

1 A bill to be entitled
2 An act relating to state financial matters; amending s.
3 121.4501, F.S.; revising and providing definitions;
4 providing for excess account balances in the Public
5 Employee Optional Retirement Program when an employee
6 transfers to the defined benefit program; providing for
7 the use of such excess balance; requiring the State Board
8 of Administration to develop procedures to resolve
9 complaints; providing for the use of records in resolving
10 such complaints; clarifying the state board's rule
11 authority with respect to the program; amending s.
12 121.4502, F.S.; establishing a forfeiture account in the
13 Public Employee Retirement Program Trust Fund; providing
14 for the use of funds in the account; amending s. 121.591,
15 F.S.; conforming a cross-reference; permitting an
16 application for benefits under the optional retirement
17 program to be submitted by electronic means; amending s.
18 121.74, F.S.; revising the contribution rates for
19 employers participating in the Florida Retirement System;
20 amending s. 121.78, F.S.; exempting the Division of
21 Retirement, the state board, and the third-party
22 administrator from liability for market losses due to acts
23 of God; amending s. 215.44, F.S.; providing reporting
24 requirements for the state board; amending s. 215.441,
25 F.S.; providing minimum qualifications for the executive
26 director of the state board; amending s. 215.444, F.S.;
27 increasing membership of the Investment Advisory Council;
28 revising membership requirements; providing council

29 meeting and reporting requirements; providing certain
 30 immunity from liability with respect to authorized actions
 31 for members of the council; amending s. 215.47, F.S.;
 32 authorizing moneys available for investment by the state
 33 board to be invested in certain federally tax-exempt
 34 bonds, notes, or obligations not subject to the federal
 35 alternative minimum tax; increasing the fund amount that
 36 may be invested in a foreign entity; amending s. 215.52,
 37 F.S.; providing the state board with certain powers;
 38 amending s. 218.409, F.S.; providing for extending a
 39 moratorium on contributions to or withdrawals from the
 40 Local Government Surplus Funds Trust Fund under certain
 41 circumstances; authorizing the state board to develop work
 42 products that are subject to trademark, copyright, or
 43 patent; providing an effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Subsection (2), paragraph (e) of subsection
 48 (4), subsection (6), and paragraphs (a) and (g) of subsection
 49 (8) of section 121.4501, Florida Statutes, are amended to read:

50 121.4501 Public Employee Optional Retirement Program.—

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

52 (a) "Approved provider" or "provider" means a private
 53 sector company that is selected and approved by the state board
 54 to offer one or more investment products or services to the
 55 ~~Public Employee~~ optional retirement program. The term includes a
 56 bundled provider that offers participants a range of

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57 | individually allocated or unallocated investment products and
58 | may offer a range of administrative and customer services, which
59 | may include accounting and administration of individual
60 | participant benefits and contributions; individual participant
61 | recordkeeping; asset purchase, control, and safekeeping; direct
62 | execution of the participant's instructions as to asset and
63 | contribution allocation; calculation of daily net asset values;
64 | direct access to participant account information; periodic
65 | reporting to participants, at least quarterly, on account
66 | balances and transactions; guidance, advice, and allocation
67 | services directly relating to the provider's ~~its~~ own investment
68 | options or products, but only if the bundled provider complies
69 | with the standard of care of s. 404(a)(1)(A-B) of the Employee
70 | Retirement Income Security Act of 1974 (ERISA) and if providing
71 | such guidance, advice, or allocation services does not
72 | constitute a prohibited transaction under s. 4975(c)(1) of the
73 | Internal Revenue Code or s. 406 of ERISA, notwithstanding that
74 | such prohibited transaction provisions do not apply to the
75 | optional retirement program; a broad array of distribution
76 | options; asset allocation; and retirement counseling and
77 | education. Private sector companies include investment
78 | management companies, insurance companies, depositories, and
79 | mutual fund companies.

80 | (b) "Average monthly compensation" means one-twelfth of
81 | average final compensation as defined in s. 121.021~~(24)~~.

82 | (c) "Covered employment" means employment in a regularly
83 | established position as defined in s. 121.021~~(52)~~.

84 | (d) "Defined benefit program" means the defined benefit

85 program of the Florida Retirement System administered under part
 86 I of this chapter ~~"Department" means the Department of~~
 87 ~~Management Services.~~

88 (e) "Division" means the Division of Retirement within the
 89 department ~~of Management Services.~~

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

93 (g) ~~(f)~~ "Eligible employee" means an officer or employee,
 94 as defined in s. 121.021, who:

95 1. Is a member of, or is eligible for membership in, the
 96 Florida Retirement System, including any renewed member of the
 97 Florida Retirement System initially enrolled before July 1,
 98 2010; or

99 2. Participates in, or is eligible to participate in, the
 100 Senior Management Service Optional Annuity Program as
 101 established under s. 121.055(6), the State Community College
 102 System Optional Retirement Program as established under s.
 103 121.051(2)(c), or the State University System Optional
 104 Retirement Program established under s. 121.35.

105
 106 The term does not include any member participating in the
 107 Deferred Retirement Option Program established under s.
 108 121.091(13), a retiree of a state-administered retirement system
 109 initially reemployed on or after July 1, 2010, or a mandatory
 110 participant of the State University System Optional Retirement
 111 Program established under s. 121.35.

112 (h) ~~(g)~~ "Employer" means an employer, as defined in s.

113 121.021~~(10)~~, of an eligible employee.

114 (i) "Optional retirement program" or "optional program"
 115 means the Public Employee Optional Retirement Program
 116 established under this part.

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

122 ~~(i) "Public Employee Optional Retirement Program,"~~
 123 ~~"optional program," or "optional retirement program" means the~~
 124 ~~alternative defined contribution retirement program established~~
 125 ~~under this section.~~

126 (k)~~(j)~~ "Retiree" means a former participant of the ~~Florida~~
 127 ~~Retirement System Public Employee~~ optional retirement program
 128 who has terminated employment and has taken a distribution as
 129 provided in s. 121.591, except for a mandatory distribution of a
 130 de minimis account authorized by the state board.

131 ~~(k) "State board" or "board" means the State Board of~~
 132 ~~Administration.~~

133 ~~(l) "Trustees" means Trustees of the State Board of~~
 134 ~~Administration.~~

135 (l)~~(m)~~ "Vested" or "vesting" means the guarantee that a
 136 participant is eligible to receive a retirement benefit upon
 137 completion of the required years of service under the ~~Public~~
 138 ~~Employee~~ optional retirement program.

139 (4) PARTICIPATION; ENROLLMENT.—

140 (e) After the period during which an eligible employee had

141 the choice to elect the defined benefit program or the ~~Public~~
 142 ~~Employee~~ optional retirement program, or the month following the
 143 receipt of the eligible employee's plan election, if sooner, the
 144 employee shall have one opportunity, at the employee's
 145 discretion, to choose to move from the defined benefit program
 146 to the ~~Public Employee~~ optional retirement program or from the
 147 ~~Public Employee~~ optional retirement program to the defined
 148 benefit program. Eligible employees may elect to move between
 149 Florida Retirement System programs only if they are earning
 150 service credit in an employer-employee relationship consistent
 151 with ~~the requirements under~~ s. 121.021(17)(b), excluding leaves
 152 of absence without pay. Effective July 1, 2005, such elections
 153 are ~~shall be~~ effective on the first day of the month following
 154 the receipt of the election by the third-party administrator and
 155 are not subject to the requirements regarding an employer-
 156 employee relationship or receipt of contributions for the
 157 eligible employee in the effective month, except ~~that the~~
 158 ~~employee must meet the conditions of the previous sentence~~ when
 159 the election is received by the third-party administrator. This
 160 paragraph is ~~shall be~~ contingent upon approval from the Internal
 161 Revenue Service for including the choice described herein within
 162 the programs offered by the Florida Retirement System.

163 1. If the employee chooses to move to the ~~Public Employee~~
 164 optional retirement program, the applicable provisions of this
 165 section shall govern the transfer.

166 2. If the employee chooses to move to the defined benefit
 167 program, the employee must transfer from his or her ~~Public~~
 168 ~~Employee~~ optional retirement program account, and from other

169 employee moneys as necessary, a sum representing the present
 170 value of that employee's accumulated benefit obligation
 171 immediately following the time of such movement, determined
 172 assuming that attained service equals the sum of service in the
 173 defined benefit program and service in the ~~Public Employee~~
 174 optional retirement program. Benefit commencement occurs on the
 175 first date the employee is ~~would become~~ eligible for unreduced
 176 benefits, using the discount rate and other relevant actuarial
 177 assumptions that were used to value the ~~Florida Retirement~~
 178 ~~System~~ defined benefit plan liabilities in the most recent
 179 actuarial valuation. For any employee who, at the time of the
 180 second election, already maintains an accrued benefit amount in
 181 the defined benefit program plan, the then-present value of the
 182 ~~such~~ accrued benefit shall be deemed part of the required
 183 transfer amount ~~described in this subparagraph~~. The division
 184 shall ensure that the transfer sum is prepared using a formula
 185 and methodology certified by an enrolled actuary.

186 3. Notwithstanding subparagraph 2., an employee who
 187 chooses to move to the defined benefit program and who became
 188 eligible to participate in the ~~Public Employee~~ optional
 189 retirement program by reason of employment in a regularly
 190 established position with a state employer after June 1, 2002; a
 191 district school board employer after September 1, 2002; or a
 192 local employer after December 1, 2002, must transfer from his or
 193 her ~~Public Employee~~ optional retirement program account, and,
 194 from other employee moneys as necessary, a sum representing the
 195 ~~that~~ employee's actuarial accrued liability.

196 4. An employee's ~~Employees'~~ ability to transfer from the

197 ~~Florida Retirement System~~ defined benefit program to the ~~Public~~
 198 ~~Employee~~ optional retirement program pursuant to paragraphs (a)-
 199 (d), and the ability of a ~~for~~ current employee ~~employees~~ to have
 200 an option to later transfer back into the defined benefit
 201 program under subparagraph 2., shall be deemed a significant
 202 system amendment. Pursuant to s. 121.031(4), any ~~such~~ resulting
 203 unfunded liability arising from actual original transfers from
 204 the defined benefit program to the optional program must ~~shall~~
 205 be amortized within 30 plan years as a separate unfunded
 206 actuarial base independent of the reserve stabilization
 207 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
 208 ~~no~~ direct amortization payment may not ~~shall~~ be calculated for
 209 this base. During this 25-year period, the ~~such~~ separate base
 210 shall be used to offset the impact of employees exercising their
 211 second program election under this paragraph. It is the
 212 ~~legislative~~ intent of the Legislature that the actuarial funded
 213 status of the ~~Florida Retirement System~~ defined benefit program
 214 not be affected ~~plan is neither beneficially nor adversely~~
 215 ~~impacted~~ by such second program elections in any significant
 216 manner, after due recognition of the separate unfunded actuarial
 217 base. Following the ~~this~~ initial 25-year period, any remaining
 218 balance of the original separate base shall be amortized over
 219 the remaining 5 years of the required 30-year amortization
 220 period.

221 5. If the employee chooses to transfer from the optional
 222 retirement program to the defined benefit program and retains an
 223 excess account balance in the optional program after satisfying
 224 the buy-in requirements under this paragraph, the excess may not

225 be distributed until the member retires from the defined benefit
 226 program. The excess account balance may be rolled over to the
 227 defined benefit program and used to purchase service credit or
 228 upgrade creditable service in that program.

229 (6) VESTING REQUIREMENTS.—

230 (a)1. With respect to employer contributions paid on
 231 behalf of the participant to the ~~Public Employee~~ optional
 232 retirement program, plus interest and earnings thereon and less
 233 investment fees and administrative charges, a participant is
 234 ~~shall be~~ vested after completing 1 work year, ~~as defined in s.~~
 235 ~~121.021(54),~~ with an employer, including any service while the
 236 participant was a member of the defined benefit ~~retirement~~
 237 program or an optional retirement program authorized under s.
 238 121.051(2)(c) or s. 121.055(6).

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

252 (b)1. With respect to amounts transferred from the defined

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

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

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

281 (8) ADMINISTRATION OF PROGRAM.—

282 (a) The ~~Public Employee~~ optional retirement program shall
 283 be administered by the state board and affected employers. The
 284 board may ~~is authorized to~~ require oaths, by affidavit or
 285 otherwise, and acknowledgments from persons in connection with
 286 the administration of its statutory duties and responsibilities
 287 for this program under this chapter. An ~~No~~ oath, by affidavit or
 288 otherwise, may not ~~shall~~ be required of an employee participant
 289 at the time of enrollment ~~election~~. Acknowledgment of an
 290 employee's election to participate in the program shall be no
 291 greater than necessary to confirm the employee's election. The
 292 state board shall adopt rules to carry out its statutory duties
 293 with respect to administering the optional retirement program,
 294 including, but not limited to, establishing the roles ~~role~~ and
 295 responsibilities of affected state, local government, and
 296 education-related employers, the state board, the department,
 297 and third-party contractors ~~in administering the Public Employee~~
 298 ~~optional retirement program~~. The department shall adopt rules
 299 necessary to administer ~~implement~~ the optional program in
 300 coordination with the defined benefit ~~retirement~~ program and the
 301 disability benefits available under the optional program.

302 (g) The state board shall develop procedures to receive
 303 and resolve participant complaints against the program, the
 304 third-party administrator, or any program vendor or provider;
 305 shall resolve any conflict between the third-party administrator
 306 and an approved provider if ~~when~~ such conflict threatens the
 307 implementation or administration of the program or the quality
 308 of services to employees; and may resolve any other conflicts.

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309 The third-party administrator shall retain all participant
310 records for at least 5 years for use in resolving any
311 participant conflicts. The state board, the third-party
312 administrator, or a provider is not required to produce
313 documentation or an audio recording to justify action taken with
314 regard to a participant if the action occurred 5 or more years
315 before the complaint is submitted to the state board. It is
316 presumed that all action taken 5 or more years before the
317 complaint is submitted was taken at the request of the
318 participant and with the participant's full knowledge and
319 consent. To overcome this presumption, the participant must
320 present documentary evidence or an audio recording demonstrating
321 otherwise.

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

324 121.4502 Public Employee Optional Retirement Program Trust
325 Fund.—

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

337 withdrawals from the account must endeavor to reduce the account
338 to zero each fiscal year.

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

341 121.591 Benefits payable under the Public Employee
342 Optional Retirement Program of the Florida Retirement System.—
343 Benefits may not be paid under this section unless the member
344 has terminated employment as provided in s. 121.021(39)(a) or is
345 deceased and a proper application has been filed in the manner
346 prescribed by the state board or the department. The state board
347 or department, as appropriate, may cancel an application for
348 retirement benefits when the member or beneficiary fails to
349 timely provide the information and documents required by this
350 chapter and the rules of the state board and department. In
351 accordance with their respective responsibilities as provided
352 herein, the State Board of Administration and the Department of
353 Management Services shall adopt rules establishing procedures
354 for application for retirement benefits and for the cancellation
355 of such application when the required information or documents
356 are not received. The State Board of Administration and the
357 Department of Management Services, as appropriate, are
358 authorized to cash out a de minimis account of a participant who
359 has been terminated from Florida Retirement System covered
360 employment for a minimum of 6 calendar months. A de minimis
361 account is an account containing employer contributions and
362 accumulated earnings of not more than \$5,000 made under the
363 provisions of this chapter. Such cash-out must either be a
364 complete lump-sum liquidation of the account balance, subject to

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365 the provisions of the Internal Revenue Code, or a lump-sum
366 direct rollover distribution paid directly to the custodian of
367 an eligible retirement plan, as defined by the Internal Revenue
368 Code, on behalf of the participant. If any financial instrument
369 issued for the payment of retirement benefits under this section
370 is not presented for payment within 180 days after the last day
371 of the month in which it was originally issued, the third-party
372 administrator or other duly authorized agent of the State Board
373 of Administration shall cancel the instrument and credit the
374 amount of the instrument to the suspense account of the Public
375 Employee Optional Retirement Program Trust Fund authorized under
376 s. 121.4501(6). Any such amounts transferred to the suspense
377 account are payable upon a proper application, not to include
378 earnings thereon, as provided in this section, within 10 years
379 after the last day of the month in which the instrument was
380 originally issued, after which time such amounts and any
381 earnings thereon shall be forfeited. Any such forfeited amounts
382 are assets of the Public Employee Optional Retirement Program
383 Trust Fund and are not subject to the provisions of chapter 717.

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

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

389 1. To the extent vested, benefits are payable only to a
390 participant.

391 2. Benefits shall be paid by the third-party administrator
392 or designated approved providers in accordance with the law, the

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393 contracts, and any applicable board rule or policy.

394 3. To receive benefits, the participant must be terminated
395 from all employment with all Florida Retirement System
396 employers, as provided in s. 121.021(39).

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

404 5. If a member or former member of the Florida Retirement
405 System receives an invalid distribution from the Public Employee
406 Optional Retirement Program Trust Fund, such person must repay
407 the full invalid distribution to the trust fund within 90 days
408 after receipt of final notification by the state board or the
409 third-party administrator that the distribution was invalid. If
410 such person fails to repay the full invalid distribution within
411 90 days after receipt of final notification, the person may be
412 deemed retired from the optional retirement program by the state
413 board, as provided pursuant to s. 121.4501(2) (k) ~~(j)~~, and is
414 subject to s. 121.122. If such person is deemed retired by the
415 state board, any joint and several liability set out in s.
416 121.091(9)(d)2. becomes null and void, and the state board, the
417 department, or the employing agency is not liable for gains on
418 payroll contributions that have not been deposited to the
419 person's account in the retirement program, pending resolution
420 of the invalid distribution. The member or former member who has

421 | been deemed retired or who has been determined by the board to
 422 | have taken an invalid distribution may appeal the agency
 423 | decision through the complaint process as provided under s.
 424 | 121.4501(9)(g)3. As used in this subparagraph, the term "invalid
 425 | distribution" means any distribution from an account in the
 426 | optional retirement program which is taken in violation of this
 427 | section, s. 121.091(9), or s. 121.4501.

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

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

439 | 121.74 Administrative and educational expenses.—In
 440 | addition to contributions required under s. 121.71, effective
 441 | July 1, 2010, through June 30, 2014, employers participating in
 442 | the Florida Retirement System shall contribute an amount equal
 443 | to 0.03 ~~0.05~~ percent of the payroll reported for each class or
 444 | subclass of Florida Retirement System membership; effective July
 445 | 1, 2014, the contribution rate shall be 0.04 percent of the
 446 | payroll reported for each class or subclass of membership. The
 447 | ~~which~~ amount contributed shall be transferred by the Division of
 448 | Retirement from the Florida Retirement System Contributions

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

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

461 121.78 Payment and distribution of contributions.—

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

476 (b) If contributions made by an employer on behalf of

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477 participants of the optional retirement program or accompanying
478 payroll data are not received within the calendar month they are
479 due, including, but not limited to, contribution adjustments as
480 a result of employer errors or corrections, and if that
481 delinquency results in market losses to participants, the
482 employer shall reimburse each participant's account for market
483 losses resulting from the late contributions. If a participant
484 has terminated employment and taken a distribution, the
485 participant is responsible for returning any excess
486 contributions erroneously provided by employers, adjusted for
487 any investment gain or loss incurred during the period such
488 excess contributions were in the participant's ~~Public Employee~~
489 ~~Optional Retirement Program~~ account. The state board ~~of~~
490 ~~Administration~~ or its designated agent shall communicate to
491 terminated participants any obligation to repay such excess
492 contribution amounts. However, the state board ~~of~~
493 ~~Administration~~, its designated agents, the Public Employee
494 Optional Retirement Program Trust Fund, the department ~~of~~
495 ~~Management Services~~, or the Florida Retirement System Trust Fund
496 may ~~shall~~ not incur any loss or gain as a result of an
497 employer's correction of such excess contributions. The third-
498 party administrator, hired by the state board pursuant to s.
499 121.4501(8), shall calculate the market losses for each affected
500 participant. If ~~When~~ contributions made on behalf of
501 participants of the optional retirement program or accompanying
502 payroll data are not received within the calendar month due, the
503 employer shall also pay the cost of the third-party
504 administrator's calculation and reconciliation adjustments

505 resulting from the late contributions. The third-party
 506 administrator shall notify the employer of the results of the
 507 calculations and the total amount due from the employer for such
 508 losses and the costs of calculation and reconciliation. The
 509 employer shall remit to the Division of Retirement the amount
 510 due within 30 ~~10~~ working days after the date of the penalty
 511 notice sent by the division. The division shall transfer that
 512 ~~said~~ amount to the third-party administrator, which ~~who~~ shall
 513 deposit proceeds from the 1-percent assessment and from
 514 individual market losses into participant accounts, as
 515 appropriate. The state board may ~~is authorized to~~ adopt rules to
 516 administer ~~implement~~ the provisions regarding late
 517 contributions, late submission of payroll data, the process for
 518 reimbursing participant accounts for resultant market losses,
 519 and the penalties charged to the employers.

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

530 (d) If contributions made by an employer on behalf of
 531 participants in the optional retirement program are delayed in
 532 posting to participant accounts due to acts of God beyond the

533 | control of the Division of Retirement, the state board, or the
 534 | third-party administrator, as applicable, market losses
 535 | resulting from the late contributions are not payable to the
 536 | participants.

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

539 | 215.44 Board of Administration; powers and duties in
 540 | relation to investment of trust funds.—

541 | (1) Except when otherwise specifically provided by the
 542 | State Constitution and subject to any limitations of the trust
 543 | agreement relating to a trust fund, the Board of Administration,
 544 | ~~hereinafter~~ sometimes referred to in this chapter as "board," or
 545 | "Trustees of the State Board of Administration," composed of the
 546 | Governor as chair, the Chief Financial Officer, and the Attorney
 547 | General, shall invest all the funds in the System Trust Fund, as
 548 | defined in s. 121.021(36), and all other funds specifically
 549 | required by law to be invested by the board pursuant to ss.
 550 | 215.44-215.53 to the fullest extent that is consistent with the
 551 | cash requirements, trust agreement, and investment objectives of
 552 | the fund. Notwithstanding any other law to the contrary, the
 553 | State Board of Administration may invest any funds of any state
 554 | agency or any unit of local government pursuant to the terms of
 555 | a trust agreement with the head of the state agency or the
 556 | governing body of the unit of local government, which trust
 557 | agreement shall govern the investment of such funds, provided
 558 | that the board shall approve the undertaking of such investment
 559 | before execution of the trust agreement by the State Board of
 560 | Administration. The funds and the earnings therefrom are exempt

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561 from the service charge imposed by s. 215.20. As used in this
562 subsection, the term "state agency" has the same meaning as that
563 provided in s. 216.001, and the terms "governing body" and "unit
564 of local government" have the same meaning as that provided in
565 s. 218.403.

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

572 (b) In exercising investment authority pursuant to s.
573 215.47, the board may retain investment advisers or managers, or
574 both, external to in-house staff, to assist the board in
575 carrying out the power specified in paragraph (a).

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

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

582 215.441 Board of Administration; appointment of executive
583 director.—The appointment of the executive director of the State
584 Board of Administration shall be subject to the approval by a
585 majority vote of the Board of Trustees of the State Board of
586 Administration, and the Governor must vote on the prevailing
587 side. Such appointment must be reaffirmed in the same manner by
588 the board of trustees on an annual basis. The executive director

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589 shall, at a minimum, possess substantial experience, knowledge,
590 and expertise in the oversight of investment portfolios and must
591 meet any other requirements determined by the board to be
592 necessary to the overall management and investment of funds.

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

595 215.444 Investment Advisory Council.—

596 (1) There is created a nine-member ~~six-member~~ Investment
597 Advisory Council to review the investments made by the staff of
598 the Board of Administration and to make recommendations to the
599 board regarding investment policy, strategy, and procedures. The
600 council shall meet with staff of the board no less than
601 quarterly and shall provide a quarterly report directly to the
602 Trustees of the State Board of Administration at a meeting of
603 the board.

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

615 (3) In carrying out the provisions of this chapter,
616 members of the Investment Advisory Council shall be officers,

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617 employees, or agents of the state for the purposes of s. 768.28.

618 Section 9. Paragraph (o) is added to subsection (1) of
 619 section 215.47, Florida Statutes, and subsection (5) of that
 620 section is amended, to read:

621 215.47 Investments; authorized securities; loan of
 622 securities.—Subject to the limitations and conditions of the
 623 State Constitution or of the trust agreement relating to a trust
 624 fund, moneys available for investments under ss. 215.44-215.53
 625 may be invested as follows:

626 (1) Without limitation in:

627 (o) Bonds, notes, or obligations described in 26 U.S.C. s.
 628 149(g)(3)(B) if investment in such bonds, notes, or obligations
 629 is necessary in order to comply with covenants in documents or
 630 proceedings relating to bonds issued pursuant to s. 215.555(6).
 631 Investments made pursuant to this paragraph may be purchased
 632 only from the proceeds of bonds issued pursuant to s. 215.555(6)
 633 and must be authorized under documents or proceedings relating
 634 to such bonds.

635 (5) With no more than 35 ~~25~~ percent of any fund in
 636 corporate obligations and securities of any kind of a foreign
 637 corporation or a foreign commercial entity having its principal
 638 office located in any country other than the United States ~~of~~
 639 ~~America~~ or its possessions or territories, not including United
 640 States dollar-denominated securities listed and traded on a
 641 United States exchange which are a part of the ordinary
 642 investment strategy of the board.

643 Section 10. Section 215.52, Florida Statutes, is amended
 644 to read:

645 215.52 Rules and regulations.—The board shall have the
 646 power and authority to make reasonable rules and regulations
 647 necessary or appropriate to carry out the provisions of ss.
 648 215.44-215.53. To ensure full transparency and accountability in
 649 fulfillment of its fiduciary duties, the board may implement any
 650 policies, restrictions, or guidelines necessary to the
 651 application of such provisions, including, but not limited to,
 652 policies, restrictions, or guidelines in the areas of
 653 compliance, ethics, training, audit procedures, service
 654 providers, vendors, and third parties doing business with the
 655 board.

656 Section 11. Paragraph (a) of subsection (8) of section
 657 218.409, Florida Statutes, is amended to read:

658 218.409 Administration of the trust fund; creation of
 659 advisory council.—

660 (8) (a) The principal, and any part thereof, of each ~~and~~
 661 ~~every~~ account constituting the trust fund is ~~shall be~~ subject to
 662 payment at any time from the moneys in the trust fund. However,
 663 the executive director may, in good faith, on the occurrence of
 664 an event that has a material impact on liquidity or operations
 665 of the trust fund, for 48 hours limit contributions to or
 666 withdrawals from the trust fund to ensure that the board can
 667 invest moneys entrusted to it in exercising its fiduciary
 668 responsibility. Such action must ~~shall~~ be immediately disclosed
 669 to all participants, the trustees, the Joint Legislative
 670 Auditing Committee, the Investment Advisory Council, and the
 671 Participant Local Government Advisory Council. The trustees
 672 shall convene an emergency meeting as soon as practicable from

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673 the time the executive director has instituted such measures and
674 review the necessity of those measures. If the trustees are
675 unable to convene an emergency meeting before the expiration of
676 the 48-hour moratorium on contributions and withdrawals, the
677 moratorium may be extended by the executive director until the
678 trustees are able to meet to review the necessity for the
679 moratorium. If the trustees agree with such measures, the
680 trustees shall vote to continue the measures for up to an
681 additional 15 days. The trustees must convene and vote to
682 continue any such measures before ~~prior to~~ the expiration of the
683 time limit set, but in no case may the time limit set by the
684 trustees exceed 15 days.

685 Section 12. Trademarks, copyrights, or patents.—The State
686 Board of Administration, on behalf of the Florida Retirement
687 System or any other trust fund under its jurisdiction, may
688 develop work products that are subject to trademark, copyright,
689 or patent statutes. The board may, in its own name or through
690 the growth initiative program created pursuant to s. 215.47(7),
691 Florida Statutes, or any other program developed with or for the
692 board:

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

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

700 (3) Take any action necessary, including legal action, to

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701 protect its work products against improper or unlawful use or
702 infringement.

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

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

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

709 Section 13. This act shall take effect July 1, 2010.