

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; requiring that the state board create an audit
25 committee for specified purposes; providing for duties,
26 membership, and term limits; requiring that the state
27 board annually produce and report to the Legislature
28 certain financial statements; requiring that such

29 | statements be audited by an independent third-party firm
30 | under the direction of the audit committee; requiring that
31 | the state board meet at specified intervals and receive
32 | reports containing certain information from specified
33 | entities; amending s. 215.441, F.S.; providing minimum
34 | qualifications for the executive director of the state
35 | board; amending s. 215.444, F.S.; increasing membership of
36 | the Investment Advisory Council; revising membership
37 | requirements; providing council meeting and reporting
38 | requirements; providing additional requirements for
39 | council members; authorizing the council to create
40 | subcommittees; amending s. 215.47, F.S.; expanding the
41 | types of investments that the state board is authorized to
42 | make; authorizing moneys available for investment by the
43 | state board to be invested in certain federally tax-exempt
44 | bonds, notes, or obligations not subject to the federal
45 | alternative minimum tax; providing funds that may be
46 | invested in a foreign entity; creating s. 215.4754, F.S.;
47 | providing intent; requiring that the contract for an
48 | investment adviser or manager include a standard of
49 | conduct; providing for termination of the contract of an
50 | adviser or manager who violates the standard of conduct;
51 | prohibiting a member of the council from contracting with
52 | or providing services for the investment of certain funds
53 | during his or her service on the council and for a
54 | specified period thereafter; creating s. 215.4755, F.S.;
55 | requiring that an investment advisor or manager annually
56 | certify to the state board certain activities regarding

57 investment decisions and standards of behavior; requiring
 58 that certain disclosures be made at the request of the
 59 state board regarding pecuniary interests of an investment
 60 adviser or manager; amending s. 215.52, F.S.; providing
 61 requirements for rules made by the state board with
 62 respect to certain fiduciary duties; amending s. 218.409,
 63 F.S.; providing for extending a moratorium on
 64 contributions to or withdrawals from the Local Government
 65 Surplus Funds Trust Fund under certain circumstances;
 66 authorizing the state board to develop work products that
 67 are subject to trademark, copyright, or patent; providing
 68 an effective date.

69

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

71

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

75 121.4501 Public Employee Optional Retirement Program.—

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

77 (a) "Approved provider" or "provider" means a private
 78 sector company that is selected and approved by the state board
 79 to offer one or more investment products or services to the
 80 ~~Public Employee~~ optional retirement program. The term includes a
 81 bundled provider that offers participants a range of
 82 individually allocated or unallocated investment products and
 83 may offer a range of administrative and customer services, which
 84 may include accounting and administration of individual

85 participant benefits and contributions; individual participant
 86 recordkeeping; asset purchase, control, and safekeeping; direct
 87 execution of the participant's instructions as to asset and
 88 contribution allocation; calculation of daily net asset values;
 89 direct access to participant account information; periodic
 90 reporting to participants, at least quarterly, on account
 91 balances and transactions; guidance, advice, and allocation
 92 services directly relating to the provider's ~~its~~ own investment
 93 options or products, but only if the bundled provider complies
 94 with the standard of care of s. 404(a)(1)(A-B) of the Employee
 95 Retirement Income Security Act of 1974 (ERISA) and if providing
 96 such guidance, advice, or allocation services does not
 97 constitute a prohibited transaction under s. 4975(c)(1) of the
 98 Internal Revenue Code or s. 406 of ERISA, notwithstanding that
 99 such prohibited transaction provisions do not apply to the
 100 optional retirement program; a broad array of distribution
 101 options; asset allocation; and retirement counseling and
 102 education. Private sector companies include investment
 103 management companies, insurance companies, depositories, and
 104 mutual fund companies.

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

107 (c) "Covered employment" means employment in a regularly
 108 established position as defined in s. 121.021~~(52)~~.

109 (d) "Defined benefit program" means the defined benefit
 110 program of the Florida Retirement System administered under part
 111 I of this chapter ~~"Department" means the Department of~~
 112 ~~Management Services.~~

113 (e) "Division" means the Division of Retirement within the
 114 department ~~of Management Services~~.

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

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

120 1. Is a member of, or is eligible for membership in, the
 121 Florida Retirement System, including any renewed member of the
 122 Florida Retirement System initially enrolled before July 1,
 123 2010; or

124 2. Participates in, or is eligible to participate in, the
 125 Senior Management Service Optional Annuity Program as
 126 established under s. 121.055(6), the State Community College
 127 System Optional Retirement Program as established under s.
 128 121.051(2)(c), or the State University System Optional
 129 Retirement Program established under s. 121.35.

130
 131 The term does not include any member participating in the
 132 Deferred Retirement Option Program established under s.
 133 121.091(13), a retiree of a state-administered retirement system
 134 initially reemployed on or after July 1, 2010, or a mandatory
 135 participant of the State University System Optional Retirement
 136 Program established under s. 121.35.

137 (h)~~(g)~~ "Employer" means an employer, as defined in s.
 138 121.021~~(10)~~, of an eligible employee.

139 (i) "Optional retirement program" or "optional program"
 140 means the Public Employee Optional Retirement Program

141 established under this part.

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

147 ~~(i) "Public Employee Optional Retirement Program,"~~
 148 ~~"optional program," or "optional retirement program" means the~~
 149 ~~alternative defined contribution retirement program established~~
 150 ~~under this section.~~

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

156 ~~(k) "State board" or "board" means the State Board of~~
 157 ~~Administration.~~

158 ~~(l) "Trustees" means Trustees of the State Board of~~
 159 ~~Administration.~~

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

164 (4) PARTICIPATION; ENROLLMENT.—

165 (e) After the period during which an eligible employee had
 166 the choice to elect the defined benefit program or the ~~Public~~
 167 ~~Employee~~ optional retirement program, or the month following the
 168 receipt of the eligible employee's plan election, if sooner, the

169 employee shall have one opportunity, at the employee's
 170 discretion, to choose to move from the defined benefit program
 171 to the ~~Public Employee~~ optional retirement program or from the
 172 ~~Public Employee~~ optional retirement program to the defined
 173 benefit program. Eligible employees may elect to move between
 174 Florida Retirement System programs only if they are earning
 175 service credit in an employer-employee relationship consistent
 176 with ~~the requirements under~~ s. 121.021(17)(b), excluding leaves
 177 of absence without pay. Effective July 1, 2005, such elections
 178 are ~~shall be~~ effective on the first day of the month following
 179 the receipt of the election by the third-party administrator and
 180 are not subject to the requirements regarding an employer-
 181 employee relationship or receipt of contributions for the
 182 eligible employee in the effective month, except ~~that the~~
 183 ~~employee must meet the conditions of the previous sentence~~ when
 184 the election is received by the third-party administrator. This
 185 paragraph is ~~shall be~~ contingent upon approval from the Internal
 186 Revenue Service for including the choice described herein within
 187 the programs offered by the Florida Retirement System.

188 1. If the employee chooses to move to the ~~Public Employee~~
 189 optional retirement program, the applicable provisions of this
 190 section shall govern the transfer.

191 2. If the employee chooses to move to the defined benefit
 192 program, the employee must transfer from his or her ~~Public~~
 193 ~~Employee~~ optional retirement program account, and from other
 194 employee moneys as necessary, a sum representing the present
 195 value of that employee's accumulated benefit obligation
 196 immediately following the time of such movement, determined

197 assuming that attained service equals the sum of service in the
 198 defined benefit program and service in the ~~Public Employee~~
 199 optional retirement program. Benefit commencement occurs on the
 200 first date the employee is ~~would become~~ eligible for unreduced
 201 benefits, using the discount rate and other relevant actuarial
 202 assumptions that were used to value the ~~Florida Retirement~~
 203 ~~System~~ defined benefit plan liabilities in the most recent
 204 actuarial valuation. For any employee who, at the time of the
 205 second election, already maintains an accrued benefit amount in
 206 the defined benefit program plan, the then-present value of the
 207 ~~such~~ accrued benefit shall be deemed part of the required
 208 transfer amount ~~described in this subparagraph~~. The division
 209 shall ensure that the transfer sum is prepared using a formula
 210 and methodology certified by an enrolled actuary.

211 3. Notwithstanding subparagraph 2., an employee who
 212 chooses to move to the defined benefit program and who became
 213 eligible to participate in the ~~Public Employee~~ optional
 214 retirement program by reason of employment in a regularly
 215 established position with a state employer after June 1, 2002; a
 216 district school board employer after September 1, 2002; or a
 217 local employer after December 1, 2002, must transfer from his or
 218 her ~~Public Employee~~ optional retirement program account, and
 219 from other employee moneys as necessary, a sum representing the
 220 ~~that~~ employee's actuarial accrued liability.

221 4. An employee's ~~Employees'~~ ability to transfer from the
 222 ~~Florida Retirement System~~ defined benefit program to the ~~Public~~
 223 ~~Employee~~ optional retirement program pursuant to paragraphs (a)-
 224 (d), and the ability of a ~~for~~ current employee ~~employees~~ to have

225 an option to later transfer back into the defined benefit
226 program under subparagraph 2., shall be deemed a significant
227 system amendment. Pursuant to s. 121.031(4), any ~~such~~ resulting
228 unfunded liability arising from actual original transfers from
229 the defined benefit program to the optional program must ~~shall~~
230 be amortized within 30 plan years as a separate unfunded
231 actuarial base independent of the reserve stabilization
232 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
233 ~~no~~ direct amortization payment may not ~~shall~~ be calculated for
234 this base. During this 25-year period, the ~~such~~ separate base
235 shall be used to offset the impact of employees exercising their
236 second program election under this paragraph. It is the
237 ~~legislative~~ intent of the Legislature that the actuarial funded
238 status of the ~~Florida Retirement System~~ defined benefit program
239 not be affected ~~plan is neither beneficially nor adversely~~
240 ~~impacted~~ by such second program elections in any significant
241 manner, after due recognition of the separate unfunded actuarial
242 base. Following the ~~this~~ initial 25-year period, any remaining
243 balance of the original separate base shall be amortized over
244 the remaining 5 years of the required 30-year amortization
245 period.

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

253 upgrade creditable service in that program.

254 (6) VESTING REQUIREMENTS.—

255 (a)1. With respect to employer contributions paid on
 256 behalf of the participant to the ~~Public Employee~~ optional
 257 retirement program, plus interest and earnings thereon and less
 258 investment fees and administrative charges, a participant is
 259 ~~shall be~~ vested after completing 1 work year, ~~as defined in s.~~
 260 ~~121.021(54)~~, with an employer, including any service while the
 261 participant was a member of the defined benefit ~~retirement~~
 262 program or an optional retirement program authorized under s.
 263 121.051(2)(c) or s. 121.055(6).

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 (b)1. With respect to amounts transferred from the defined
 278 benefit program to the investment program, plus interest and
 279 earnings, and less investment fees and administrative charges, a
 280 participant shall be vested in the amount transferred ~~from the~~

281 ~~defined benefit program, plus interest and earnings thereon and~~
 282 ~~less administrative charges and investment fees,~~ upon meeting
 283 the service requirements for the participant's membership class
 284 as set forth in s. 121.021(29). The third-party administrator
 285 shall account for such amounts for each participant. The
 286 division shall notify the participant and the third-party
 287 administrator when the participant has satisfied the vesting
 288 period for Florida Retirement System purposes.

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

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

306 (8) ADMINISTRATION OF PROGRAM.—

307 (a) The ~~Public Employee~~ optional retirement program shall
 308 be administered by the state board and affected employers. The

309 board may ~~is authorized to~~ require oaths, by affidavit or
 310 otherwise, and acknowledgments from persons in connection with
 311 the administration of its statutory duties and responsibilities
 312 for this program under this chapter. An ~~No~~ oath, by affidavit or
 313 otherwise, may not ~~shall~~ be required of an employee participant
 314 at the time of enrollment ~~election~~. Acknowledgment of an
 315 employee's election to participate in the program shall be no
 316 greater than necessary to confirm the employee's election. The
 317 state board shall adopt rules to carry out its statutory duties
 318 with respect to administering the optional retirement program,
 319 including establishing the roles ~~role~~ and responsibilities of
 320 affected state, local government, and education-related
 321 employers, the state board, the department, and third-party
 322 contractors ~~in administering the Public Employee optional~~
 323 ~~retirement program~~. The department shall adopt rules necessary
 324 to administer ~~implement~~ the optional program in coordination
 325 with the defined benefit ~~retirement~~ program and the disability
 326 benefits available under the optional program.

327 (g) The state board shall receive and resolve participant
 328 complaints against the program, the third-party administrator,
 329 or any program vendor or provider; shall resolve any conflict
 330 between the third-party administrator and an approved provider
 331 if ~~when~~ such conflict threatens the implementation or
 332 administration of the program or the quality of services to
 333 employees; and may resolve any other conflicts. The third-party
 334 administrator shall retain all participant records for at least
 335 5 years for use in resolving any participant conflicts. The
 336 state board, the third-party administrator, or a provider is not

337 required to produce documentation or an audio recording to
338 justify action taken with regard to a participant if the action
339 occurred 5 or more years before the complaint is submitted to
340 the state board. It is presumed that all action taken 5 or more
341 years before the complaint is submitted was taken at the request
342 of the participant and with the participant's full knowledge and
343 consent. To overcome this presumption, the participant must
344 present documentary evidence or an audio recording demonstrating
345 otherwise.

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

348 121.4502 Public Employee Optional Retirement Program Trust
349 Fund.—

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

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

365 121.591 Benefits payable under the Public Employee
366 Optional Retirement Program of the Florida Retirement System.—
367 Benefits may not be paid under this section unless the member
368 has terminated employment as provided in s. 121.021(39)(a) or is
369 deceased and a proper application has been filed in the manner
370 prescribed by the state board or the department. The state board
371 or department, as appropriate, may cancel an application for
372 retirement benefits when the member or beneficiary fails to
373 timely provide the information and documents required by this
374 chapter and the rules of the state board and department. In
375 accordance with their respective responsibilities as provided
376 herein, the State Board of Administration and the Department of
377 Management Services shall adopt rules establishing procedures
378 for application for retirement benefits and for the cancellation
379 of such application when the required information or documents
380 are not received. The State Board of Administration and the
381 Department of Management Services, as appropriate, are
382 authorized to cash out a de minimis account of a participant who
383 has been terminated from Florida Retirement System covered
384 employment for a minimum of 6 calendar months. A de minimis
385 account is an account containing employer contributions and
386 accumulated earnings of not more than \$5,000 made under the
387 provisions of this chapter. Such cash-out must either be a
388 complete lump-sum liquidation of the account balance, subject to
389 the provisions of the Internal Revenue Code, or a lump-sum
390 direct rollover distribution paid directly to the custodian of
391 an eligible retirement plan, as defined by the Internal Revenue
392 Code, on behalf of the participant. If any financial instrument

393 issued for the payment of retirement benefits under this section
394 is not presented for payment within 180 days after the last day
395 of the month in which it was originally issued, the third-party
396 administrator or other duly authorized agent of the State Board
397 of Administration shall cancel the instrument and credit the
398 amount of the instrument to the suspense account of the Public
399 Employee Optional Retirement Program Trust Fund authorized under
400 s. 121.4501(6). Any such amounts transferred to the suspense
401 account are payable upon a proper application, not to include
402 earnings thereon, as provided in this section, within 10 years
403 after the last day of the month in which the instrument was
404 originally issued, after which time such amounts and any
405 earnings thereon shall be forfeited. Any such forfeited amounts
406 are assets of the Public Employee Optional Retirement Program
407 Trust Fund and are not subject to the provisions of chapter 717.

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

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

413 1. To the extent vested, benefits are payable only to a
414 participant.

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

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

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

428 5. If a member or former member of the Florida Retirement
429 System receives an invalid distribution from the Public Employee
430 Optional Retirement Program Trust Fund, such person must repay
431 the full invalid distribution to the trust fund within 90 days
432 after receipt of final notification by the state board or the
433 third-party administrator that the distribution was invalid. If
434 such person fails to repay the full invalid distribution within
435 90 days after receipt of final notification, the person may be
436 deemed retired from the optional retirement program by the state
437 board, as provided pursuant to s. 121.4501(2) (k) ~~(j)~~, and is
438 subject to s. 121.122. If such person is deemed retired by the
439 state board, any joint and several liability set out in s.
440 121.091(9)(d)2. becomes null and void, and the state board, the
441 department, or the employing agency is not liable for gains on
442 payroll contributions that have not been deposited to the
443 person's account in the retirement program, pending resolution
444 of the invalid distribution. The member or former member who has
445 been deemed retired or who has been determined by the board to
446 have taken an invalid distribution may appeal the agency
447 decision through the complaint process as provided under s.
448 121.4501(9)(g)3. As used in this subparagraph, the term "invalid

449 distribution" means any distribution from an account in the
 450 optional retirement program which is taken in violation of this
 451 section, s. 121.091(9), or s. 121.4501.

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

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

463 121.74 Administrative and educational expenses.—In
 464 addition to contributions required under s. 121.71, effective
 465 July 1, 2010, through June 30, 2014, employers participating in
 466 the Florida Retirement System shall contribute an amount equal
 467 to 0.03 ~~0.05~~ percent of the payroll reported for each class or
 468 subclass of Florida Retirement System membership; effective July
 469 1, 2014, the contribution rate shall be 0.04 percent of the
 470 payroll reported for each class or subclass of membership. The
 471 ~~which~~ amount contributed shall be transferred by the Division of
 472 Retirement from the Florida Retirement System Contributions
 473 Clearing Trust Fund to the State Board of Administration's
 474 Administrative Trust Fund to offset the costs of administering
 475 the optional retirement program and the costs of providing
 476 educational services to participants in the defined benefit

477 program and the optional retirement program. Approval of the
478 trustees ~~of the State Board of Administration~~ is required before
479 ~~prior to~~ the expenditure of these funds. Payments for third-
480 party administrative or educational expenses shall be made only
481 pursuant to the terms of the approved contracts for such
482 services.

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

485 121.78 Payment and distribution of contributions.—

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

500 (b) If contributions made by an employer on behalf of
501 participants of the optional retirement program or accompanying
502 payroll data are not received within the calendar month they are
503 due, including, but not limited to, contribution adjustments as
504 a result of employer errors or corrections, and if that

505 delinquency results in market losses to participants, the
506 employer shall reimburse each participant's account for market
507 losses resulting from the late contributions. If a participant
508 has terminated employment and taken a distribution, the
509 participant is responsible for returning any excess
510 contributions erroneously provided by employers, adjusted for
511 any investment gain or loss incurred during the period such
512 excess contributions were in the participant's ~~Public Employee~~
513 ~~Optional Retirement Program~~ account. The state board of
514 ~~Administration~~ or its designated agent shall communicate to
515 terminated participants any obligation to repay such excess
516 contribution amounts. However, the state board of
517 ~~Administration~~, its designated agents, the Public Employee
518 Optional Retirement Program Trust Fund, the department of
519 ~~Management Services~~, or the Florida Retirement System Trust Fund
520 may shall not incur any loss or gain as a result of an
521 employer's correction of such excess contributions. The third-
522 party administrator, hired by the state board pursuant to s.
523 121.4501(8), shall calculate the market losses for each affected
524 participant. If ~~When~~ contributions made on behalf of
525 participants of the optional retirement program or accompanying
526 payroll data are not received within the calendar month due, the
527 employer shall also pay the cost of the third-party
528 administrator's calculation and reconciliation adjustments
529 resulting from the late contributions. The third-party
530 administrator shall notify the employer of the results of the
531 calculations and the total amount due from the employer for such
532 losses and the costs of calculation and reconciliation. The

533 employer shall remit to the Division of Retirement the amount
534 due within 30 ~~10~~ working days after the date of the penalty
535 notice sent by the division. The division shall transfer that
536 ~~said~~ amount to the third-party administrator, which ~~who~~ shall
537 deposit proceeds from the 1-percent assessment and from
538 individual market losses into participant accounts, as
539 appropriate. The state board may ~~is authorized to~~ adopt rules to
540 administer ~~implement~~ the provisions regarding late
541 contributions, late submission of payroll data, the process for
542 reimbursing participant accounts for resultant market losses,
543 and the penalties charged to the employers.

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

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

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

563 215.44 Board of Administration; powers and duties in
 564 relation to investment of trust funds.—

565 (1) Except when otherwise specifically provided by the
 566 State Constitution and subject to any limitations of the trust
 567 agreement relating to a trust fund, the Board of Administration,
 568 ~~hereinafter~~ sometimes referred to in this chapter as "board," or
 569 "Trustees of the State Board of Administration," composed of the
 570 Governor as chair, the Chief Financial Officer, and the Attorney
 571 General, shall invest all the funds in the System Trust Fund, as
 572 defined in s. 121.021(36), and all other funds specifically
 573 required by law to be invested by the board pursuant to ss.
 574 215.44-215.53 to the fullest extent that is consistent with the
 575 cash requirements, trust agreement, and investment objectives of
 576 the fund. Notwithstanding any other law to the contrary, the
 577 State Board of Administration may invest any funds of any state
 578 agency, any state university or college, ~~or~~ any unit of local
 579 government, or any direct-support organization thereof pursuant
 580 to the terms of a trust agreement with the head of the state
 581 agency or the governing body of the state university or college,
 582 unit of local government, or direct-support organization
 583 thereof, or pursuant to the enrollment requirements stated in s.
 584 218.407, and may invest such funds in the Local Government
 585 Surplus Funds Trust Fund created by s. 218.405., ~~which trust~~
 586 ~~agreement shall govern the investment of such funds, provided~~
 587 ~~that~~ The board shall approve the undertaking of investments
 588 subject to a trust agreement ~~such investment~~ before execution of

589 such ~~the~~ trust agreement by the State Board of Administration.
590 The funds and the earnings therefrom are exempt from the service
591 charge imposed by s. 215.20. As used in this subsection, the
592 term "state agency" has the same meaning as that provided in s.
593 216.011 ~~216.001~~, and the terms "governing body" and "unit of
594 local government" have the same meaning as that provided in s.
595 218.403.

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

602 (b) In exercising investment authority pursuant to s.
603 215.47, the board may retain investment advisers or managers, or
604 both, external to in-house staff, to assist the board in
605 carrying out the power specified in paragraph (a).

606 (c) The board shall create an audit committee to assist
607 the board in fulfilling its oversight responsibilities. The
608 committee shall consist of three members appointed by the board.
609 Members shall be appointed for 4-year terms. A vacancy shall be
610 filled for the remainder of the unexpired term. The committee
611 shall annually elect a chair and vice chair from its membership.
612 A member may not be elected to consecutive terms as chair or
613 vice chair. Persons appointed to the audit committee must have
614 relevant knowledge and expertise as determined by the board. The
615 audit committee shall serve as an independent and objective
616 party to monitor processes for financial reporting, internal

617 controls and risk assessment, audit processes, and compliance
618 with laws, rules, and regulations. The audit committee shall
619 direct the efforts of the board's independent external auditors
620 and the board's internal audit staff. The committee shall
621 periodically, but not less than quarterly, report to the board
622 and the executive director of the board.

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

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

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

635 215.441 Board of Administration; appointment of executive
636 director.—The appointment of the executive director of the State
637 Board of Administration shall be subject to the approval by a
638 majority vote of the Board of Trustees of the State Board of
639 Administration, and the Governor must vote on the prevailing
640 side. Such appointment must be reaffirmed in the same manner by
641 the board of trustees on an annual basis. The executive director
642 shall, at a minimum, possess substantial experience, knowledge,
643 and expertise in the oversight of investment portfolios and must
644 meet any other requirements determined by the board to be

645 necessary to the overall management and investment of funds.

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

648 215.444 Investment Advisory Council.—

649 (1) There is created a nine-member ~~six-member~~ Investment
650 Advisory Council to review the investments made by the staff of
651 the Board of Administration and to make recommendations to the
652 board regarding investment policy, strategy, and procedures. The
653 council shall meet with staff of the board no less than
654 quarterly and shall provide a quarterly report directly to the
655 Trustees of the State Board of Administration at a meeting of
656 the board.

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

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

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

675 Section 9. Paragraphs (b) and (c) of subsection (1),
 676 paragraph (a) of subsection (2), and subsection (5) of section
 677 215.47, Florida Statutes, are amended, paragraph (o) is added to
 678 subsection (1) of that section, and subsection (20) is added to
 679 that section, to read:

680 215.47 Investments; authorized securities; loan of
 681 securities.—Subject to the limitations and conditions of the
 682 State Constitution or of the trust agreement relating to a trust
 683 fund, moneys available for investments under ss. 215.44–215.53
 684 may be invested as follows:

685 (1) Without limitation in:

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

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

697 (o) Bonds, notes, or obligations described in 26 U.S.C. s.
 698 149(g) (3) (B), if investment in such bonds, notes, or obligations
 699 is necessary in order to comply with covenants in documents or
 700 proceedings relating to bonds issued pursuant to s. 215.555(6).

701 Investments made pursuant to this paragraph may be purchased
 702 only from the proceeds of bonds issued pursuant to s. 215.555(6)
 703 and must be authorized under documents or proceedings relating
 704 to such bonds.

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

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

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

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

729 the board.

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

732 215.4754 Ethics requirements for investment advisers and
733 managers and members of the Investment Advisory Council.—The
734 intent of this section is to promote independence and the
735 avoidance of conflicts and improper influence by certain
736 investment advisers and managers without creating unnecessary
737 barriers to the board performing its investment duties
738 consistent with its fiduciary standards, investment performance,
739 and business relationships.

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

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

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

755 215.4755 Certification and disclosure requirements for
756 investment advisers and managers.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

819 215.52 Rules and regulations.—The board shall have the
 820 power and authority to make reasonable rules and regulations
 821 necessary to carry out the provisions of ss. 215.44-215.53. The
 822 rules shall provide for full transparency and accountability in
 823 fulfillment of the board's fiduciary duties in the areas of
 824 compliance, ethics, training, and audit procedures.

825 Section 13. Paragraph (a) of subsection (8) of section
 826 218.409, Florida Statutes, is amended to read:

827 218.409 Administration of the trust fund; creation of
 828 advisory council.—

829 (8) (a) The principal, and any part thereof, of each ~~and~~
 830 ~~every~~ account constituting the trust fund is ~~shall be~~ subject to
 831 payment at any time from the moneys in the trust fund. However,
 832 the executive director may, in good faith, on the occurrence of
 833 an event that has a material impact on liquidity or operations
 834 of the trust fund, for 48 hours limit contributions to or
 835 withdrawals from the trust fund to ensure that the board can
 836 invest moneys entrusted to it in exercising its fiduciary
 837 responsibility. Such action must ~~shall~~ be immediately disclosed
 838 to all participants, the trustees, the Joint Legislative
 839 Auditing Committee, the Investment Advisory Council, and the
 840 Participant Local Government Advisory Council. The trustees

841 shall convene an emergency meeting as soon as practicable from
842 the time the executive director has instituted such measures and
843 review the necessity of those measures. If the trustees are
844 unable to convene an emergency meeting before the expiration of
845 the 48-hour moratorium on contributions and withdrawals, the
846 moratorium may be extended by the executive director until the
847 trustees are able to meet to review the necessity for the
848 moratorium. If the trustees agree with such measures, the
849 trustees shall vote to continue the measures for up to an
850 additional 15 days. The trustees must convene and vote to
851 continue any such measures before ~~prior to~~ the expiration of the
852 time limit set, but in no case may the time limit set by the
853 trustees exceed 15 days.

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

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

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

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

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

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

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

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