47, F.S.; revising guidelines for foreign obligations that are eligible for state investment; providing that expenditures for acquisition for private equity or other private investment partnerships shall be included in the cost of the investment; amending ss. 215.475, 215.5601, F.S.; redesignating investment plans as "investment policy statements"; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 112.363, Florida Statutes, is amended to read:

112.363 Retiree health insurance subsidy.—

(3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—

(e)1. Beginning July 1, 2001, each eligible retiree of the defined benefit program of the Florida Retirement System, or, if the retiree is deceased, his or her beneficiary who is receiving a monthly benefit from such retiree's account and who is a spouse, or a person who meets the definition of joint annuitant in s. 121.021(28), shall receive a monthly retiree health insurance subsidy payment equal to the number of years of creditable service, as defined in s. 121.021(17), completed at the time of retirement multiplied by \$5; however, no eligible retiree or beneficiary may receive a subsidy payment of more than \$150 or less than \$30. If there are multiple beneficiaries, the total payment must not be greater than the payment to which the retiree was entitled. The health insurance subsidy amount payable to any person receiving the retiree health insurance subsidy payment on July 1, 2001, shall not be reduced solely by operation of this subparagraph.

2. Beginning July 1, 2002, each eligible participant of the Public Employee Optional Retirement Program of the Florida Retirement System who has met the requirements of this section, or, if the participant is deceased, his or her spouse who is the participant's designated beneficiary, shall receive a monthly retiree health insurance subsidy payment equal to the number of years of creditable service, as provided in this subparagraph,

completed at the time of retirement, multiplied by \$5; however, no eligible retiree or beneficiary may receive a subsidy payment of more than \$150 or less than \$30. For purposes of determining a participant's creditable service used to calculate the health insurance subsidy, a participant's years of service credit or fraction thereof shall be based on the participant's work year as defined in s. 121.021(54). Credit shall be awarded for a full work year whenever health insurance subsidy contributions have been made as required by law for each month in the participant's work year. In addition, all years of creditable service retained under the Florida Retirement System defined benefit program shall be included as creditable service for purposes of this section. Notwithstanding any other provision in this section to the contrary, the spouse at the time of death shall be the participant's beneficiary unless such participant has designated a different beneficiary subsequent to the participant's most recent marriage.

Section 2. Subsections (2), (4), (10), and (15) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Public Employee Optional Retirement Program.—

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

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

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

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

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

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

(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)(c) or s. 121.35.

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

(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).

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

(j) “Retiree” means a former participant of the Florida Retirement System Public Employee Optional Retirement Program who has terminated employment and has taken a distribution as provided in s. 121.591, except for a mandatory distribution of a de minimis account authorized by the state board.

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

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

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

(4) PARTICIPATION; ENROLLMENT.—

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by August 31, 2002, or, in the case of an active employee who is on a leave of absence on April 1, 2002, by the last business day of the 5th month following August 31, 2002, or within 90 days after the month the leave of absence concludes ~~conclusion of the leave of absence, whichever is later~~. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

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

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

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

b. If the employee files such election within the prescribed time period, enrollment in the optional program shall be effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the optional program, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the optional program.

c. Any such employee who fails to elect to participate in the Public Employee Optional Retirement Program within the prescribed time period is deemed to have elected to retain membership in the defined benefit program

of the Florida Retirement System, and the employee's option to elect to participate in the optional program is forfeited.

3. With respect to employees who become eligible to participate in the Public Employee Optional Retirement Program pursuant to s. 121.051(2)(c)3., any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her participation in the State Community College Optional Retirement Program. The election must be made in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's participation in the State Community College Optional Retirement Program shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

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

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30, or, in the case of an active employee who is on a leave of absence on July 1, 2002, by the last business day of the 5th month following November 30, 2002, or within 90 days after the month the leave of absence concludes ~~conclusion of the leave of absence, whichever is later~~. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

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

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

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

b. If the employee files such election within the prescribed time period, enrollment in the optional program shall be effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the optional program, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the optional program.

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

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

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

a. Any such employee may elect to participate in the Public Employee Optional Retirement Program in lieu of retaining his or her membership in the defined benefit program of the Florida Retirement System. The election must be made in writing or by electronic means and must be filed with the third-party administrator by February 28, 2003, or, in the case of an active employee who is on a leave of absence on October 1, 2002, by the last business day of the 5th month following February 28, 2003, or within 90 days after the month the leave of absence concludes ~~conclusion of the leave of absence, whichever is later~~. This election is irrevocable, except as provided in paragraph (e). Upon making such election, the employee shall be enrolled as a participant of the Public Employee Optional Retirement Program, the employee's membership in the Florida Retirement System shall be governed by the provisions of this part, and the employee's membership in the defined benefit program of the Florida Retirement System shall terminate. The employee's enrollment in the Public Employee Optional Retirement

ment Program shall be effective the first day of the month for which a full month's employer contribution is made to the optional program.

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

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

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

b. If the employee files such election within the prescribed time period, enrollment in the optional program shall be effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the optional program, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the optional program.

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

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

(d) Contributions available for self-direction by a participant who has not selected one or more specific investment products shall be allocated as prescribed by the board. The third-party administrator shall notify any such participant at least quarterly that the participant should take an affirmative action to make an asset allocation among the optional program products.

(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 eligible employee's plan 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. 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.

(10) EDUCATION COMPONENT.—

(a) The board, in coordination with the department, shall provide for an education component for system members in a manner consistent with the provisions of this section. The education component must be available to eligible employees at least 90 days prior to the beginning date of the election period for the employees of the respective types of employers.

(b) The education component must provide system members with impartial and balanced information about plan choices. The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the participant. The board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the board.

(c) The board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members with information necessary to make informed plan choice decisions. The transfer education component must include, but is not limited to, information on:

1. The amount of money available to a member to transfer to the defined contribution program.

2. The features of and differences between the defined benefit program and the defined contribution program, both generally and specifically, as those differences may affect the member.

3. The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

4. The rate of return from investments in the defined contribution program and the period of time over which such rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit program.

5. The historical rates of return for the investment alternatives available in the defined contribution programs.

6. The benefits and historical rates of return on investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

7. The program choices available to employees of the State University System and the comparative benefits of each available program, if applicable.

8. Payout options available in each of the retirement programs.

(d) An ongoing education and communication component must provide system members with information necessary to make informed decisions about choices within their program of membership and in preparation for retirement. The component must include, but is not limited to, information concerning:

1. Rights and conditions of membership.
2. Benefit features within the program, options, and effects of certain decisions.
3. Coordination of contributions and benefits with a deferred compensation plan under s. 457 or a plan under s. 403(b) of the Internal Revenue Code.
4. Significant program changes.
5. Contribution rates and program funding status.
6. Planning for retirement.

(e) Descriptive materials must be prepared under the assumption that the employee is an unsophisticated investor, and all materials used in the education component must be approved by the state board prior to dissemination.

(f) The board and the department shall also establish a communication component to provide program information to participating employers and the employers' personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement programs.

(g) Funding for education of new employees may reflect administrative costs to the optional program and the defined benefit program.

(h) Pursuant to paragraph (8)(a), all Florida Retirement System employees have an obligation to regularly communicate the existence of the two Florida Retirement System plans and the plan choice in the natural course of administering their personnel functions, using the educational materials supplied by the state board and the Department of Management Services.

#### (15) STATEMENT OF FIDUCIARY STANDARDS AND RESPONSIBILITIES.—

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

provisions of law authorizing investments, the investment and fiduciary standards set forth in this subsection shall prevail.

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

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

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

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

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

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

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

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

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

Section 3. 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.

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

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

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

(b) If a participant elects to receive his or her benefits upon termination of employment, the participant must submit a written application to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph

(c). The participant may defer receipt of benefits until he or she chooses to make such application, subject to federal requirements.

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

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

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

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

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

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

(b) **Disability retirement; entitlement.**—

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

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

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

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

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

d. Whenever a participant has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

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

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

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

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

(g) Computation of disability retirement benefit.—The amount of each monthly payment shall be calculated in the same manner as provided for

members of the defined benefit program of the Florida Retirement System under s. 121.091(4)(f). For such purpose, creditable service under both the defined benefit program and the Public Employee Optional Retirement Program of the Florida Retirement System shall be applicable as provided under paragraph (b).

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

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

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

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

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

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

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

(k) Recovery from disability.—

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

2. Upon recovery from disability, any recipient of disability retirement benefits under this subsection shall be a compulsory member of the Public Employee Optional Retirement Program of the Florida Retirement System. The net difference between the recipient's original account balance transferred to the Florida Retirement System Trust Fund, including earnings,

under paragraph (a) and total disability benefits paid to such recipient, if any, shall be determined as provided in sub-subparagraph a.

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

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

c. If the recipient returns to covered employment, transferred amounts shall be deposited in individual accounts under the Public Employee Optional Retirement Program, as directed by the participant. Vested and 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 deceased disabled retiree's beneficiary shall also receive the amount of the participant's remaining account balance, if any, in the Florida Retirement System Trust Fund.~~ The Department of Management Services may adopt rules necessary to administer this paragraph.

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

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

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

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

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

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

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

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

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

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

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

(4) **LIMITATION ON LEGAL PROCESS.**—The benefits payable to any person under the Public Employee Optional Retirement Program, and any contributions accumulated under such program, are not subject to assignment, execution, attachment, or any legal process, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

Section 4. Paragraph (b) of subsection (3) of section 121.78, Florida Statutes, is amended to read:

121.78 Payment and distribution of contributions.—

(3)

(b) If contributions made by an employer on behalf of participants of the optional retirement program or accompanying payroll data are not received

within the calendar month they are due, including, but not limited to, contribution adjustments as a result of employer errors or corrections, and if that delinquency results in market losses to participants, the employer shall reimburse each participant's account for market losses resulting from the late contributions. If a participant has terminated employment and taken a distribution, the participant is responsible for returning any excess contributions erroneously provided by employers, adjusted for any investment gain or loss incurred during the period such excess contributions were in the participant's Public Employee Optional Retirement Program account. The State Board of Administration or its designated agent shall communicate to terminated participants any obligation to repay such excess contribution amounts. However, the State Board of Administration, its designated agents, the Public Employee Optional Retirement Program Trust Fund, the Department of Management Services, or the Florida Retirement System Trust Fund shall not incur any loss or gain as a result of an employer's correction of such excess contributions. The third-party administrator, hired by the board pursuant to s. 121.4501(8), shall calculate the market losses for each affected participant. When contributions made on behalf of participants of the optional retirement program or accompanying payroll data are not received within the calendar month due, the employer shall also pay the cost of the third-party administrator's calculation and reconciliation adjustments resulting from the late contributions. The third-party administrator shall notify the employer of the results of the calculations and the total amount due from the employer for such losses and the costs of calculation and reconciliation. The employer shall remit to the division the amount due within 10 working days after the date of the penalty notice sent by the division. The division shall transfer said amount to the third-party administrator, who shall deposit proceeds from the 1-percent assessment and from individual market losses into participant accounts, as appropriate. The board is authorized to adopt rules to implement the provisions regarding late contributions, late submission of payroll data, the process for reimbursing participant accounts for resultant market losses, and the penalties charged to the employers.

Section 5. Paragraphs (f), (g), and (i) of subsection (2) of section 215.47, Florida Statutes, are amended 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:

(f) Certain interests in real property and related personal property, including mortgages and related instruments on commercial or industrial real property, with provisions for equity or income participation or with provisions for convertibility to equity ownership; and interests in collective investment funds. Associated expenditures for acquisition and operation of assets purchased under this provision or of investments in private equity or other private investment partnerships or limited liability companies shall be included as a part of the cost of the investment.

1. The title to real property acquired under this paragraph shall be vested in the name of the respective fund.
2. For purposes of taxation of property owned by any fund, the provisions of s. 196.199(2)(b) do not apply.
3. Real property acquired under the provisions of this paragraph shall not be considered state lands or public lands and property as defined in chapter 253, and the provisions of that chapter do not apply to such real property.

(g) Fixed-income obligations not otherwise authorized by this section issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities, if the obligations are rated investment grade by at least one nationally recognized rating service. General obligations backed by the full faith and credit of a foreign government which has not defaulted on similar obligations for a minimum period of 25 years prior to purchase of the obligation and has met its payments of similar obligations when due.

(i) Obligations of agencies of the government of the United States, provided such obligations have been included in and authorized by the Florida Retirement System Defined Benefit Total Fund Investment Plan Investment Policy Statement established in s. 215.475.

Section 6. Section 215.475, Florida Statutes, is amended to read:

215.475 Investment policy statement plan.—

(1) In making investments for the System Trust Fund pursuant to ss. 215.44-215.53, the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Total Fund Investment Plan Investment Policy Statement, hereinafter referred to as “the IPS plan,” as developed by the executive director and approved by the board. The IPS plan must include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS plan to the board for approval.

(2) Prior to any recommended changes in the IPS plan being presented to the board, the executive director of the board shall present such changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board’s final approval of the IPS plan or changes in the IPS plan.

Section 7. Paragraph (a) of subsection (4) of section 215.5601, Florida Statutes, is amended to read:

215.5601 Lawton Chiles Endowment Fund.—

(4) ADMINISTRATION.—

(a) The board may invest and reinvest funds of the endowment in accordance with s. 215.47 and consistent with an investment policy statement ~~plan~~ developed by the executive director and approved by the board.

Section 8. This act shall take effect July 1, 2004.

Approved by the Governor May 20, 2004.

Filed in Office Secretary of State May 20, 2004.