

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 expanding the authority of the state board to use trust
24 agreements; providing reporting requirements for the state
25 board; amending s. 215.441, F.S.; providing minimum
26 qualifications for the executive director of the state
27 board; amending s. 215.444, F.S.; increasing membership of
28 the Investment Advisory Council; revising membership

29 requirements; providing council meeting and reporting
 30 requirements; amending s. 215.47, F.S.; expanding the
 31 types of investments that the state board is authorized to
 32 make; authorizing moneys available for investment by the
 33 state 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 requirements for rules made by the state
 38 board with respect to certain fiduciary duties; amending
 39 s. 218.409, F.S.; providing for extending a moratorium on
 40 contributions to or withdrawals from the Local Government
 41 Surplus Funds Trust Fund under certain circumstances;
 42 authorizing the state board to develop work products that
 43 are subject to trademark, copyright, or patent; providing
 44 an effective date.

45

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

47

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

51 121.4501 Public Employee Optional Retirement Program.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

140 (4) PARTICIPATION; ENROLLMENT.—

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

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

167 2. If the employee chooses to move to the defined benefit
168 program, the employee must transfer from his or her ~~Public~~

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

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

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

222 5. If the employee chooses to transfer from the optional
 223 retirement program to the defined benefit program and retains an
 224 excess account balance in the optional program after satisfying

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

230 (6) VESTING REQUIREMENTS.—

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

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

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

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

278 (c) Any nonvested accumulations transferred from a
 279 participant's account to the suspense account shall be forfeited
 280 by the participant if the participant is not reemployed as an

281 eligible employee within 5 years after termination.

282 (8) ADMINISTRATION OF PROGRAM.—

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

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

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309 employees; and may resolve any other conflicts. The third-party
310 administrator shall retain all participant records for at least
311 5 years for use in resolving any participant conflicts. The
312 state board, the third-party administrator, or a provider is not
313 required to produce documentation or an audio recording to
314 justify action taken with regard to a participant if the action
315 occurred 5 or more years before the complaint is submitted to
316 the state board. It is presumed that all action taken 5 or more
317 years before the complaint is submitted was taken at the request
318 of the 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

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

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

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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 ~~40~~ 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, any state university or college, ~~or~~ any unit of local
 555 government, or any direct-support organization thereof pursuant
 556 to the terms of a trust agreement with the head of the state
 557 agency or the governing body of the state university or college,
 558 unit of local government, or direct-support organization
 559 thereof, or pursuant to the enrollment requirements stated in s.
 560 218.407, and may invest such funds in the Local Government

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561 Surplus Funds Trust Fund created by s. 218.405., ~~which trust~~
 562 ~~agreement shall govern the investment of such funds, provided~~
 563 ~~that~~ The board shall approve the undertaking of investments
 564 subject to a trust agreement ~~such investment~~ before execution of
 565 such ~~the~~ trust agreement by the State Board of Administration.
 566 The funds and the earnings therefrom are exempt from the service
 567 charge imposed by s. 215.20. As used in this subsection, the
 568 term "state agency" has the same meaning as that provided in s.
 569 216.001, and the terms "governing body" and "unit of local
 570 government" have the same meaning as that provided in s.
 571 218.403.

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

578 (b) In exercising investment authority pursuant to s.
 579 215.47, the board may retain investment advisers or managers, or
 580 both, external to in-house staff, to assist the board in
 581 carrying out the power specified in paragraph (a).

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

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

588 215.441 Board of Administration; appointment of executive

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589 director.—The appointment of the executive director of the State
590 Board of Administration shall be subject to the approval by a
591 majority vote of the Board of Trustees of the State Board of
592 Administration, and the Governor must vote on the prevailing
593 side. Such appointment must be reaffirmed in the same manner by
594 the board of trustees on an annual basis. The executive director
595 shall, at a minimum, possess substantial experience, knowledge,
596 and expertise in the oversight of investment portfolios and must
597 meet any other requirements determined by the board to be
598 necessary to the overall management and investment of funds.

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

601 215.444 Investment Advisory Council.—

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

610 (2) The members of the council shall be appointed by the
611 board as a resource to the Trustees of the State Board of
612 Administration and shall be subject to confirmation by the
613 Senate. These individuals shall possess special knowledge,
614 experience, and familiarity with ~~financial investments and~~
615 portfolio management, institutional investments, and fiduciary
616 responsibilities. Members shall be appointed for 4-year terms. A

617 vacancy shall be filled for the remainder of the unexpired term.
 618 The council shall annually elect a chair and a vice chair from
 619 its membership. A member may not be elected to consecutive terms
 620 as chair or vice chair.

621 Section 9. Paragraphs (b) and (c) of subsection (1),
 622 paragraph (a) of subsection (2), and subsection (5) of section
 623 215.47, Florida Statutes, are amended, and paragraph (o) is
 624 added to subsection (1) of that section, to read:

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

630 (1) Without limitation in:

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

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

642 (o) Bonds, notes, or obligations described in 26 U.S.C. s.
 643 149(g) (3) (B), if investment in such bonds, notes, or obligations
 644 is necessary in order to comply with covenants in documents or

645 proceedings relating to bonds issued pursuant to s. 215.555(6).
 646 Investments made pursuant to this paragraph may be purchased
 647 only from the proceeds of bonds issued pursuant to s. 215.555(6)
 648 and must be authorized under documents or proceedings relating
 649 to such bonds.

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

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

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

665 Section 10. Section 215.52, Florida Statutes, is amended
 666 to read:

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

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.