

CHAPTER 2010-180

Council Substitute for Committee Substitute for House Bill No. 1307

An act relating to state financial matters; amending s. 121.4501, F.S.; revising and providing definitions; providing for excess account balances in the Public Employee Optional Retirement Program when an employee transfers to the defined benefit program; providing for the use of such excess balance; requiring the State Board of Administration to resolve complaints; providing for the use of records in resolving such complaints; clarifying the state board's rule authority with respect to the program; amending s. 121.4502, F.S.; establishing a forfeiture account in the Public Employee Retirement Program Trust Fund; providing for the use of funds in the account; amending s. 121.591, F.S.; conforming a cross-reference; permitting an application for benefits under the optional retirement program to be submitted by electronic means; amending s. 121.74, F.S.; revising the contribution rates for employers participating in the Florida Retirement System; amending s. 121.78, F.S.; exempting the Division of Retirement, the state board, and the third-party administrator from liability for market losses due to acts of God; amending s. 215.44, F.S.; expanding the authority of the state board to use trust agreements; requiring that the state board create an audit committee for specified purposes; providing for duties, membership, and term limits; requiring that the state board annually produce and report to the Legislature certain financial statements; requiring that such statements be audited by an independent third-party firm under the direction of the audit committee; requiring that the state board meet at specified intervals and receive reports containing certain information from specified entities; amending s. 215.441, F.S.; providing minimum qualifications for the executive director of the state board; amending s. 215.444, F.S.; increasing membership of the Investment Advisory Council; revising membership requirements; providing council meeting and reporting requirements; providing additional requirements for council members; authorizing the council to create subcommittees; amending s. 215.47, F.S.; expanding the types of investments that the state board is authorized to make; authorizing moneys available for investment by the state board to be invested in certain federally tax-exempt bonds, notes, or obligations not subject to the federal alternative minimum tax; providing funds that may be invested in a foreign entity; creating s. 215.4754, F.S.; providing intent; requiring that the contract for an investment adviser or manager include a standard of conduct; providing for termination of the contract of an adviser or manager who violates the standard of conduct; prohibiting a member of the council from contracting with or providing services for the investment of certain funds during his or her service on the council and for a specified period thereafter; creating s. 215.4755, F.S.; requiring that an investment advisor or manager annually certify to the state board certain activities regarding investment decisions and standards of behavior; requiring that certain

disclosures be made at the request of the state board regarding pecuniary interests of an investment adviser or manager; amending s. 215.52, F.S.; providing requirements for rules made by the state board with respect to certain fiduciary duties; amending s. 218.409, F.S.; providing for extending a moratorium on contributions to or withdrawals from the Local Government Surplus Funds Trust Fund under certain circumstances; authorizing the state board to develop work products that are subject to trademark, copyright, or patent; providing an effective date.

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

Section 1. Subsection (2), paragraph (e) of subsection (4), subsection (6), and paragraphs (a) and (g) of subsection (8) 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 the provider’s ~~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) “Defined benefit program” means the defined benefit program of the Florida Retirement System administered under part I of this chapter ~~“Department” means the Department of Management Services.~~

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

(f) “Electronic means” means by telephone, if the required information is received on a recorded line, or through Internet access, if the required information is captured online.

(g)(f) ~~“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 on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(h)(g) ~~“Employer” means an employer, as defined in s. 121.021(40), of an eligible employee.~~

(i) “Optional retirement program” or “optional program” means the Public Employee Optional Retirement Program established under this part.

(j)(h) ~~“Participant” means an eligible employee who elects to participate in the Public Employee Optional Retirement Program and enrolls in the such optional program as provided in subsection (4) or a terminated Deferred Retirement Option participant as described in subsection (21).~~

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

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

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

~~(l)(m) “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.—

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

4. ~~An employee's~~ Employees' ability to transfer from the ~~Florida Retirement System~~ defined benefit program to the ~~Public Employee~~ optional retirement program pursuant to paragraphs (a)-(d), and the ability ~~of a~~ for current ~~employee~~ 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 ~~must~~ 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, ~~a~~ no direct amortization payment ~~may not~~ shall be calculated for this base. During this 25-year period, ~~the~~ 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 of the Legislature that the actuarial funded status of the ~~Florida Retirement System~~ defined benefit ~~program not be affected~~ 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 ~~the~~ 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.

5. If the employee chooses to transfer from the optional retirement program to the defined benefit program and retains an excess account balance in the optional program after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the defined benefit program. The excess account balance may be rolled over to the defined benefit program and used to purchase service credit or upgrade creditable service in that program.

(6) VESTING REQUIREMENTS.—

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

optional retirement program authorized under s. 121.051(2)(c) or s. 121.055(6).

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

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

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

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

(8) ADMINISTRATION OF PROGRAM.—

(a) The ~~Public Employee~~ optional retirement program shall be administered by the state board and affected employers. The board ~~may~~ ~~is authorized~~ to require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for this program under this chapter. ~~An~~ ~~No~~ oath, by affidavit

or otherwise, ~~may not shall~~ be required of an employee participant at the time of enrollment election. Acknowledgment of an employee's election to participate in the program shall be no greater than necessary to confirm the employee's election. The state board shall adopt rules to carry out its statutory duties with respect to administering the optional retirement program, including establishing the roles role and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors ~~in administering the Public Employee optional retirement program~~. The department shall adopt rules necessary to administer implement the optional program in coordination with the defined benefit ~~retirement~~ program and the disability benefits available under the optional program.

(g) The state board shall receive and resolve participant complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if when such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all participant records for at least 5 years for use in resolving any participant conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a participant if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the participant and with the participant's full knowledge and consent. To overcome this presumption, the participant must present documentary evidence or an audio recording demonstrating otherwise.

Section 2. Subsection (3) is added to section 121.4502, Florida Statutes, to read:

121.4502 Public Employee Optional Retirement Program Trust Fund.

(3) A forfeiture account shall be created within the Public Employee Optional Retirement Program Trust Fund to hold the assets derived from the forfeiture of benefits by participants. Pursuant to a private letter ruling from the Internal Revenue Service, the forfeiture account may be used only for paying expenses of the Public Employee Optional Retirement Program and reducing future employer contributions to the program. Consistent with Rulings 80-155 and 74-340 of the Internal Revenue Service, unallocated reserves within the forfeiture account must be used as quickly and as prudently as possible considering the state board's fiduciary duty. Expected withdrawals from the account must endeavor to reduce the account to zero each fiscal year.

Section 3. Paragraphs (a) and (b) of subsection (1) of section 121.591, Florida Statutes, are amended to read:

121.591 Benefits payable under the Public Employee Optional Retirement Program of the Florida Retirement System.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed in the manner prescribed by the state board or the department. The state board or department, as appropriate, may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities as provided herein, the State Board of Administration and the Department of Management Services shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received. The State Board of Administration and the Department of Management Services, as appropriate, are authorized to cash out a de minimis account of a participant who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer contributions and accumulated earnings of not more than \$5,000 made under the provisions of this chapter. Such cash-out must either be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the participant. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the State Board of Administration shall cancel the instrument and credit the amount of the instrument to the suspense account of the Public Employee Optional Retirement Program Trust Fund authorized under s. 121.4501(6). Any such amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings thereon shall be forfeited. Any such forfeited amounts are assets of the Public Employee Optional Retirement Program Trust Fund and are not subject to the provisions of chapter 717.

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

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

1. To the extent vested, benefits are 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, the participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

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

5. If a member or former member of the Florida Retirement System receives an invalid distribution from the Public Employee Optional Retirement Program Trust Fund, such person must repay the full invalid distribution to the trust fund within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid. 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 optional retirement program by the state board, as provided pursuant to s. 121.4501(2)(k)(j), and is subject to s. 121.122. If such person is deemed retired by the state board, any joint and several liability set out in s. 121.091(9)(d)2. becomes null and 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 retirement program, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the 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 optional retirement program which is taken in violation of this section, s. 121.091(9), or s. 121.4501.

(b) If a participant elects to receive his or her benefits upon termination of employment as defined in s. 121.021, the participant must submit a written application or ~~an application by electronic means an equivalent form~~ to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph (c). The participant may defer receipt of benefits until he or she chooses to make such application, subject to federal requirements.

Section 4. Section 121.74, Florida Statutes, is amended to read:

121.74 Administrative and educational expenses.—In addition to contributions required under s. 121.71, effective July 1, 2010, through June 30, 2014, employers participating in the Florida Retirement System shall contribute an amount equal to ~~0.03~~ 0.05 percent of the payroll reported for each class or subclass of Florida Retirement System membership; effective July 1, 2014, the contribution rate shall be 0.04 percent of the payroll reported for each class or subclass of membership. ~~The, which amount contributed~~ shall be transferred by the Division of Retirement from the Florida Retirement System Contributions Clearing Trust Fund to the State

Board of Administration's Administrative Trust Fund to offset the costs of administering the optional retirement program and the costs of providing educational services to participants in the defined benefit program and the optional retirement program. Approval of the trustees of the ~~State Board of Administration~~ is required ~~before~~ prior to the expenditure of these funds. Payments for third-party administrative or educational expenses shall be made only pursuant to the terms of the approved contracts for such services.

Section 5. Subsection (3) of section 121.78, Florida Statutes, is amended to read:

121.78 Payment and distribution of contributions.—

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

(b) If contributions made by an employer on behalf of participants of the optional retirement program or accompanying payroll data are not received within the calendar month they are due, 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 may 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 state board pursuant to s. 121.4501(8), shall calculate the market losses for each affected participant. If ~~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 of Retirement the amount due within 30 ~~10~~ working days after the date of the penalty notice sent by the division. The division shall transfer that ~~the~~ amount to the third-party administrator, which ~~who~~ shall deposit proceeds from the 1-percent assessment and from individual market losses into participant accounts, as appropriate. The state board may ~~is authorized to~~ adopt rules to administer ~~implement~~ the provisions regarding late contributions, late submission of payroll data, the process for reimbursing participant accounts for resultant market losses, and the penalties charged to the employers.

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

(d) If contributions made by an employer on behalf of participants in the optional retirement program are delayed in posting to participant accounts due to acts of God beyond the control of the Division of Retirement, the state board, or the third-party administrator, as applicable, market losses resulting from the late contributions are not payable to the participants.

Section 6. Subsections (1) and (2) of section 215.44, Florida Statutes, are amended to read:

215.44 Board of Administration; powers and duties in relation to investment of trust funds.—

(1) Except when otherwise specifically provided by the State Constitution and subject to any limitations of the trust agreement relating to a trust fund, the Board of Administration, hereinafter sometimes referred to in this chapter as “board,” or “Trustees of the State Board of Administration,” composed of the Governor as chair, the Chief Financial Officer, and the Attorney General, shall invest all the funds in the System Trust Fund, as defined in s. 121.021(36), and all other funds specifically required by law to be invested by the board pursuant to ss. 215.44-215.53 to the fullest extent that is consistent with the cash requirements, trust agreement, and investment objectives of the fund. Notwithstanding any other law to the contrary, the State Board of Administration may invest any funds of any state agency, any state university or college, or any unit of local government, or any direct-support organization thereof pursuant to the terms of a trust agreement with the head of the state agency or the governing body of the state university or college, unit of local government, or direct-support organization thereof, or pursuant to the enrollment requirements stated in s. 218.407, and may invest such funds in the Local Government Surplus Funds Trust Fund

~~created by s. 218.405., which trust agreement shall govern the investment of such funds, provided that~~ The board shall approve the undertaking of investments subject to a trust agreement such investment before execution of such the trust agreement by the State Board of Administration. The funds and the earnings therefrom are exempt from the service charge imposed by s. 215.20. As used in this subsection, the term “state agency” has the same meaning as that provided in s. ~~216.011~~ 216.001, and the terms “governing body” and “unit of local government” have the same meaning as that provided in s. 218.403.

(2)(a) The board shall have the power to make purchases, sales, exchanges, investments, and reinvestments for and on behalf of the funds referred to in subsection (1), and it shall be the duty of the board to see that moneys invested under the provisions of ss. 215.44-215.53 are at all times handled in the best interests of the state.

(b) In exercising investment authority pursuant to s. 215.47, the board may retain investment advisers or managers, or both, external to in-house staff, to assist the board in carrying out the power specified in paragraph (a).

(c) The board shall create an audit committee to assist the board in fulfilling its oversight responsibilities. The committee shall consist of three members appointed by the board. Members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term. The committee shall annually elect a chair and vice chair from its membership. A member may not be elected to consecutive terms as chair or vice chair. Persons appointed to the audit committee must have relevant knowledge and expertise as determined by the board. The audit committee shall serve as an independent and objective party to monitor processes for financial reporting, internal controls and risk assessment, audit processes, and compliance with laws, rules, and regulations. The audit committee shall direct the efforts of the board’s independent external auditors and the board’s internal audit staff. The committee shall periodically, but not less than quarterly, report to the board and the executive director of the board.

(d) The board shall produce a set of financial statements for the Florida Retirement System on an annual basis, which shall be reported to the Legislature and audited by a commercial independent third-party audit firm.

(e) The board shall meet at least quarterly and shall receive reports from the audit committee, the investment advisory committee, the inspector general, the general counsel, the executive director, and such other persons or entities as the board may require about the financial status, operations, and investment activities of the board.

Section 7. Section 215.441, Florida Statutes, is amended to read:

215.441 Board of Administration; appointment of executive director.—The appointment of the executive director of the State Board of Administration shall be subject to the approval by a majority vote of the Board of

Trustees of the State Board of Administration, and the Governor must vote on the prevailing side. Such appointment must be reaffirmed in the same manner by the board of trustees on an annual basis. The executive director shall, at a minimum, possess substantial experience, knowledge, and expertise in the oversight of investment portfolios and must meet any other requirements determined by the board to be necessary to the overall management and investment of funds.

Section 8. Section 215.444, Florida Statutes, is amended to read:

215.444 Investment Advisory Council.—

(1) There is created a six-member Investment Advisory Council to review the investments made by the staff of the Board of Administration and to make recommendations to the board regarding investment policy, strategy, and procedures. Beginning February 1, 2011, the membership of the council shall be expanded to nine members. The council shall meet with staff of the board at least once each quarter and shall provide a quarterly report directly to the Board of Trustees of the State Board of Administration at a meeting of the board.

(2) The members of the council shall be appointed by the board as a resource to the Board of Trustees of the State Board of Administration and shall be subject to confirmation by the Senate. These individuals shall possess special knowledge, experience, and familiarity with financial investments and portfolio management, institutional investments, and fiduciary responsibilities. Members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term. The council shall annually elect a chair and a vice chair from its membership. A member may not be elected to consecutive terms as chair or vice chair.

(3) The council members must undergo regular fiduciary training as required by the board and must complete an annual conflict disclosure statement. In carrying out their duties, council members must make recommendations consistent with the fiduciary standards applicable to the board.

(4) The council may create subcommittees as necessary to carry out its duties and responsibilities.

Section 9. Paragraphs (b) and (c) of subsection (1), paragraph (a) of subsection (2), and subsection (5) of section 215.47, Florida Statutes, are amended, paragraph (o) is added to subsection (1) of that section, and subsection (20) is added to that section, 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:

(1) Without limitation in:

(b) State Bonds, notes, or obligations of any state or organized territory of the United States or the District of Columbia that pledge pledging the full faith and credit of the state, territory, or district; and revenue bonds, notes, or obligations of any state or organized territory of the United States or the District of Columbia additionally secured by the full faith and credit of the state, territory, or district.

(c) Bonds, notes, or obligations of the several counties or districts in any the state or organized territory of the United States or the District of Columbia containing a pledge of the full faith and credit of the county or district involved.

(o) Bonds, notes, or obligations described in 26 U.S.C. s. 149(g)(3)(B), if investment in such bonds, notes, or obligations is necessary in order to comply with covenants in documents or proceedings relating to bonds issued pursuant to s. 215.555(6). Investments made pursuant to this paragraph may be purchased only from the proceeds of bonds issued pursuant to s. 215.555(6) and must be authorized under documents or proceedings relating to such bonds.

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

(a) Bonds, notes, or obligations of any state or organized territory of the United States or the District of Columbia; of any municipality or political subdivision or any agency, district, or authority thereof; or of any agency or authority of this state, if the obligations are rated investment grade by at least one nationally recognized statistical rating organization.

(5) With no more than 25 percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity having its principal office located in any country other than the United States of America or its possessions or territories, not including United States dollar-denominated securities listed and traded on a United States exchange which are a part of the ordinary investment strategy of the board.

(20) Notwithstanding the provisions in subsection (5) limiting such investments to 25 percent of any fund, the board may invest no more than 35 percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity having its principal office located in any country other than the United States or its possessions or territories, not including United States dollar-denominated securities listed and traded on a United States exchange that are a part of the ordinary investment strategy of the board.

Section 10. Section 215.4754, Florida Statutes, is created to read:

215.4754 Ethics requirements for investment advisers and managers and members of the Investment Advisory Council.—The intent of this section is to promote independence and the avoidance of conflicts and improper influence by certain investment advisers and managers without creating

unnecessary barriers to the board performing its investment duties consistent with its fiduciary standards, investment performance, and business relationships.

(1) A contract under which an investment adviser or manager has been retained to exercise investment authority on behalf of the board for direct holdings shall require that the investment adviser or manager abide by a standard of conduct pursuant to s. 215.4755. Any such contract may be terminated by the board if the investment adviser or manager violates such standard of conduct.

(2) An Investment Advisory Council member or any business organization or any affiliate thereof that is owned by or employs such member may not directly or indirectly contract with or provide any services for the investment of trust funds invested by the board during the time of such member's service on the council or for 2 years thereafter.

Section 11. Section 215.4755, Florida Statutes, is created to read:

215.4755 Certification and disclosure requirements for investment advisers and managers.—

(1) An investment adviser or manager who has discretionary investment authority for direct holdings and who is retained as provided in s. 215.44(2)(c) shall agree pursuant to contract to annually certify in writing to the board that:

(a) All investment decisions made on behalf of the trust funds and the board are made in the best interests of the trust funds and the board and not made in a manner to the advantage of such investment adviser or manager, other persons, or clients to the detriment of the trust funds and the board.

(b) Appropriate policies, procedures, or other safeguards have been adopted and implemented to ensure that relationships with any affiliated persons or entities do not adversely influence the investment decisions made on behalf of the trust funds and the board.

(c) A written code of ethics, conduct, or other set of standards, which governs the professional behavior and expectations of owners, general partners, directors or managers, officers, and employees of the investment adviser or manager, has been adopted and implemented and is effectively monitored and enforced. The investment advisers' and managers' code of ethics shall require that:

1. Officers and employees involved in the investment process refrain from personal business activity that could conflict with the proper execution and management of the investment program over which the investment adviser or manager has discretionary investment authority or that could impair their ability to make impartial decisions with respect to such investment program; and

2. Officers and employees refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the board.

(d) The investment adviser or manager has proactively and promptly disclosed to the board, notwithstanding subsection (2), any known circumstances or situations that a prudent person could expect to create an actual, potential, or perceived conflict of interest, including specifically:

1. Any material interests in or with financial institutions with which officers and employees conduct business on behalf of the trust funds and the board; and

2. Any personal financial or investment positions of the investment adviser or manager that could be related to the performance of an investment program over which the investment adviser or manager has discretionary investment authority on behalf of the board.

(2) At the board's request, an investment adviser or manager who has discretionary investment authority over direct holdings and who is retained as provided in s. 215.44(2)(c) shall disclose in writing to the board:

(a) Any nonconfidential, nonproprietary information or reports to substantiate the certifications required under subsection (1).

(b) All direct or indirect pecuniary interests that the investment adviser or manager has in or with any party to a transaction with the board, if the transaction is related to any discretionary investment authority that the investment adviser or manager exercises on behalf of the board.

(3) An investment adviser or manager certification required under subsection (1) shall be provided annually, no later than January 31, for the reporting period of the previous calendar year on a form prescribed by the board.

Section 12. Section 215.52, Florida Statutes, is amended to read:

215.52 Rules and regulations.—The board shall have the power and authority to make reasonable rules and regulations necessary to carry out the provisions of ss. 215.44-215.53. The rules shall provide for full transparency and accountability in fulfillment of the board's fiduciary duties in the areas of compliance, ethics, training, and audit procedures.

Section 13. Paragraph (a) of subsection (8) of section 218.409, Florida Statutes, is amended to read:

218.409 Administration of the trust fund; creation of advisory council.

(8)(a) The principal, and any part thereof, of each and every account constituting the trust fund is shall be subject to payment at any time from the moneys in the trust fund. However, the executive director may, in good faith,

on the occurrence of an event that has a material impact on liquidity or operations of the trust fund, for 48 hours limit contributions to or withdrawals from the trust fund to ensure that the board can invest moneys entrusted to it in exercising its fiduciary responsibility. Such action must shall be immediately disclosed to all participants, the trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Participant Local Government Advisory Council. The trustees shall convene an emergency meeting as soon as practicable from the time the executive director has instituted such measures and review the necessity of those measures. If the trustees are unable to convene an emergency meeting before the expiration of the 48-hour moratorium on contributions and withdrawals, the moratorium may be extended by the executive director until the trustees are able to meet to review the necessity for the moratorium. If the trustees agree with such measures, the trustees shall vote to continue the measures for up to an additional 15 days. The trustees must convene and vote to continue any such measures before ~~prior to~~ the expiration of the time limit set, but in no case may the time limit set by the trustees exceed 15 days.

Section 14. Trademarks, copyrights, or patents.—The State Board of Administration, on behalf of the Florida Retirement System or any other trust fund under its jurisdiction, may develop work products that are subject to trademark, copyright, or patent statutes. The board may, in its own name or through the growth initiative program created pursuant to s. 215.47(7), Florida Statutes, or any other program developed with or for the board:

(1) Perform all things necessary to secure letters of patent, copyrights, or trademarks on any work products and enforce its rights therein.

(2) License, lease, assign, or otherwise give written consent to any person for the manufacture or use of its work products on a royalty basis or for such other consideration as the board deems proper.

(3) Take any action necessary, including legal action, to protect its work products against improper or unlawful use or infringement.

(4) Enforce the collection of any sums due the board for the manufacture or use of its work products by any other party.

(5) Sell any of its work products and execute all instruments necessary to consummate any such sale.

(6) Do all other acts necessary and proper for the execution of powers and duties provided under this section.

Section 15. This act shall take effect July 1, 2010.

Approved by the Governor June 1, 2010.

Filed in Office Secretary of State June 1, 2010.