

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 resolve complaints; providing for the
9 use of records in resolving such complaints; clarifying
10 the state board's rule authority with respect to the
11 program; amending s. 121.4502, F.S.; establishing a
12 forfeiture account in the Public Employee Retirement
13 Program Trust Fund; providing for the use of funds in the
14 account; amending s. 121.591, F.S.; conforming a cross-
15 reference; permitting an application for benefits under
16 the optional retirement program to be submitted by
17 electronic means; amending s. 121.74, F.S.; revising the
18 contribution rates for employers participating in the
19 Florida Retirement System; amending s. 121.78, F.S.;
20 exempting the Division of Retirement, the state board, and
21 the third-party administrator from liability for market
22 losses due to acts of God; amending s. 215.44, F.S.;
23 providing reporting requirements for the state board;
24 amending s. 215.441, F.S.; providing minimum
25 qualifications for the executive director of the state
26 board; amending s. 215.444, F.S.; increasing membership of
27 the Investment Advisory Council; revising membership
28 requirements; providing council meeting and reporting

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

46
47 Be It Enacted by the Legislature of the State of Florida:

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

52 121.4501 Public Employee Optional Retirement Program.—

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

54 (a) "Approved provider" or "provider" means a private
55 sector company that is selected and approved by the state board
56 to offer one or more investment products or services to the

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

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

84 (c) "Covered employment" means employment in a regularly

85 established position as defined in s. 121.021~~(52)~~.

86 (d) "Defined benefit program" means the defined benefit
 87 program of the Florida Retirement System administered under part
 88 I of this chapter ~~"Department" means the Department of~~
 89 ~~Management Services.~~

90 (e) "Division" means the Division of Retirement within the
 91 department ~~of Management Services.~~

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

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

97 1. Is a member of, or is eligible for membership in, the
 98 Florida Retirement System, including any renewed member of the
 99 Florida Retirement System initially enrolled before July 1,
 100 2010; or

101 2. Participates in, or is eligible to participate in, the
 102 Senior Management Service Optional Annuity Program as
 103 established under s. 121.055(6), the State Community College
 104 System Optional Retirement Program as established under s.
 105 121.051(2)(c), or the State University System Optional
 106 Retirement Program established under s. 121.35.

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

113 Program established under s. 121.35.

114 (h)~~(g)~~ "Employer" means an employer, as defined in s.
115 121.021~~(10)~~, of an eligible employee.

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

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

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

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

133 ~~(k) "State board" or "board" means the State Board of~~
134 ~~Administration.~~

135 ~~(l) "Trustees" means Trustees of the State Board of~~
136 ~~Administration.~~

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

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141 (4) PARTICIPATION; ENROLLMENT.—

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

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

168 2. If the employee chooses to move to the defined benefit

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

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

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197 ~~that~~ employee's actuarial accrued liability.

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

223 5. If the employee chooses to transfer from the optional
224 retirement program to the defined benefit program and retains an

225 excess account balance in the optional program after satisfying
 226 the buy-in requirements under this paragraph, the excess may not
 227 be distributed until the member retires from the defined benefit
 228 program. The excess account balance may be rolled over to the
 229 defined benefit program and used to purchase service credit or
 230 upgrade creditable service in that program.

231 (6) VESTING REQUIREMENTS.—

232 (a)1. With respect to employer contributions paid on
 233 behalf of the participant to the ~~Public Employee~~ optional
 234 retirement program, plus interest and earnings thereon and less
 235 investment fees and administrative charges, a participant is
 236 ~~shall be~~ vested after completing 1 work year, ~~as defined in s.~~
 237 ~~121.021(54),~~ with an employer, including any service while the
 238 participant was a member of the defined benefit ~~retirement~~
 239 program or an optional retirement program authorized under s.
 240 121.051(2)(c) or s. 121.055(6).

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

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253 | suspense account.

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

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

279 | (c) Any nonvested accumulations transferred from a
280 | participant's account to the suspense account shall be forfeited

281 by the participant if the participant is not reemployed as an
 282 eligible employee within 5 years after termination.

283 (8) ADMINISTRATION OF PROGRAM.—

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

304 (g) The state board shall receive and resolve participant
 305 complaints against the program, the third-party administrator,
 306 or any program vendor or provider; shall resolve any conflict
 307 between the third-party administrator and an approved provider
 308 if ~~when~~ such conflict threatens the implementation or

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

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

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

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

337 possible considering the state board's fiduciary duty. Expected
338 withdrawals from the account must endeavor to reduce the account
339 to zero each fiscal year.

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

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

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

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

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

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

392 2. Benefits shall be paid by the third-party administrator

393 or designated approved providers in accordance with the law, the
394 contracts, and any applicable board rule or policy.

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

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

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

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

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

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

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

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

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

462 121.78 Payment and distribution of contributions.—

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

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

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

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

531 (d) If contributions made by an employer on behalf of
532 participants in the optional retirement program are delayed in

533 posting to participant accounts due to acts of God beyond the
 534 control of the Division of Retirement, the state board, or the
 535 third-party administrator, as applicable, market losses
 536 resulting from the late contributions are not payable to the
 537 participants.

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

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

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

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

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

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

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

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

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

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

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

596 215.444 Investment Advisory Council.—

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

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

616 (3) In carrying out the provisions of this chapter,

617 members of the Investment Advisory Council shall be officers,
 618 employees, or agents of the state for the purposes of s. 768.28.

619 Section 9. Paragraphs (b) and (c) of subsection (1),
 620 paragraph (a) of subsection (2), and subsection (5) of section
 621 215.47, Florida Statutes, are amended, and paragraph (o) is
 622 added to subsection (1) of that section, to read:

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

628 (1) Without limitation in:

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

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

640 (o) Bonds, notes, or obligations described in 26 U.S.C. s.
 641 149(g)(3)(B), if investment in such bonds, notes, or obligations
 642 is necessary in order to comply with covenants in documents or
 643 proceedings relating to bonds issued pursuant to s. 215.555(6).
 644 Investments made pursuant to this paragraph may be purchased

645 only from the proceeds of bonds issued pursuant to s. 215.555(6)
 646 and must be authorized under documents or proceedings relating
 647 to such bonds.

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

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

655 (5) With no more than 35 ~~25~~ percent of any fund in
 656 corporate obligations and securities of any kind of a foreign
 657 corporation or a foreign commercial entity having its principal
 658 office located in any country other than the United States ~~of~~
 659 ~~America~~ or its possessions or territories, not including United
 660 States dollar-denominated securities listed and traded on a
 661 United States exchange which are a part of the ordinary
 662 investment strategy of the board.

663 Section 10. Section 215.52, Florida Statutes, is amended
 664 to read:

665 215.52 Rules and regulations.—The board shall have the
 666 power and authority to make reasonable rules and regulations
 667 necessary to carry out the provisions of ss. 215.44-215.53. The
 668 rules shall provide for full transparency and accountability in
 669 fulfillment of the board's fiduciary duties in the areas of
 670 compliance, ethics, training, audit procedures, service
 671 providers, vendors, and third parties doing business with the
 672 board.

673 Section 11. Paragraph (a) of subsection (8) of section
 674 218.409, Florida Statutes, is amended to read:

675 218.409 Administration of the trust fund; creation of
 676 advisory council.—

677 (8)(a) The principal, and any part thereof, of each ~~and~~
 678 ~~every~~ account constituting the trust fund is ~~shall be~~ subject to
 679 payment at any time from the moneys in the trust fund. However,
 680 the executive director may, in good faith, on the occurrence of
 681 an event that has a material impact on liquidity or operations
 682 of the trust fund, for 48 hours limit contributions to or
 683 withdrawals from the trust fund to ensure that the board can
 684 invest moneys entrusted to it in exercising its fiduciary
 685 responsibility. Such action must ~~shall~~ be immediately disclosed
 686 to all participants, the trustees, the Joint Legislative
 687 Auditing Committee, the Investment Advisory Council, and the
 688 Participant Local Government Advisory Council. The trustees
 689 shall convene an emergency meeting as soon as practicable from
 690 the time the executive director has instituted such measures and
 691 review the necessity of those measures. If the trustees are
 692 unable to convene an emergency meeting before the expiration of
 693 the 48-hour moratorium on contributions and withdrawals, the
 694 moratorium may be extended by the executive director until the
 695 trustees are able to meet to review the necessity for the
 696 moratorium. If the trustees agree with such measures, the
 697 trustees shall vote to continue the measures for up to an
 698 additional 15 days. The trustees must convene and vote to
 699 continue any such measures before ~~prior to~~ the expiration of the
 700 time limit set, but in no case may the time limit set by the

701 trustees exceed 15 days.

702 Section 12. Trademarks, copyrights, or patents.—The State
 703 Board of Administration, on behalf of the Florida Retirement
 704 System or any other trust fund under its jurisdiction, may
 705 develop work products that are subject to trademark, copyright,
 706 or patent statutes. The board may, in its own name or through
 707 the growth initiative program created pursuant to s. 215.47(7),
 708 Florida Statutes, or any other program developed with or for the
 709 board:

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

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

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

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

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

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

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