

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMUNITY AFFAIRS**  
**Senator Simpson, Chair**  
**Senator Thompson, Vice Chair**

**MEETING DATE:** Tuesday, February 18, 2014  
**TIME:** 2:00 —4:00 p.m.  
**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Simpson, Chair; Senator Thompson, Vice Chair; Senators Bradley, Hukill, Latvala, Smith, Soto, Stargel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 330</b> Simmons (Identical H 231)	Admissions Tax; Revising the professional sporting events that are exempt from the admissions tax, etc.  CM    02/03/2014 Favorable CA    02/18/2014 Favorable AFT AP	Favorable Yeas 9 Nays 0
2	<b>SB 66</b> Flores (Similar CS/H 113)	Discretionary Sales Surtaxes; Authorizing a county defined in s. 125.011(1), F.S., to levy a surtax up to a specified amount for the benefit of a Florida College System institution and a state university in the county pursuant to an ordinance conditioned to take effect upon approval in a county referendum; establishing an oversight board with specified duties, responsibilities, and requirements relating to the expenditure of surtax proceeds; requiring that the board of trustees of each institution receiving surtax proceeds prepare an annual plan for submission to the oversight board for approval; providing that state funding may not be reduced because an institution receives surtax funds, etc.  ED    02/04/2014 Favorable CA    02/18/2014 Favorable AFT AP	Favorable Yeas 9 Nays 0
Consideration of proposed committee bill:			
3	<b>SPB 7046</b>	Florida Retirement System; Requiring the Trustees of the State Board of Administration to establish the Florida Retirement System Cash Balance Plan; requiring employees and employers to make contributions for funding the plan; providing that the plan provide a lump-sum or annuity benefit; providing procedures for employees who are members of the pension plan or investment plan before a certain date to transfer to the cash balance plan; providing procedures for employees employed after a certain date to be enrolled in the investment plan or cash balance plan, etc.	Submitted as Committee Bill Yeas 5 Nays 4

Consideration of proposed committee bill:

**COMMITTEE MEETING EXPANDED AGENDA**

Community Affairs

Tuesday, February 18, 2014, 2:00 —4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SPB 7040</b>	Florida Retirement System Cash Balance Plan Trust Fund; Creating the Florida Retirement System Cash Balance Plan Trust Fund, to hold the assets of the Florida Retirement System Cash Balance Plan; providing that the trust fund is a retirement trust fund not subject to termination pursuant to s. 19(f), Art. III of the State Constitution; providing for sources of moneys and purposes; requiring a forfeiture account to be created within the trust fund, etc.	Submitted as Committee Bill Yeas 9 Nays 0
Consideration of proposed committee bill:			
5	<b>SPB 7038</b>	Deferred Compensation; Requiring that state employees be automatically enrolled in the deferred compensation program by specified dates; requiring the Chief Financial Officer to notify state employees of automatic enrollment by a specified date; establishing contribution levels for participating state employees by specified dates; requiring a state agency to match employer contributions up to a specified amount, etc.	Submitted as Committee Bill Yeas 9 Nays 0
Consideration of proposed committee bill:			
6	<b>SPB 7042</b>	OGSR/Children of Agency Officers and Employees/Identifying Information; Amending provisions relating to an exemption from public record requirements for personal identifying information of certain dependent children of current or former agency officers or employees; removing the scheduled repeal of the exemption, etc.	Submitted as Committee Bill Yeas 9 Nays 0
Other Related Meeting Documents			

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 330

INTRODUCER: Senator Simmons and others

SUBJECT: Admissions Tax

DATE: February 18, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	<b>Favorable</b>
2.	White	Yeatman	CA	<b>Favorable</b>
3.			AFT	
4.			AP	

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**I. Summary:**

SB 330 creates an additional exemption from the tax on admissions for Major League Soccer all-star games. The bill also clarifies the current exemption for events related to the National Basketball Association All-Star weekend.

The Revenue Estimating Conference adopted a zero cash impact estimate, with the recurring impact being negative indeterminate. The estimated impact if an all-star event for either league occurred is negative \$100,000.

**II. Present Situation:**

**State Taxes on Admissions**

Under the Florida Revenue Act of 1949, “admissions” refer to sums of money collected for the privilege of entering any place of amusement, sport, or recreation.<sup>1</sup> Section 212.04, F.S., establishes a taxable privilege for selling or receiving anything of value by way of admissions. Admissions are taxed at 6 percent of the sales price or actual value received. The sales price or actual value of admission is the price remaining after deducting federal taxes, state and local seat surcharges, taxes, or fees imposed upon admission, and ticket office or ticketing service charges.

The statute provides for several events for which tax on admissions is not levied.<sup>2</sup> Related to professional sporting events, the tax is not levied on admissions to the National Football League championship game, admissions to a Major League Baseball (MLB), National Basketball Association (NBA), or National Hockey League all-star game, admissions to the MLB Home

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<sup>1</sup> Section 212.02(1), F.S., provides examples, such as sales of tickets, gate charges, cover charges, box charges, season passes, membership dues, or entrance fees to places such as theaters, shows, exhibitions, games, races, or private recreation clubs.

<sup>2</sup> See s. 212.04(2), F.S.

Run Derby, or admissions to the NBA Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, or Slam Dunk Challenge.<sup>3</sup>

### **Local Government Taxes on Admissions**

Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax, in addition to the state tax, on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.<sup>4</sup> The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S. Currently, the maximum surtax actually imposed is 1.5 percent in several counties;<sup>5</sup> however, the theoretical maximum rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county. In general, the levy of a particular tax is subject to county voter approval.

### **Administration of Taxes**

The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections of discretionary sales surtaxes received by the DOR are returned monthly to the county imposing the tax. Further, there are several state-shared revenue programs that allocate some portion of the state sales and use tax to local governments. A few revenue sharing programs require as a prerequisite that the county or municipality meet eligibility criteria. While general law restricts the use of some shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments.<sup>6</sup>

### **Sporting Events – All-Star Games**

The NBA holds an all-star weekend.<sup>7</sup> Events include charity games, a dunk contest, 3-point shot contest, and an all-star game. Since the all-star game was first played in 1951, the game has taken place in Florida only three times – in 1990 in Miami, and in 1992 and 2012 in Orlando. The 2014 NBA all-star weekend will take place in New Orleans, Louisiana. Florida has two NBA teams – the Miami Heat (1988), and the Orlando Magic (1989).

Major League Soccer (MLS) has hosted an all-star game since 1996.<sup>8</sup> The MLS all-star game has only been held in Florida once – in 1998 in Orlando. The 2014 all-star game will be held in Portland, Oregon. Florida has previously been the home to two now-defunct MLS franchises, the Tampa Bay Mutiny (1996 – 2001) and the Miami Fusion F.C. (1998 – 2001).<sup>9</sup> However, in November 2013, Orlando was granted an expansion team for the MLS, called the Orlando City

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<sup>3</sup> Section 212.04(2)(a)4., F.S.

<sup>4</sup> The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

<sup>5</sup> See DOR Form DR-15 DSS, Discretionary Sales Surtax Information, *available at* [http://dor.myflorida.com/dor/forms/current/dr15dss\\_1113.pdf](http://dor.myflorida.com/dor/forms/current/dr15dss_1113.pdf) (last visited Feb. 4, 2014).

<sup>6</sup> For more information see Revenue Estimating Conference, *2013 Florida Tax Handbook*.

<sup>7</sup> NBA, All-Star, *available at* <http://www.nba.com/allstar/> (last visited Feb. 4, 2014).

<sup>8</sup> MLS, All-Star Game, *available at* <http://www.mlssoccer.com/all-star/2013> (last visited Feb. 4, 2014).

<sup>9</sup> MLS, Tampa Bay Mutiny, *available at* <http://www.mlssoccer.com/history/club/tampabay>, and Miami Fusion F.C., *available at* <http://www.mlssoccer.com/history/club/miami>, (last visited Feb. 4, 2014).

Soccer Club, to join the league in 2015.<sup>10</sup> There have also been news reports of a possible expansion team for Miami, with a possible announcement by the MLS in February 2014.<sup>11</sup>

### III. Effect of Proposed Changes:

SB 330 creates an additional exemption from the tax on admissions for Major League Soccer all-star games.

The bill also clarifies the current exemption for events related to the National Basketball Association All-Star weekend. The bill repeals reference to specific event names, and instead exempts NBA all-star events produced by the NBA and “held at a facility such as an arena, convention center, or municipal facility.”

The bill provides an effective date of July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (c) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce the percentage of a state tax shared with counties and municipalities. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from the prohibitions. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 are exempt (the estimated population as of April 1, 2013, is about 19.3 million).<sup>12</sup>

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<sup>10</sup> MLS, “Major League Soccer names Orlando City SC as 21<sup>st</sup> franchise, set for 2015 debut,” *available at* <http://www.mlssoccer.com/news/article/2013/11/19/major-league-soccer-names-orlando-city-21st-franchise-set-2015-debut> (last visited Feb. 4, 2014).

<sup>11</sup> For example, see Davis, Craig, Sun-Sentinel, “Miami may be on verge of getting MLS team,” *available at* <http://www.sun-sentinel.com/sports/soccer/fl-mls-decision-miami-february-0117-20140116,0,3028261.story> (last visited Feb. 4, 2014).

<sup>12</sup> Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, April 1, 2013, *available at* [http://edr.state.fl.us/Content/population-demographics/data/2013\\_Pop\\_Estimates.pdf](http://edr.state.fl.us/Content/population-demographics/data/2013_Pop_Estimates.pdf) (last visited Feb. 4, 2014).

The Revenue Estimating Conference estimated that the new exemptions created by this bill will have a negative indeterminate fiscal impact on local governments. If either all-star event occurs in this state, the estimated total impact is negative \$100,000.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference considered this bill on January 17, 2014, and adopted a zero cash impact estimate, with the recurring impact being negative indeterminate. The estimated impact of an all-star event in Florida for either league is negative \$100,000.<sup>13</sup>

**B. Private Sector Impact:**

Individuals attending these sporting events will not have to pay sales tax on the tickets they purchase. Additionally, the venues or teams hosting these events will not need to collect sales tax on the tickets sold to such events.

Generally, organizers of these events set the price of admission and print admission tickets. The price printed on the ticket is the actual amount paid by an attendee. Consequently, any sales tax due is currently borne by the tournament organizer, the host organization, or facility. The existence of a sales tax exemption for these tickets may make a Florida locale vying to bring such an event to Florida more competitive in comparison with other locations.

**C. Government Sector Impact:**

The DOR has indicated that the provisions of the bill would have an insignificant impact on their operations.<sup>14</sup>

**VI. Technical Deficiencies:**

None.

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<sup>13</sup> Revenue Estimating Conference, Analysis HB 231/SB 330, January 17, 2014, *available at* <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/page70-72.pdf> (last visited 1/27/2014).

<sup>14</sup> DOR, 2014 Bill Analysis SB 330 (December 31, 2013).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 212.04(2)(a) of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Simmons

10-00496-14

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1                                   A bill to be entitled  
2       An act relating to the admissions tax; amending s.  
3       212.04, F.S.; revising the professional sporting  
4       events that are exempt from the admissions tax;  
5       providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9       Section 1. Paragraph (a) of subsection (2) of section  
10      212.04, Florida Statutes, is amended to read:

11           212.04 Admissions tax; rate, procedure, enforcement.-

12           (2) (a) A tax may not be levied on:

13           1. ~~No tax shall be levied on~~ Admissions to athletic or  
14      other events sponsored by elementary schools, junior high  
15      schools, middle schools, high schools, community colleges,  
16      public or private colleges and universities, deaf and blind  
17      schools, facilities of the youth services programs of the  
18      Department of Children and Families ~~Family Services~~, and state  
19      correctional institutions if ~~when~~ only student, faculty, or  
20      inmate talent is used. However, this exemption does ~~shall~~ not  
21      apply to admission to athletic events sponsored by a state  
22      university, and the proceeds of the tax collected on such  
23      admissions shall be retained and used by each institution to  
24      support women's athletics as provided in s. 1006.71(2)(c).

25           2.a. ~~No tax shall be levied on~~ Dues, membership fees, and  
26      admission charges imposed by not-for-profit sponsoring  
27      organizations. To receive this exemption, the sponsoring  
28      organization must qualify as a not-for-profit entity under ~~the~~  
29      ~~provisions of~~ s. 501(c)(3) of the Internal Revenue Code of 1954,

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30 as amended.

31 ~~3.b. No tax shall be levied on~~ Admission charges to an  
32 event sponsored by a governmental entity, sports authority, or  
33 sports commission if ~~when~~ held in a convention hall, exhibition  
34 hall, auditorium, stadium, theater, arena, civic center,  
35 performing arts center, or publicly owned recreational facility  
36 and if ~~when~~ 100 percent of the risk of success or failure lies  
37 with the sponsor of the event and 100 percent of the funds at  
38 risk for the event belong to the sponsor, and student or faculty  
39 talent is not exclusively used. As used in this subparagraph  
40 ~~sub-subparagraph~~, the terms "sports authority" and "sports  
41 commission" mean a nonprofit organization that is exempt from  
42 federal income tax under s. 501(c)(3) of the Internal Revenue  
43 Code and that contracts with a county or municipal government  
44 for the purpose of promoting and attracting sports-tourism  
45 events to the community with which it contracts.

46 ~~4.3. No tax shall be levied on~~ An admission paid by a  
47 student, or on the student's behalf, to any required place of  
48 sport or recreation if the student's participation in the sport  
49 or recreational activity is required as a part of a program or  
50 activity sponsored by, and under the jurisdiction of, the  
51 student's educational institution if, ~~provided~~ his or her  
52 attendance is as a participant and not as a spectator.

53 ~~5.4. No tax shall be levied on~~ Admissions to the National  
54 Football League championship game or Pro Bowl; ~~on~~ admissions to  
55 any semifinal game or championship game of a national collegiate  
56 tournament; ~~on~~ admissions to a Major League Baseball, Major  
57 League Soccer, National Basketball Association, or National  
58 Hockey League all-star game; ~~on~~ admissions to the Major League

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59 Baseball Home Run Derby held before the Major League Baseball  
 60 All-Star Game; or ~~on~~ admissions to ~~the~~ National Basketball  
 61 Association all-star events produced by the National Basketball  
 62 Association and held at a facility such as an arena, convention  
 63 center, or municipal facility ~~Rookie Challenge, Celebrity Game,~~  
 64 ~~3-Point Shooting Contest, or Slam Dunk Challenge.~~

65 ~~6.5.~~ A participation fee or sponsorship fee imposed by a  
 66 governmental entity as described in s. 212.08(6) for an athletic  
 67 or recreational program if ~~is exempt when~~ the governmental  
 68 entity by itself, or in conjunction with an organization exempt  
 69 under s. 501(c)(3) of the Internal Revenue Code of 1954, as  
 70 amended, sponsors, administers, plans, supervises, directs, and  
 71 controls the athletic or recreational program.

72 ~~7.6.~~ ~~Also exempt from the tax imposed by this section to~~  
 73 ~~the extent provided in this subparagraph~~ are Admissions to live  
 74 theater, live opera, or live ballet productions in this state  
 75 which are sponsored by an organization that has received a  
 76 determination from the Internal Revenue Service that the  
 77 organization is exempt from federal income tax under s.  
 78 501(c)(3) of the Internal Revenue Code of 1954, as amended, if  
 79 the organization actively participates in planning and  
 80 conducting the event, is responsible for the safety and success  
 81 of the event, is organized for the purpose of sponsoring live  
 82 theater, live opera, or live ballet productions in this state,  
 83 has more than 10,000 subscribing members and has among the  
 84 stated purposes in its charter the promotion of arts education  
 85 in the communities ~~which~~ it serves, and will receive at least 20  
 86 percent of the net profits, if any, of the events ~~which~~ the  
 87 organization sponsors and will bear the risk of at least 20

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88 percent of the losses, if any, from the events ~~which~~ it sponsors  
89 if the organization employs other persons as agents to provide  
90 services in connection with a sponsored event. Before ~~Prior to~~  
91 March 1 of each year, such organization may apply to the  
92 department for a certificate of exemption for admissions to such  
93 events sponsored in this state by the organization during the  
94 immediately following state fiscal year. The application must  
95 ~~shall~~ state the total dollar amount of admissions receipts  
96 collected by the organization or its agents from such events in  
97 this state sponsored by the organization or its agents in the  
98 year immediately preceding the year in which the organization  
99 applies for the exemption. Such organization shall receive the  
100 exemption only to the extent of \$1.5 million multiplied by the  
101 ratio that such receipts bear to the total of such receipts of  
102 all organizations applying for the exemption in such year;  
103 however, ~~in no event shall~~ such exemption granted to any  
104 organization may not exceed 6 percent of such admissions  
105 receipts collected by the organization or its agents in the year  
106 immediately preceding the year in which the organization applies  
107 for the exemption. Each organization receiving the exemption  
108 shall report each month to the department the total admissions  
109 receipts collected from such events sponsored by the  
110 organization during the preceding month and shall remit to the  
111 department an amount equal to 6 percent of such receipts reduced  
112 by any amount remaining under the exemption. Tickets for such  
113 events sold by such organizations may ~~shall~~ not reflect the tax  
114 otherwise imposed under this section.

115 ~~8.7. Also exempt from the tax imposed by this section are~~  
116 Entry fees for participation in freshwater fishing tournaments.

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117        9.8. ~~Also exempt from the tax imposed by this section are~~  
118 Participation or entry fees charged to participants in a game,  
119 race, or other sport or recreational event if spectators are  
120 charged a taxable admission to such event.

121        10.9. ~~No tax shall be levied on~~ Admissions to any  
122 postseason collegiate football game sanctioned by the National  
123 Collegiate Athletic Association.

124        Section 2. This act shall take effect July 1, 2014.



The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson, Chair  
Committee on Community Affairs

**Subject:** Committee Agenda Request

**Date:** February 4, 2014

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I respectfully request that **Senate Bill 330**, relating to Admissions Tax, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons  
Florida Senate, District 10

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 66

INTRODUCER: Senators Flores and Margolis

SUBJECT: Discretionary Sales Surtaxes

DATE: February 18, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Letarte</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	_____	_____	<u>AFT</u>	_____
4.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 66 authorizes a new discretionary sales surtax under s. 212.055, F. S., which is titled the “Higher Education Surtax.” The bill allows a county, as defined in s. 125.011(1), F.S., to levy a voter-approved sales surtax of up to 0.5 percent for the benefit of a Florida College System (FCS) institution and a state university located in the county. The FCS institution and state university are to receive 90 percent and 10 percent, respectively, of the surtax proceeds. Currently, Miami-Dade County is the only county eligible to levy this surtax. The bill also establishes procedures and requirements for surtax deposits, investments, and usage. An oversight board will review and then accept or amend the expenditures of the surtax proceeds. An approved Higher Education Surtax expires after five years.

The bill takes effect upon becoming law.

**II. Present Situation:**

**Local Discretionary Sales Surtax**

A “surtax” is an “additional tax imposed on something being taxed or on the primary tax itself.”<sup>1</sup> The Florida Statutes authorize Florida counties to charge a discretionary sales surtax if the surtax is specifically designated as a subsection of s. 212.055, F.S.<sup>2</sup>

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes, which are the:

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<sup>1</sup> *Black’s Law Dictionary* 704 (3d ed. 2006).

<sup>2</sup> Sections 212.054, 212.055, F.S.

- Charter County and Regional Transportation System Surtax,
- Local Government Infrastructure Surtax,
- Small County Surtax,
- Indigent Care and Trauma Center Surtax,
- County Public Hospital Surtax,
- School Capital Outlay Surtax,
- Voter-Approved Indigent Care Surtax, and
- Emergency Fire Rescue Services and Facilities Surtax.<sup>3</sup>

Currently, the maximum surtax actually imposed is 1.5 percent in several counties.<sup>4</sup> The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered, and is levied in addition to the state tax.<sup>5</sup> The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax.<sup>6</sup> Discretionary sales surtax applies to the first \$5,000 on any item of tangible personal property.<sup>7</sup> The \$5,000 cap does not apply to:

- sales of admissions,
- sales of warranties,
- sales and uses of services,
- charges for prepaid calling arrangements,
- leases, rentals, and licenses to use real property or transient accommodations,
- leases or renting of parking or storage space for motor vehicles in parking lots or garages,
- docking or storage space in boat docks and marinas, and
- tie-down or storage space for aircraft.<sup>8</sup>

Miami-Dade County currently imposes two local discretionary surtaxes: the Charter County Transit System Surtax at a 0.5 percent rate and the County Public Hospital Surtax at a 0.5 percent rate.<sup>9</sup>

### **Postsecondary Education Institutions**

Section 1000.21, F.S., provides system-wide definitions used within the Florida K-20 Education Code. There are 28 postsecondary educational institutions designated as FCS institutions.<sup>10</sup>

<sup>3</sup> Section 212.055(1)-(8), F.S.

<sup>4</sup> Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2014*, available at [http://dor.myflorida.com/dor/forms/current/dr15dss\\_1113.pdf](http://dor.myflorida.com/dor/forms/current/dr15dss_1113.pdf) (listing the following counties as having a 1.5% surtax rate in 2014: Calhoun, Escambia, Gadsden, Jackson, Leon, Liberty, Madison, Monroe, and Walton).

<sup>5</sup> Florida Department of Revenue, *Florida's Discretionary Sales Surtax*, available at <http://dor.myflorida.com/dor/forms/current/gt800019.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* This surtax applies to the “sale, use, lease rental, or license to use any item of tangible personal property,” and tangible personal property is “personal property that you can see, weigh, measure, or touch or is in any manner perceptible to the senses, including electric power or energy.” *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Office of Economic and Demographic Research, *2013 Local Discretionary Sales Surtax Rates in Florida's Counties*, available at <http://edr.state.fl.us/content/local-government/data/county-municipal/2013LDSSrates.pdf>.

<sup>10</sup> Section 1000.21(3), F.S.

Among the FCS institutions is Miami Dade College, which is the only FCS institution listed as serving Miami-Dade County. There are 12 state universities<sup>11</sup> and Florida International University is the only state university located in Miami-Dade County.<sup>12</sup>

### Home-Rule Charter Counties

Section 125.011(1), F.S., defines a county as:

. . . any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

The local governments authorized to operate under a home rule charter, referenced in the definition above, in the State Constitutions of 1885 and 1968 are the city of Key West and Monroe County,<sup>13</sup> Dade County,<sup>14</sup> and Hillsborough County.<sup>15</sup> Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.<sup>16</sup>

Therefore, Miami-Dade County is the only county that comports with the description contained in s. 125.011(1), F.S., of a “county operating under a home rule charter” adopted under constitutional authority and which “by resolution of its board of county commissioners, elects the powers” conferred by that statutory section. General laws used by Miami-Dade County, and only Miami-Dade County, have survived various legal challenges claiming that such general laws are, in actuality, special laws.<sup>17</sup>

<sup>11</sup> Section 1000.21(6), F.S.

<sup>12</sup> Florida International University, *Campuses*, <http://www.fiu.edu/about-us/campuses/index.html> (last visited Feb. 10, 2014).

<sup>13</sup> Art. VIII, s. 6, n. 2, Fla. Const.

<sup>14</sup> Art. VIII, s. 6, n. 3, Fla. Const.

<sup>15</sup> Art. VIII, s. 6, n. 4, Fla. Const.

<sup>16</sup> Miami-Dade County Florida, *The Home Rule Amendment and Charter*, available at <http://www.miamidade.gov/charter/library/charter.pdf>; see Hillsborough County Florida, *Home Rule Charter*, <http://www.hillsboroughcounty.org/DocumentCenter/Home/View/376>, Creation: Section 1.01 Chartered County (last visited Feb. 10, 2014) (providing that the county is chartered under Article VIII, Section 1 of the Florida Constitution as opposed to Article VIII, Section 6 of the Florida Constitution); Monroe County Florida, *County Commission*, <http://www.monroecounty-fl.gov/index.aspx?NID=27> (last visited Feb. 10, 2014) (citing Article VIII, Section 1 of the Florida Constitution stating “[e]xcept when otherwise provided by county charter, the governing body of each county shall be a [b]oard of [c]ounty [c]ommissioners composed of five [or seven] members serving staggered terms of four years,” on the page titled “County Commission” and displaying five “Commission Members”); see also Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/about-floridas-counties/charter-county-information> (last visited Feb. 10, 2014) (listing the twenty chartered counties in Florida, which does not include Monroe).

<sup>17</sup> *Metropolitan Dade County v. Golden Nugget Group*, 448 So.515 (Fla. 3<sup>rd</sup> DCA 1984), *aff’d*, 464 So.2d 535 (Fla. 1985); *Homestead Hospital v. Miami-Dade County*, 829 So.2d259 (Fla. 3<sup>rd</sup> DCA 1992).

### **Previous Tax in Miami-Dade County for the Benefit of Miami Dade College**

A referendum in September 1992 authorized Miami-Dade County to levy an ad valorem tax of  $\frac{3}{4}$  of a mill, exceeding the constitutional millage limitation, for a two-year period.<sup>18</sup> The proceeds of the tax were “for the purpose of maintenance, improvement, and expansion of occupational, vocational, and educational programs at the College.”<sup>19</sup> The designated purpose of the proceeds that would benefit Miami-Dade from the surtax in this bill is similar to the purpose of the proceeds from the 1992 referendum.<sup>20</sup> The proceeds of the 1992 referendum were approximately \$94 million and were deposited into the College’s quasi-endowment fund.<sup>21</sup> As of June 30, 2011, the College noted a total of \$86.1 million in quasi-endowment investments.<sup>22</sup>

### **III. Effect of Proposed Changes:**

SB 66 amends s. 212.055, F.S., to add a ninth discretionary sales surtax, known as the Higher Education Surtax, authorizing a county as defined in s. 125.011(1), F.S., to levy up to 0.5 percent for the benefit of a FCS institution and a state university located in the county. The surtax requires an ordinance conditioned upon approval by a majority of county electors voting in a referendum.

The ordinance must outline a plan, developed by each of the institutions’ board of trustees, for using the surtax proceeds for the benefit of the FCS institution and state university. Proceeds of the surtax must be set aside and invested as allowed by law, with the principal and income to be used for purposes including, but not limited to, maintenance, improvement, and expansion of academic and workforce training programs, teaching enhancements, capital expenditures and infrastructure projects, and fixed capital costs. A state university may use the surtax proceeds for land acquisition for parcels that are contiguous with its existing main campus.

The bill states that costs associated with the referendum shall only be paid with funds from private sources or with college auxiliary funds and may not be paid with student fees or moneys an institution receives from the state. Referendum ballot guidelines are specified and include a question format currently utilized for other discretionary surtax referenda. Ninety percent of the proceeds from the surtax must be deposited into a Florida Prime account managed by the State Board of Administration for use by the FCS institution, and 10 percent of the surtax proceeds must be deposited into a Florida Prime account managed by the State Board of Administration for use by the state university.

Upon approval of the referendum, an oversight board is charged with accepting or amending expenditures of the surtax proceeds. Each institution must prepare annual plans specifying how the board of trustees intends to allocate the surtax proceeds. Appointment requirements are

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<sup>18</sup> State of Florida Auditor General, *Miami Dade College: Financial Audit for the Fiscal Year Ended June 30, 2011*, 27 (2012), available at <https://www.mdc.edu/businessaffairs/Papers/Documents/MDC%20AFR%202010-11%202012-155.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Infra* Part III. (providing that the portion of proceeds received by Miami-Dade College would be used for, but not limited to, maintenance, improvement, and expansion of academic workforce training programs, teaching enhancements, capital expenditures and infrastructure projects, and fixed capital costs).

<sup>21</sup> State of Florida Auditor General, *supra* note 18 at 27.

<sup>22</sup> *Id.*

outlined for the seven-member board and members serve a four-year term and may be reappointed.

Annual apportionment of state funds to an FCS institution or a state university may not be reduced because the institution or university has received surtax funds. A discretionary sales surtax approved by voters expires after five years.

The bill takes effect upon becoming law.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

Article III, s. 11(a)(2) of the Florida Constitution states that there “shall be no special law or general law of local application pertaining to: . . . assessment or collection of taxes for state or county purposes.”

A specific law, as defined by the Florida Supreme Court, is a law that is “relating to or designed to operate on, particular persons or things, or one that purports to operate on classified persons or things when classification is not permissible or the classification adopted is illegal.”<sup>23</sup>

In contrast, a general law “operates universally throughout the state, uniformly upon subjects as they may exist throughout the state, or uniformly within a permissible classification.”<sup>24</sup> The Legislature has wide discretion in creating classifications provided the classifications are reasonable.<sup>25</sup> A classification by the Legislature carries a presumption of reasonableness.<sup>26</sup>

<sup>23</sup> *Village of Wellington v. Palm Beach Cnty.*, 941 So. 2d 595, 599 (Fla. 4<sup>th</sup> DCA 2006) (citing *Schrader v. Fla. Keys Aqueduct Auth.*, 840 So. 2d 1050 (Fla. 2003)).

<sup>24</sup> *Id.* (citing *Martin Mem'l Med. Ctr., Inc. v. Tenet Healthsystem Hosp. Inc.*, 875 So. 2d 797 (Fla. 1<sup>st</sup> DCA 2004)).

Additionally, a general law is “[a] statute relating to subdivisions of the state or to subjects, persons or things of a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class.” *Carter v. Norman*, 38 So. 2d 30, 32 (Fla. 1948).

<sup>25</sup> *Metro. Dade Cnty. v. Golden Nugget Grp.*, 448 So. 2d 515, 519 (Fla. 3<sup>d</sup> DCA 1984), *aff'd*, 464 So. 2d 535 (Fla 1985).

<sup>26</sup> *Id.* at 520.

This bill authorizes counties, as defined in s. 125.011(1), F.S., to levy a non-ad valorem surtax. Three counties are potentially eligible to levy the bill's surtax in the future; however, only Miami-Dade County is currently eligible to levy the surtax.<sup>27</sup> However, "the [Florida Supreme] Court never addressed the question as to whether the classification based on a home-rule charter was an impermissible closed class because it potentially applied to only three counties."<sup>28</sup> Although the specific definition of "county" from s. 125.011(1), F.S., has been previously used to identify the same three counties,<sup>29</sup> the Court focused on a shared characteristic of the counties and not on the home-rule charter aspect of the specific definition of "county."<sup>30</sup> The affected counties in *Metropolitan Dade County* shared a characteristic of having substantial tourist-oriented economies, which the Florida Supreme Court determined was a reasonable classification because the purpose of the tax at issue was to construct or improve convention centers for promoting tourism.<sup>31</sup>

Section 125.011(1), F.S., is referenced in 13 chapters of Florida Statutes a total of 26 times. Legal challenges claiming that these general laws are, in actuality, special laws have failed.<sup>32</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Sales tax would increase in Miami-Dade County if an ordinance is approved to levy the Higher Education Surtax up to 0.5 percent. The Higher Education Surtax expires five years after the effective date of the surtax.

### C. Government Sector Impact:

The Office of Economic and Demographic Research has stated that "[i]f Miami-Dade were to levy this tax, it would generate \$234.7 m[illion] annually."<sup>33</sup>

<sup>27</sup> See *City of Miami v. McGrath*, 824 So. 2d 143, 152 (Fla. 2002) (noting that Dade, Hillsborough, and Monroe Counties potentially meet the statutory definition of "county" as defined in section 125.011(1), Florida Statutes, but that only Dade County had adopted a home-rule charter) (citing *Golden Nugget Grp. v. Metro. Dade Cnty.*, 464 So. 2d 535, 536 (Fla. 1985)).

<sup>28</sup> *Id.*

<sup>29</sup> *Golden Nugget Grp.*, 464 So. 2d at 536-537.

<sup>30</sup> *City of Miami*, 824 So. 2d at 152; *Golden Nugget Grp.*, 464 So. 2d at 537.

<sup>31</sup> *Id.*

<sup>32</sup> *Metropolitan Dade County v. Golden Nugget Group*, 448 So.515 (Fla. 3<sup>rd</sup> DCA 1984), *aff'd*, 464 So.2d 535 (Fla. 1985); *Homestead Hospital v. Miami-Dade County*, 829 So.2d259 (Fla. 3<sup>rd</sup> DCA 1992).

<sup>33</sup> Office of Economic and Demographic Research, *Revenue Estimating Conference: Impact Conference*, <http://edr.state.fl.us/Content/conferences/revenueimpact/index.cfm> (select "2014 Session Index of Issues and Links to Backup Materials," select the link for "Discretionary Surtax Florida College System" under the "Issue" column) (last visited Feb. 10, 2014).

Miami Dade College and Florida International University would receive surtax proceeds if an ordinance is approved to levy the Higher Education Surtax. The Higher Education Surtax expires five years after the effective date of the surtax.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 212.055 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Flores

37-00130-14

201466\_\_

1                   A bill to be entitled  
2       An act relating to discretionary sales surtaxes;  
3       amending s. 212.055, F.S.; authorizing a county  
4       defined in s. 125.011(1), F.S., to levy a surtax up to  
5       a specified amount for the benefit of a Florida  
6       College System institution and a state university in  
7       the county pursuant to an ordinance conditioned to  
8       take effect upon approval in a county referendum;  
9       requiring the ordinance to include a plan for the use  
10      of the proceeds; providing referendum requirements and  
11      procedures; requiring that the proceeds from the  
12      surtax be transferred into a specified account and  
13      managed in a specified manner; establishing an  
14      oversight board with specified duties,  
15      responsibilities, and requirements relating to the  
16      expenditure of surtax proceeds; providing for the  
17      appointment of members of the oversight board;  
18      requiring that the board of trustees of each  
19      institution receiving surtax proceeds prepare an  
20      annual plan for submission to the oversight board for  
21      approval; providing that state funding may not be  
22      reduced because an institution receives surtax funds;  
23      providing for the scheduled expiration of the surtax;  
24      providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:  
27

28       Section 1. Subsection (9) is added to section 212.055,  
29 Florida Statutes, to read:

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201466\_\_

30           212.055 Discretionary sales surtaxes; legislative intent;  
31 authorization and use of proceeds.—It is the legislative intent  
32 that any authorization for imposition of a discretionary sales  
33 surtax shall be published in the Florida Statutes as a  
34 subsection of this section, irrespective of the duration of the  
35 levy. Each enactment shall specify the types of counties  
36 authorized to levy; the rate or rates which may be imposed; the  
37 maximum length of time the surtax may be imposed, if any; the  
38 procedure which must be followed to secure voter approval, if  
39 required; the purpose for which the proceeds may be expended;  
40 and such other requirements as the Legislature may provide.  
41 Taxable transactions and administrative procedures shall be as  
42 provided in s. 212.054.

43           (9) HIGHER EDUCATION SURTAX.—A county as defined in s.  
44 125.011(1), pursuant to an ordinance that is conditioned to take  
45 effect only upon approval by a majority vote of the electors of  
46 the county voting in a referendum, may levy a surtax of up to  
47 0.5 percent for the benefit of a Florida College System  
48 institution and a state university as defined in s. 1000.21  
49 located in the county.

50           (a) The ordinance must set forth a plan for using the  
51 surtax proceeds for the benefit of the Florida College System  
52 institution and the state university prepared by each of the  
53 institutions' boards of trustees. Such plans must provide for  
54 the permissible uses of the surtax proceeds, including, but not  
55 limited to, the maintenance, improvement, and expansion of  
56 academic and workforce training programs; teaching enhancements;  
57 capital expenditures and infrastructure projects; fixed capital  
58 costs associated with the construction, reconstruction,

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59 renovation, maintenance, or improvement of facilities and  
 60 campuses that have a useful life expectancy of at least 5 years;  
 61 deferred maintenance; land improvement, design, and engineering  
 62 costs related thereto; and the expansion and enhancement of  
 63 facilities at all institution sites within the county. The  
 64 proceeds from the surtax may be used by a state university for  
 65 land acquisition for parcels that are contiguous with its  
 66 existing main campus. The proceeds of the surtax must be set  
 67 aside and invested as allowed by law, with the principal and  
 68 income to be used for the purposes listed in this subsection as  
 69 administered by the board of trustees.

70 (b) The expense of holding the referendum may not be paid  
 71 with student fees or moneys that the institution receives from  
 72 the state, but shall be paid only with funds received from  
 73 private sources or with college auxiliary funds. The county must  
 74 provide at least 30 days' notice of the election as provided  
 75 under s. 100.342.

76 (c) The referendum providing for the imposition of the  
 77 surtax must include a statement that provides a brief and  
 78 general description of the purposes for which the proceeds of  
 79 the surtax may be used, conform to the requirements of s.  
 80 101.161, and be placed on the ballot by the governing body of  
 81 the county. The following questions shall be placed on the  
 82 ballot:

- 83
- 84 FOR THE. . . .CENTS TAX
- 85 AGAINST THE. . . .CENTS TAX
- 86

87 (d) Upon approval of the referendum, 90 percent of the

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88 proceeds from the surtax must be transferred by the Department  
89 of Revenue into a Florida Prime account managed by the State  
90 Board of Administration and used only for the operation,  
91 maintenance, and administration of the Florida College System  
92 institution within that county and 10 percent of the proceeds  
93 from the surtax must be transferred by the Department of Revenue  
94 into a Florida Prime account managed by the State Board of  
95 Administration and used only for the operation, maintenance,  
96 land acquisition, and administration of the state university.

97 (e) Upon approval of the referendum, an oversight board  
98 shall be established to review and accept or amend expenditures  
99 of the proceeds of the surtax and to review the plan prepared by  
100 the boards of trustees pursuant to paragraph (f). Annually, or  
101 as needed, the oversight board shall meet to approve each  
102 proposed spending plan.

103 1. The board shall be composed of seven members who are  
104 residents of the county and appointed as follows:

105 a. One member appointed by the board of directors of the  
106 chamber of commerce of the county in which the institutions are  
107 located.

108 b. One member of the board of directors of the chapter of  
109 the United Way in the county in which the institutions are  
110 located appointed by the board of directors of that chapter of  
111 the United Way.

112 c. One member appointed by the board of trustees of the  
113 state university, who may not be a member of the board of  
114 trustees of the state university.

115 d. Two members appointed by the board of trustees of the  
116 Florida College System institution, who may not be members of

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117 the board of trustees of the Florida College System institution.

118 e. Two members appointed by the chair of the county  
119 legislative delegation.

120 2. Initial appointments to the oversight board shall be  
121 made by the respective entities within 60 days after the passage  
122 of the referendum. Each member shall be appointed for a 4-year  
123 term and may be reappointed. A vacancy on the board shall be  
124 filled for the unexpired portion of the term in the same manner  
125 as the original appointment. No member appointed to fill a  
126 vacancy may serve for more than the remaining portion of a  
127 previous member's unexpired term.

128 (f) Consistent with the purposes set forth in the plan  
129 included in the ordinance under paragraph (a), the board of  
130 trustees of the Florida College System institution and the board  
131 of trustees of the state university shall annually prepare plans  
132 that specify how each board of trustees intends to allocate and  
133 expend the funds for the institutions' upcoming fiscal year and  
134 submit such plans to the oversight board for approval.

135 (g) The annual apportionment of state funds for the support  
136 of a state university and a Florida College System institution  
137 allocated under general law may not be reduced because the  
138 institutions have received funds pursuant to a sales surtax  
139 levied under this subsection.

140 (h) A surtax imposed under this subsection expires 5 years  
141 after the effective date of the surtax.

142 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14

Meeting Date

Topic LOCAL REFERENDUM

Bill Number SB 66  
*(if applicable)*

Name SHARON CROW

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title VP

Address 1200 W. 15B BLVD.

Phone 386-295-6258

Street  
DAYTONA BEACH, FL 32119  
City State Zip

E-mail SCROWSON@daytonastate.edu

Speaking:  For  Against  Information

Representing DAYTONA STATE COLLEGE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-14

Meeting Date

Topic Local Referendum

Bill Number 66  
*(if applicable)*

Name Victoria Hernandez

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Dir. Gov't. Affis.

Address 300 NE 2 Ave

Phone 305-298-4870

Street

MIAMI FL 33132

City

State

Zip

E-mail vhernand@mdc.edu

Speaking:  For  Against  Information

Representing MIAMI DADE COLLEGE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 66  
*(if applicable)*

Name Michael Brawer

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title CEO Assoc of FL Colleges

Address 113 E College Ave

Phone 850 222 3222

Street

TLH FL 32301

City

State

Zip

E-mail mbrawer@myafcollege.org

Speaking:  For  Against  Information

Representing Assoc of FL Colleges

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



The Florida Senate

## Committee Agenda Request

**To:** Senator Wilton Simpson, Chair  
Committee on Community Affairs

**Subject:** Committee Agenda Request

**Date:** February 10, 2014

---

I respectfully request that **Senate Bill #66**, relating to Discretionary Sales Surtaxes, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

---

Senator Anitere Flores  
Florida Senate, District 37

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SPB 7046

INTRODUCER: For consideration by the Community Affairs Committee

SUBJECT: Florida Retirement System

DATE: February 19, 2014

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7046 establishes a cash balance retirement plan for Florida Retirement System (FRS) employees featuring individual employee accounts that are guaranteed a minimum retirement benefit. Cash balance plans offer some of the features of both the pension plan and the investment plan. The State Board of Administration (SBA) is responsible for administering the new plan. Cash balance accounts would be funded by employee and employer contributions based on a percentage of monthly compensation, a guaranteed 2 percent interest on the account balance, and 75 percent of any investment returns over 2 percent.

Employees hired after July 1, 2015, may choose the cash balance plan or existing investment plan, and could revise that decision by making a second election. Only special risk employees would be able to choose the pension plan. Employees under the cash balance plan are vested after completing five years of service. Existing employees may choose to move between the pension plan or investment plan to the cash balance plan. Upon retirement, employees may choose to receive the total of the cash balance account as a lump-sum distribution, direct rollover retirement account distribution, periodic distribution or combination.

**II. Present Situation:**

**The Florida Retirement System**

The FRS is the fourth largest public retirement system in the United States. It is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S., and administered by the Department of Management Services (DMS).<sup>1</sup> The FRS was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the Pension Plan, and in 2007, the

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<sup>1</sup> Section 121.021(5), F.S.

Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.<sup>2</sup>

The FRS consists of 1,000 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities, and also includes the 185 cities and 251 special districts that have elected to join the system.<sup>3</sup> Members of the FRS are required to make employee contributions of 3 percent of their salary.<sup>4</sup> As of June 30, 2012, the FRS had 623,011 active members, 334,682 retired members and beneficiaries, and 40,556 active members of the Deferred Retirement Option Program (DROP).<sup>5</sup>

The membership of the FRS is divided into five membership classes:

- Regular Class<sup>6</sup> consists of 535,467 active members, plus 7,675 in renewed membership;
- Special Risk Class<sup>7</sup> includes 70,005 active members;
- Special Risk Administrative Support Class<sup>8</sup> has 59 active members;
- Elected Officers' Class<sup>9</sup> has 2,005 active members, plus 201 in renewed membership; and
- Senior Management Service Class<sup>10</sup> has 7,295 members, plus 251 in renewed membership.<sup>11</sup>

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined benefit plan, also known as the Pension Plan; and
- The defined contribution plan, also known as the Investment Plan.

According to information supplied by the SBA, approximately 50,000 new hires are processed each year for a retirement plan choice.<sup>12</sup> Historically, about 25 percent have actively elected the Investment Plan, 21 percent have actively elected the Pension Plan and 54 percent have defaulted into the Pension Plan.

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<sup>2</sup> The Florida Retirement System Annual Report, July 1, 2011 – June 30, 2012, at 38, available at [https://www.rol.frs.state.fl.us/forms/2011-12\\_Annual\\_Report.pdf](https://www.rol.frs.state.fl.us/forms/2011-12_Annual_Report.pdf) (last visited Feb. 14, 2013).

<sup>3</sup> *Id.*, at 38.

<sup>4</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011.

<sup>5</sup> Florida Retirement System 2011-2012 Annual Report, at 54, 62, and 66.

<sup>6</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>7</sup> The Special Risk Class is for members employed as: law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

<sup>8</sup> The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

<sup>9</sup> The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

<sup>10</sup> The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

<sup>11</sup> All figures from Florida Retirement System 2011-2012 Annual Report, at 55.

<sup>12</sup> It is uncertain how many of these new hires stay for their full career.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

#### *Investment Plan*

In 2000, the Legislature created the Public Employee Optional Retirement Program (Investment Plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the Investment Plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the Investment Plan.<sup>13</sup> With respect to the employer contributions, a member vests after completing one work year with an FRS employer.<sup>14</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>15</sup> The Investment Plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.<sup>16</sup> An FRS member who qualifies for disability while enrolled in the Investment Plan must apply for benefits as if the employee was a member of the Pension Plan. If approved for retirement disability benefits, the member is transferred to the Pension Plan.<sup>17</sup>

The SBA is primarily responsible for administering the Investment Plan.<sup>18</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>19</sup> The SBA selects and contracts with a third-party administrator to provide administrative services.<sup>20</sup>

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<sup>13</sup> Section 121.4501(6)(a), F.S.

<sup>14</sup> If a member terminates employment before vesting in the Investment Plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

<sup>15</sup> Section 121.591, F.S.

<sup>16</sup> See s. 121.4501(16), F.S.

<sup>17</sup> Pension Plan disability retirement benefits, which apply for Investment Plan members who qualify for disability, compensate an inline-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

<sup>18</sup> Section 121.4501(8), F.S.

<sup>19</sup> Section 4, Art. IV, Fla. Const.

<sup>20</sup> The third-party administrator may not be a provider or be affiliated with a provider. Section 121.4501(8)(a), F.S.

### *Pension Plan*

The Pension Plan is administered by the secretary of the DMS through the Division of Retirement.<sup>21</sup> Investment management is handled by the SBA. As of July 1, 2013, the actuarial funding level of the plan was at 85.9 percent, the lowest it has been since 1997.<sup>22</sup>

Any member initially enrolled in the Pension Plan before July 1, 2011, vests in the Pension Plan after completing six years of service with an FRS employer.<sup>23</sup> For members enrolled on or after July 1, 2011, the member vests in the Pension Plan after eight years of creditable service.<sup>24</sup> Benefits payable under the Pension Plan are calculated based on years of service x accrual rate x average final compensation.<sup>25</sup> For most members of the Pension Plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.<sup>26</sup> For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.<sup>27</sup> Members initially enrolled in the Pension Plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.<sup>28</sup>

### *Contribution Rates*

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the Pension Plan or the Investment Plan.<sup>29</sup> In order to address unfunded actuarial liabilities (UAL) of the system, an employer contribution rate is set in statute. The rates are determined annually based on an actuarial study obtained by the DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

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<sup>21</sup> Section 121.025, F.S.

<sup>22</sup> Presentation to House Committee on Appropriations by Heather Williamson, Staff Director for the House Committee on Government Operations, (Feb. 12, 2014).

<sup>23</sup> Section 121.021(45)(a), F.S.

<sup>24</sup> Section 121.021(45)(b), F.S.

<sup>25</sup> Section 121.091, F.S.

<sup>26</sup> Section 121.021(29)(a)1., F.S.

<sup>27</sup> Section 121.021(29)(b)1., F.S.

<sup>28</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>29</sup> Section 121.70(1), F.S.

**Table 1. Current Employer Contribution Rates for Each Class:**<sup>30</sup>

Membership Class	Normal Cost		UAL Rate	
	Effective 7/1/2013	Yearly Change	Effective 7/1/2013	Yearly Change
Regular Class	3.53%	-0.02%	2.19%	1.70%
Special Risk Class	11.00%	-0.01%	6.83%	4.08%
Special Risk Administrative Support Class	4.17%	0.23%	30.56%	29.73%
Elected Officer’s Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52%	-0.01	24.85%	23.97%
• Justices and Judges	10.05%	0.03%	17.00%	16.23%
• County Officers	8.44%	0.08%	23.36%	22.63%
Senior Management Service Class	4.81%	-0.03%	12.27%	11.95%
Deferred Retirement Option Program (DROP)	4.63%	0.30%	7.01%	7.01%

For all membership classes, except the DROP, employees contribute 3 percent of their compensation towards retirement.<sup>31</sup>

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the Investment Plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas contributions under the Pension Plan are transferred into the FRS Trust Fund.<sup>32</sup>

*Calculation of Pension Plan Benefits*

Benefits payable to a pension plan retiree are calculated using formulas that include the average final compensation. “Average final compensation” means the average of the five or eight highest fiscal years of compensation for creditable service prior to retirement, termination, or death. If you enrolled in FRS prior to July 1, 2011, your average final compensation will be five years. If you enrolled in FRS on or after July 1, 2011, your average final compensation will be eight years. The average final compensation includes accumulated annual leave payments, not to exceed 500 hours, and all payments defined as compensation in s. 121.021(22). The average final compensation does not include compensation paid to professional persons for special or particular services; payments for accumulated sick leave made due to retirement or termination; payments for accumulated annual leave in excess of 500 hours; bonuses as defined in s. 121.021(47); third party payments made on or after July 1, 1990; or fringe benefits such as automobile or housing allowances.<sup>33</sup>

<sup>30</sup> Section 121.71(4)-(5), F.S.

<sup>31</sup> Section 121.71(3), F.S.

<sup>32</sup> See sections 121.4503 and 121.72(1), F.S.

<sup>33</sup> Section 121.021(24), F.S.

“Compensation” means the monthly salary paid a member by his or her employer for work performed arising from that employment. Compensation includes overtime payments paid from a salary fund; accumulated annual leave payments; payments in addition to the employee’s base rate of pay if specified conditions apply; amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.<sup>34</sup>

### Cash Balance Plans

According to the U.S. Department of Labor, a cash balance plan is “a defined benefit plan that defines the benefit in terms that are more characteristic of a defined contribution plan.”<sup>35</sup> Specifically, the promised benefit may be defined in terms of a stated account balance. However, per Internal Revenue Service (IRS) Code, the benefit must be “definitely determinable,”<sup>36</sup> such as is the case with conversion of the account balance into a monthly annuity.<sup>37</sup> Cash balance plans, typically:<sup>38</sup>

- Provide each member with an individual account;
- Are funded through both employee and employer contributions into one trust fund;
- Relieve members from making choices about how the money is invested;
- Guarantee members a return on investment;
- Place investment risks solely on the employer;
- Provide member accounts with dividends when investment returns exceed a threshold;
- Offer a retiring member an annuity based on their account balance;
- Offer a lump sum distribution that can be rolled into an IRA or another employer's plan; and
- Protect benefits through federal insurance provided by the Pension Benefit Guaranty Corporation.

Although “notional” or “hypothetical” account balances accrue for each employee, plan assets are not segregated into individual accounts.<sup>39</sup> Plan sponsors invest the assets of the plan collectively, just like those of any other defined benefit plan, so the combined value of participant accounts typically will not equal the total value of plan assets. However, participants’ benefits are guaranteed because of an obligation that the employer fund any shortfall in accumulated assets below the accrued liabilities of the plan.

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<sup>34</sup> Section 121.021(22), F.S.

<sup>35</sup> Cash balance plans are one of a variety of “hybrid” plans. U.S. Department of Labor, *FAQs About Cash Balance Pension Plans*, [http://www.dol.gov/ebsa/FAQs/faq\\_consumer\\_cashbalanceplans.html](http://www.dol.gov/ebsa/FAQs/faq_consumer_cashbalanceplans.html) (last visited Feb. 12, 2014).

<sup>36</sup> IRS Code, section 401(a)(25) states that a defined benefit plan is treated as providing definitely determinable benefits so long as any assumptions that are used to determine a benefit under the plan are specified in the plan in a manner that precludes employer discretion.

<sup>37</sup> IRS Code, sections 411(a)(7)(A)(i) and 411(b)(2)(B) indicate that the fundamental definition of the accrued benefit under a defined benefit plan is in the form of an annuity beginning at normal retirement age. Code section 411(c)(3) and Notice 96-8 clarify that the requirements of Code section 411 are to be applied on the basis of a life annuity.

<sup>38</sup> U.S. Dep’t of Labor, *supra* note 35.

<sup>39</sup> National Association of State Retirement Administrators, *Issue Brief: State Hybrid Retirement Plans* (Sep. 2013), available at [http://www.nasra.org/files/Issue Briefs/NASRAHybridBrief.pdf](http://www.nasra.org/files/Issue%20Briefs/NASRAHybridBrief.pdf) (last visited Feb. 14, 2014).

*Risk Allocation, as Compared with Investment and Pension Plans*

As a hybrid plan, a cash balance plan apportions risk between employees and employers differently than in a pure defined contribution plan, or a defined benefit plan. Risk within retirement systems can be expressed in terms of investment risk, accessibility risk, longevity risk, and inflation risk.<sup>40</sup>

In a cash balance system, employers bear the investment risks associated with meeting the minimum guaranteed return rate. Because assets are pooled and invested by professionals and specified annual returns are provided on notional participant accounts, employees do not bear investment risks associated with having the sophistication to manage investments, as is the case with a pure defined contribution plan.

If the vesting period is not attained by an employee in a traditional defined benefit plan, that employee foregoes access to employer contributions. Cash balance plans are typically designed with vesting that occurs either immediately or within a couple of years.<sup>41</sup> Additionally, they are designed to offer portability to other retirement systems, much like in a defined contribution plan. Cash balance plans, with their typically short vesting periods and greater portability of funds, ensure retirement funds are accessible to employees who may work for a variety of employers over the course of their careers.

Longevity risk refers to the risks associated with an employee outliving their retirement benefits.<sup>42</sup> In a pure defined contribution system that provides one lump-sum amount to employees, longevity risk falls on employees, individually, who must ensure funds are not exhausted over their retired life. Both traditional defined benefit plans and cash balance plans offer payment of an employee's benefit in the form of a series of payments for life to begin at retirement. By requiring participants to receive all or most of their benefit as an annuity paid out over their retired lifetime, longevity risk is pooled across plan participants, but the employer bears the risk that plan assets are sufficient to cover all distributions.

Inflation risk refers to potential losses incurred due to the devaluation of money over time. Reducing inflation risk for post-retirement years typically requires an employee to have saved enough to offset future price increases. Alternatively, many public defined benefit plans provide retirees with an annual cost-of-living adjustment (COLA) to offset the effects of inflation. A COLA places some of the inflation risk on the employer. Defined contribution plans generally do not offer postretirement adjustments, so the employee assumes all inflationary risk. A cash balance plan can be designed that provides an optional COLA on the annuitized benefits.<sup>43</sup>

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<sup>40</sup> For a more detailed discussion of the investment risk, longevity risk, and inflation risk associated with various hybrid plans, see NASRA, *State Hybrid Retirement Plans Part II: Shared-Risk Arrangements* (Aug. 2012), available at <http://www.nasra.org/files/Issue%20Briefs/NASRAHybridIIBrief.pdf> (last visited Feb. 15, 2014).

<sup>41</sup> Private employers offering cash balance plans must offer vesting within 3 years pursuant to ERISA and other federal laws.

<sup>42</sup> NASRA, *supra* note 40.

<sup>43</sup> NASRA, *Issue Brief: Cost of Living Adjustments* (June 2012), <http://www.nasra.org/resources/COLA%20IB%20060512.pdf> (last visited Feb. 15, 2014).

### *Cash Balance Plans in Other States*

Legislatures in 5 states have sought to reduce the fiscal burden of unfunded pension promises made to current and retired government employees by passing legislation that implements some form of cash balance plan.<sup>44</sup> While designs of these cash balance plans vary with respect to contributions, benefit accrual rates, vesting periods, and benefit payments, they all offer “fully funded retirement benefits, access to professionally managed, low-fee, pooled investments with appropriate asset allocations,” and access to annuities.<sup>45</sup> The statewide retirement systems that are designed as cash balance plans are:

- California State Teachers Retirement System (for part-time workers);<sup>46</sup>
- Kansas Public Employees Retirement System (effective 1/1/15);<sup>47</sup>
- Kentucky Public Employees Retirement System (effective 1/1/14);<sup>48</sup>
- Nebraska Public Employees' Retirement System (for state and county workers);<sup>49</sup>
- Texas County & District Retirement System;<sup>50</sup>
- Texas Municipal Retirement System.<sup>51</sup>

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<sup>44</sup> See Table 2, *infra*, for a comparison of these plans.

<sup>45</sup> The Pew Charitable Trusts, *Public Pension Cash Balance Plans: A Primer* (Feb. 2014), available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2014/CashBalance-Brief\\_v7.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2014/CashBalance-Brief_v7.pdf) (last visited Feb. 14, 2013).

<sup>46</sup> California State Teachers' Retirement System, *Overview of the California State Teachers' Retirement System and Related Issues* (2013), available at [http://www.calstrs.com/sites/main/files/file-attachments/overview\\_2013\\_v2.pdf](http://www.calstrs.com/sites/main/files/file-attachments/overview_2013_v2.pdf).

<sup>47</sup> Kansas Legislature, Bill Summary for HB 2333: New Tier 3 Cash Balance Plan (2012), available at [http://www.kslegislature.org/li\\_2012/b2011\\_12/asures/documents/summary\\_hb\\_2333\\_2012.pdf](http://www.kslegislature.org/li_2012/b2011_12/asures/documents/summary_hb_2333_2012.pdf).

<sup>48</sup> Kentucky Legislature, *Senate Bill 2* (2011), available at <http://www.lrc.ky.gov/record/11rs/SB2.htm>.

<sup>49</sup> Nebraska Public Employees Retirement Systems, *Annual Report to the Legislative Retirement Committee* (2013), available at [http://nebraskalegislature.gov/FloorDocs/103/PDF/Agencies/Retirement\\_Plans\\_\\_Administrator\\_of/410\\_20130422-144332.pdf](http://nebraskalegislature.gov/FloorDocs/103/PDF/Agencies/Retirement_Plans__Administrator_of/410_20130422-144332.pdf).

<sup>50</sup> Texas County and District Retirement System, *Guide to Member Benefits*, available at <https://www.tcdrs.org/TCDRS%20Publications/GuidetoMemberBenefits.pdf>.

<sup>51</sup> Texas Municipal Retirement System, *TMRS Facts* (2013), available at [http://www.tmr.org/down/pubs/TMRS\\_Facts\\_2012\\_web.pdf](http://www.tmr.org/down/pubs/TMRS_Facts_2012_web.pdf).

**Table 2. Comparison of Cash Balance Plans in 5 States<sup>52</sup>**

	Employee Contribution	Employer Contribution	Guaranteed Return	Dividends	Vesting Schedule	Benefit Payment
California	4%	4%	Based on the average of 30-year U.S. Treasury bonds.	Granted, if plan funding ratio > 100%; depends on Treasury bond rates.	Immediate	Lump-sum and/or monthly lifetime annuity or period certain monthly annuity
Kansas	6%	3 to 6% based on tenure	5.25%	Possible	5 years	Lump-sum up to 30%, annuity, and participants may elect to fund an auto-COLA
Kentucky	5% for regular members, 8% for public safety members	4% for regular members, 7.5% for public safety members	4%	75% of long-run (five-year average) returns above the guarantee	5 years	Annuity payments, optional payment of the equivalent of life annuity, or refund of account balance
Nebraska	4.5% for county members, 4.8% for state members	6.8% for county members, 7.5% for state members	Greater of 5%, or the federal mid-term rate plus 1.5%	Granted depending on the plan's funding level and board approval	3 years	Annuity of any portion of the cash balance with option for automatic annual COLA. Lump sum of any remainder
Texas (County and District System)	4 to 7% depending on employer election	Between 100 and 250% of the member's contribution	7%	None provided	5, 8, or 10 years depending on employer election	Lifetime annuity based on employee final account balance, less any partial lump sum payments, plus employer matching
Texas (Texas Municipal System)	5 to 7% depending on employer election	Between 100 and 200% of the member's contribution	5% member contributions. Employer contributions earn annual return on assets.	Granted upon board approval	5, 8, or 10 years depending on employer election	Annuity with partial lump sum option

<sup>52</sup> NASRA, *Issue Brief: State Hybrid Retirement Plans* (Sep. 2013), available at <http://www.nasra.org/files/Issue%20Briefs/NASRAHybridBrief.pdf>; The Pew Charitable Trusts, *Public Pension Cash Balance Plans* (Feb. 2014), available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2014/CashBalance-Brief\\_v7.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2014/CashBalance-Brief_v7.pdf); NASRA, *DC, Cash Balance, and Hybrid Plans*, available at <http://www.nasra.org/Files/Topical%20Reports/Governance%20and%20Legislation/Pension%20Reform/dcplans.pdf> (last visited Feb. 15, 2014).

### III. Effect of Proposed Changes:

**Section 1** directs the Division of Law Revision and Information to designate portions of ch. 121, F.S., as parts III and IV of the chapter, and to create a new part III of ch. 121, F.S., to be entitled the “Florida Retirement System Cash Balance Plan.”

**Section 2** creates s. 121.601, F.S., to provide definitions applicable to the new FRS cash balance plan. The key definitions include “active member,” “annuity savings account,” “approved provider,” “eligible employee,” “retirement annuity account,” and “vested.”

An “active member” is a member actively employed by a participating employer. “Annuity savings account” means the account containing the member contributions. An “approved provider” is a private sector company selected and approved by the SBA to offer annuity products. “Retirement annuity account” means the account containing the employer contributions. A member is deemed to be “vested” upon completing 5 years of creditable service in the FRS.

**Section 3** creates s. 121.602, F.S., which establishes the cash balance plan within the FRS, to be administered by the SBA as a qualified governmental plan under s. 401(a) of the Internal Revenue Code. The cash balance plan references certain provisions of the investment plan, especially with respect to administration of accounts, while being a completely distinct plan. It is designed as follows:

#### *Participation by Special Risk Class*

Employees initially hired on or after July 1, 2015, and eligible to participate in the Special Risk Class, may choose to participate in either the pension plan, the investment plan or the cash balance plan. A special risk employee has eight months to make the election, and participation in their elected plan is retroactive to the first day of employment. If the employee fails to make an election after the eighth month, the employee will be placed in the investment plan. After the eight month time period for making an election, an employee has one additional opportunity to elect participation in another plan, including the pension plan.

#### *Participation, Generally*

Employees initially hired on or after July 1, 2015, and not eligible to participate in the Special Risk Class, must choose either the investment plan or the cash balance plan. An employee has eight months to make their initial election, and participation in their elected plan is retroactive to the first day of employment. If any employee fails to make an active election to participate in a plan by the end of the eighth month following the employee’s month of hire, the member will be enrolled in the investment plan. After the eight month time period for making an election, an employee has one additional opportunity to elect participation in either the investment or cash balance plan.

#### *Single Election Option*

All active members of the pension plan or investment plan are granted one career-time election to transfer to the cash balance plan. If this election is used, the transfer is final and irrevocable. If the member transfers to the cash balance plan, the member may either retain his service credits

or accumulations in the prior plan or transfer the amounts to the cash balance plan. Any transfer to the cash balance plan is treated as an employer credit within the cash balance plan.

#### *Contributions*

The member and employer will make monthly contributions to the active member's cash balance accounts based on a percentage of the member's gross monthly compensation. No voluntary contributions may be made into the cash balance plan. The SBA has a duty to ensure that plan assets are held in trust and allocated properly. The DMS is responsible for monitoring contribution levels for the cash balance plan.

Section 121.721, F.S., is created (by section 17 of the bill) which sets the contributions paid by employers and members for the cash balance plan. All active members will pay 3 percent of their gross monthly compensation to the plan. The employer contributions for retirement benefits will vary based on the class in which the member participates. The accounts will be credited with a guaranteed 2 percent annual effective rate. If the cash balance plan portfolio earns more than 2 percent return during the prior year, the members will be credited 75 percent of the rate over 2 percent. The guaranteed interest is credited monthly and the additional interest is credited annually. Members are not eligible for any interest credits if the member has taken a full distribution or annuitized the account balance prior to the posting of the interest credits.

#### *Accounts*

Member contributions and the associated interest are credited to the annuity savings account. The employer contributions and associated interest are credited to the retirement annuity account.

#### *Vesting*

The member is immediately vested in all member contributions and associated interest paid into the annuity savings account. The member becomes vested in the employer contributions, employer credits and associated interest paid into the retirement annuity account upon completion of 5 years of creditable service in the FRS. If the member transfers any credit from the investment plan or the pension plan, the member must meet the applicable vesting requirements of those plans prior to vesting in those amounts transferred to the cash balance plan. If a non-vested member is reemployed within 15 years of termination and has not withdrawn the employee contributions, then the prior earned employer contributions will be restored.

#### *Benefit Payments*

Benefits may not be paid from cash balance plan accounts, unless the member has terminated employment or is deceased. To receive benefits, a member must submit a written application. The benefits are payable as a lump-sum distribution, an eligible rollover distribution, an annuity or a combination of the three methods. The benefit payment method selected by the member is final and irrevocable once the benefit payment is cashed, transferred or deposited. No benefits are payable from the cash balance plan for hardships, loans, unforeseeable emergencies or any other purpose other than retirement. The SBA may cash out a de minimis account (\$5,000 or less) of a member who has terminated employment for a minimum of six calendar months. An employee may not receive a distribution if a qualified domestic relations order is filed against the member's cash balance account.

*Disability Payments*

If a member of the cash balance plan becomes totally and permanently disabled, the member may elect to receive the vested balance of the member's cash balance accounts or may transfer such balances to the pension fund to be eligible to receive a disability benefit from the pension fund. Employers participating in the FRS will be assessed an amount to pay for the disability benefits.

*Death Benefits*

If a member of the cash balance plan dies prior to retirement, a beneficiary may receive benefits as if the member retired on the date of death. The benefits may be payable as a lump-sum distribution, an eligible rollover distribution, an annuity, or a combination of the three. If a member of the cash balance plan is killed in the line of duty, the surviving spouse may transfer the benefits to the pension fund and receive a monthly lifetime benefit equal to one half of the member's monthly salary at the time of the member's death.

*Designation of Beneficiaries*

Members of the cash balance plan may designate beneficiaries similar to the way members of the investment plan designate beneficiaries.

*Purchase of Creditable Military Service*

Members of the cash balance plan may purchase certain military service and up to two years of other service based on authorized leaves of absence granted by employers participating in the FRS, pursuant to s. 121.111(1), F.S. No other service may be purchased.

*Retiree Health Insurance Subsidy*

Members of the cash balance plan are eligible to accrue benefits under the retiree health insurance subsidy program administered pursuant to s. 112.363, F.S.

*Social Security Coverage*

Members of the cash balance plan will be provided social security coverage similar to other members of the FRS.

*Cash Balance Plan Education*

The SBA is required to provide an education component for the members of the cash balance plan similar to the education component offered to the members of the investment plan.

*Member Information Requirements*

The SBA is required to provide quarterly benefit statements to the members of the cash balance plan.

*Federal Requirements*

The cash balance plan must be administered in compliance with federal requirements, to maintain its status as a qualified governmental plan. The SBA is granted rulemaking authority necessary to maintain such compliance. Credits payable under the cash balance plan may not exceed the maximum amount permitted under s. 401(a) of the Internal Revenue Code.

*Cash Balance Plan Administration*

The cash balance plan will be administered by the SBA similar to how the investment plan is administered.

*Fiduciary Standards and Responsibilities*

Investment of the cash balance plan assets will be made for the sole interest of the members and beneficiaries of the plan and to defray the expenses of administering the plan.

*Annual Actuarial Study*

An actuarial valuation of the cash balance plan must be completed annually by the SBA.

*Recommendations by Investment Advisory Council*

The Investment Advisory Council is charged with making recommendations to the SBA regarding investment policy, strategy and procedures for the cash balance plan.

*Investment Policy Statement*

The SBA will invest the funds in the cash balance plan. These investments must comply with the investment policy statement approved by the Trustees of the SBA.

**Section 4** amends s. 112.363, F.S., to establish that a member of the cash balance plan may begin receiving the retiree health insurance subsidy upon retirement.

**Sections 5 and 6** amend s. 121.011-012, F.S., to update references to part IV of ch. 121, F.S.

**Section 7** amends s. 121.021, F.S., to add “cash balance program” to the definition of FRS.

**Section 8** amends s. 121.051, F.S., to establish the retirement plan options available to employees eligible to participate in the Community College Optional Retirement Program (CCORP). Employees hired on or after July 1, 2015, may choose to participate in the CCORP, the investment plan or the cash balance plan. Existing members of CCORP are not permitted to transfer to the pension plan after July 1, 2015.

**Section 9** amends s. 121.052, F.S., to eliminate the option for members eligible for the Elected Officers Class to choose to participate in the Senior Management Service Class.

**Section 10** amends s. 121.055, F.S., to eliminate the option for members eligible for the Elected Officers Class to choose to participate in the Senior Management Service Class or the Senior Management Service Optional Annuity Program (SMSOAP). The SMSOAP is closed to new members effective July 1, 2015. Members enrolled in the SMSOAP prior to July 1, 2015, may retain membership in the program.

**Section 11** amends s. 121.091, F.S., to apply current reemployment restrictions to the retirees of the cash balance plan. After retirement in the cash balance plan, a retiree may not be reemployed with an FRS-participating employer within the first six calendar months of retirement.

**Section 12** amends s. 121.151, F.S., to authorize the SBA to invest the assets of the cash balance plan.

**Section 13** amends s. 121.35, F.S., to allow employees eligible to participate in the State University System Optional Retirement Program (SUSORP) and initially employed on or after July 1, 2015, the opportunity to choose to participate in the SUSORP, the investment plan or the cash balance plan.

**Section 14** amends s. 121.4501, F.S., to allow each member enrolled in the FRS prior to July 1, 2015, one opportunity during the member's active career to switch from the pension plan to the cash balance plan or from the investment plan to the cash balance plan.

**Section 15** amends s. 121.70, F.S., to make clarifying changes so that the cash balance plan is recognized as a component of the FRS.

**Section 16** amends s. 121.71, F.S., to continue the blended rate methodology, so that the costs associated with the pension plan, the investment plan and the cash balance plan are included for actuarial valuation purposes.

**Section 17** creates s. 121.721, F.S., to set the contributions paid by employers and members for the cash balance plan. All active members will pay 3 percent of their gross monthly compensation to the plan. The employer contributions for retirement benefits will vary based on the class in which the member participates. The accounts will be credited with a guaranteed 2 percent annual effective rate. If the cash balance plan portfolio earns more than 2 percent return during the prior year, the members will be credited 75 percent of the rate over 2 percent. The guaranteed interest is credited monthly and the additional interest is credited annually. Members are not eligible for any interest credits if the member has taken a full distribution or annuitized the account balance prior to the posting of the interest credits.

This section also establishes the methodology for the crediting of interest to the member accounts.

**Section 18** amends s. 121.73, F.S., to set the employer contributions required to fund the disability and death benefits provided under the cash balance plan. At this time these rates are based on the similar benefits cost decrements identified in the 2013 FRS Valuation of the pension plan.

**Section 19** amends s. 121.74, F.S., to permit the education and administrative assessment paid by employers to be used by the SBA for both the investment plan and the cash balance plans.

**Section 21** amends s. 121.78, F.S., to establish the usage of penalties and delinquent fees relating to cash balance plan contributions.

**Section 22** amends s. 216.136, F.S., to expand the responsibilities of the FRS Actuarial Assumption Conference to include developing official information relating to the FRS cash balance plan.

**Sections 20, 23, and 24** amend s. 121.76, 238.072, and 413.051, F.S., to make technical changes to conform, to correct cross-references, or to make other technical changes.

**Section 25** provides a legislative statement that this bill fulfills an important state interest.

**Section 26** adjusts the contributions paid by FRS-participating employers to fund the provisions of this act.

**Section 27** directs the SBA to seek a determination letter from the IRS regarding the changes to the FRS made by this bill.

**Section 28** provides that the bill is effective July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Because the FRS is a multi-employer pension plan, the effects of this bill extend to all member FRS government employers. To the extent this bill requires cities and counties to spend money or take action that requires the expenditure of money, the mandates provision of Art. VII, s. 18 of the State Constitution may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 25 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

This bill contains a statement indicating that the bill fulfills an important state interest and the bill applies to similarly situated persons (all employers who participate in the FRS), so it appears that this exception would apply.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

D. Other Constitutional Issues:

**Actuarial Requirements**

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act” (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

The DMS has commissioned an actuarial study to determine the overall fiscal impacts of the cash balance plan.

**Contractual Obligations**

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.<sup>53</sup> This “preservation of rights” provision<sup>54</sup> was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.<sup>55</sup> The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that

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<sup>53</sup> Section 121.011(3)(d), F.S.

<sup>54</sup> The “preservation of rights” provision vests all rights and benefits already earned under the present retirement plan so the Legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So. 2d 1033, 1037 (Fla. 1981).

<sup>55</sup> *Id.* at 1035.

level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.<sup>56</sup>

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.<sup>57</sup> More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.<sup>58</sup>

This bill does not change any benefits that a member earned prior to July 1, 2015.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The bill will pass along to all employer members of the FRS an adjustment to their statutory payroll costs in order to fund the proposed benefit changes. The amount of this change will not be known until the actuarial studies are completed.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

A number of the provisions of the bill will require actuarial studies to determine the fiscal impact on the FRS.

The SBA will also incur costs to establish the cash balance plan. No estimate is currently available.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 112.363, 121.011-012, 121.021, 121.051, 121.052, 121.055, 121.091, 121.151, 121.35, 121.4501, 121.70-71, 121.73-74, 121.76, 121.78, 213.136, 238.072, and 413.051.

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<sup>56</sup> *Id.* at 1036.

<sup>57</sup> *Id.* at 1037.

<sup>58</sup> *Rick Scott, et al. v. George Williams, et al.*, 107 So. 3d 379 (Fla. 2013).

This bill creates sections 121.601, 121.602, and 121.721 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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265442

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/18/2014	.	
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The Committee on Community Affairs (Simpson) recommended the following:

**Senate Amendment**

Between lines 436 and 437  
insert:

5. After the prescribed time period during which an eligible employee can elect participation in the pension plan, cash balance plan, or the investment plan, or after the month following such election, if sooner, the employee shall have one opportunity to move between the pension plan, investment plan, and the cash balance plan. If the employee is no longer eligible



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11 to participate in the Special Risk Class at the time of such  
12 election, the employee may only elect to move to the investment  
13 plan or the cash balance plan. Such elections are effective on  
14 the first day of the month following the receipt of the election  
15 by the third-party administrator. This paragraph is contingent  
16 upon approval by the Internal Revenue Service.



303712

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/18/2014	.	
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The Committee on Community Affairs (Simpson) recommended the following:

**Senate Amendment**

Between lines 469 and 470  
insert:

5. After the prescribed time period during which an eligible employee can elect the cash balance plan or the investment plan, or after the month following such election, if sooner, the employee shall have one opportunity to choose to move between the investment plan and the cash balance plan. If the employee is eligible to participate in the Special Risk



303712

11 Class at the time of such election, the employee may also elect  
12 to move to the pension plan. Such elections are effective on the  
13 first day of the month following the receipt of the election by  
14 the third-party administrator. This paragraph is contingent upon  
15 approval by the Internal Revenue Service.  
16



338372

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/18/2014	.	
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The Committee on Community Affairs (Simpson) recommended the following:

**Senate Amendment**

Between lines 491 and 492  
insert:

(e) Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17) (b), excluding leaves of absence without pay. Such elections are effective on the first day of the month following receipt of the election by the third-party administrator. This paragraph is contingent upon



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11 approval by the Internal Revenue Service.  
12 1. If the employee chooses to move from the pension plan to  
13 the investment plan, s. 121.4501(3) governs the transfer.  
14 2. If the employee chooses to move from the pension plan or  
15 investment plan to the cash balance plan, subsection (2) governs  
16 the transfer.  
17 3. If the employee chooses to move from the cash balance  
18 plan to the investment plan and establishes one or more  
19 individual member accounts, the employee may elect to transfer a  
20 sum representing the balance of the member's cash balance  
21 accounts to the investment plan. Upon transfer, all service  
22 credit earned under the cash balance plan is nullified for  
23 purposes of entitlement to a future benefit under the cash  
24 balance plan.  
25 4. If an employee participating in the Special Risk Class  
26 chooses to move to the pension plan, the employee must transfer  
27 from his or her investment plan account or cash balance accounts  
28 and from other employee moneys as necessary, a sum representing  
29 the present value of the employee's accumulated benefit  
30 obligation immediately following the time of such movement,  
31 determined by assuming that attained service equals the sum of  
32 service in the pension plan, service in the investment plan, and  
33 service in the cash balance plan. Benefit commencement occurs on  
34 the first date the employee is eligible for unreduced benefits  
35 using the discount rate and other relevant actuarial assumptions  
36 that were used to value the pension plan liabilities in the most  
37 recent actuarial valuation. For an employee who, at the time of  
38 the election, already maintains an accrued benefit amount in the  
39 pension plan, the then-present value of the accrued benefit is



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40 deemed part of the required transfer amount. The division must  
41 ensure that the transfer sum is prepared using a formula and  
42 methodology certified by an enrolled actuary. A refund of  
43 employee contributions or additional member payments made which  
44 exceed the employee contributions that would have accrued had  
45 the member remained in the pension plan and not transferred to  
46 the investment plan or cash balance plan is not permitted.

47 5. An employee's ability to transfer from the pension plan  
48 to the investment plan or cash balance plan, and the ability of  
49 a current employee to have the option to later transfer back  
50 into the pension plan, shall be deemed a significant system  
51 amendment. Pursuant to s. 121.031(4), any resulting unfunded  
52 liability arising from actual original transfers from the  
53 pension plan to the investment plan must be amortized within 30  
54 plan years as a separate unfunded actuarial base independent of  
55 the reserve stabilization mechanism described in s.  
56 121.031(3)(f). For the first 25 years, a direct amortization  
57 payment may not be calculated for this base. During this period,  
58 the separate base shall be used to offset the impact of  
59 employees exercising their option to transfer back into the  
60 pension plan. The actuarial funded status of the pension plan is  
61 not affected by such second program elections in a significant  
62 manner after due recognition of the separate unfunded actuarial  
63 base. Following the initial 25-year period, any remaining  
64 balance of the original separate base shall be amortized over  
65 the remaining 5 years of the required 30-year amortization  
66 period.

67 6. If an employee participating in the Special Risk Class  
68 chooses to transfer from the investment plan or cash balance



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69 plan to the pension plan and retains an excess account balance  
70 in the investment plan after satisfying the buy-in requirements  
71 under this paragraph, the excess may not be distributed until  
72 the member retires from the pension plan. The excess account  
73 balance may be rolled over to the pension plan and used to  
74 purchase service credit or upgrade creditable service in the  
75 pension plan.



363248

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/18/2014	.	
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The Committee on Community Affairs (Simpson) recommended the following:

**Senate Amendment**

Delete lines 1685 - 1686

and insert:

(g) Except as otherwise provided in s. 121.602(3)(a) and (e), an employee initially enrolled on or after July 1, 2015, is not eligible to enroll in the pension plan.

FOR CONSIDERATION By the Committee on Community Affairs

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1                                   A bill to be entitled  
2       An act relating to the Florida Retirement System;  
3       providing a directive to the Division of Law Revision  
4       and Information; creating s. 121.601, F.S.; providing  
5       definitions; creating s. 121.602, F.S.; requiring the  
6       Trustees of the State Board of Administration to  
7       establish the Florida Retirement System Cash Balance  
8       Plan; requiring employees and employers to make  
9       contributions for funding the plan; providing that the  
10      plan provide a lump-sum or annuity benefit; providing  
11      procedures for employees who are members of the  
12      pension plan or investment plan before a certain date  
13      to transfer to the cash balance plan; providing  
14      procedures for employees employed after a certain date  
15      to be enrolled in the investment plan or cash balance  
16      plan; providing for the distribution of employee and  
17      employer contributions and credits to the cash balance  
18      plan; providing for the establishment of employee  
19      annuity savings accounts and employer retirement  
20      annuity accounts; providing vesting requirements;  
21      providing for the payment of benefits, including  
22      disability and death benefits, and the designation of  
23      a beneficiary; providing for the purchase of  
24      creditable service; providing eligibility for the  
25      retiree health insurance subsidy and social security  
26      coverage; providing for the education of members about  
27      the cash balance plan and requiring the state board to  
28      provide certain information to members on a quarterly  
29      basis; requiring the plan to conform to Internal

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30 Revenue Code requirements; authorizing the state board  
31 to adopt rules relating to maintaining federal status;  
32 providing for plan administration and imposing  
33 fiduciary standards on such management; requiring an  
34 annual actuarial analysis of the plan; directing the  
35 Investment Advisory Council to make recommendations to  
36 the board of directors; requiring the development and  
37 adoption of an Investment Policy Statement; amending  
38 s. 112.363, F.S., relating to the retiree health  
39 insurance subsidy; conforming provisions to changes  
40 made by the act; amending ss. 121.011 and 121.012,  
41 F.S.; conforming cross-references; amending s.  
42 121.021, F.S.; revising the definition of "Florida  
43 Retirement System" to conform to changes made by the  
44 act; amending s. 121.051, F.S.; prohibiting employees  
45 from enrolling in the pension plan after a certain  
46 date; providing exceptions; amending s. 121.052, F.S.;  
47 prohibiting elected officials from joining the Senior  
48 Management Service Class after a specified date;  
49 amending s. 121.055, F.S.; prohibiting an elected  
50 official eligible for membership in the Elected  
51 Officers' Class from enrolling in Senior Management  
52 Service Class or Senior Management Service Optional  
53 Annuity Program; closing the Senior Management Service  
54 Optional Annuity Program to new members after a  
55 specified date; amending s. 121.091, F.S., relating to  
56 benefits payable under the Florida Retirement System;  
57 conforming provisions to changes made by the act;  
58 amending s. 121.151, F.S., relating to the investment

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59 of retirement funds; conforming provisions to changes  
60 made by the act; amending s. 121.35, F.S.; authorizing  
61 participants in the optional retirement program for  
62 the State University System to enroll in the cash  
63 balance plan as of a specified date; amending s.  
64 121.4501, F.S., relating to the Florida Retirement  
65 System Investment Plan; limiting the ability of  
66 members to enroll in the pension plan after a  
67 specified date; consolidating provisions relating to  
68 past plan elections; providing for certain employees  
69 enrolled in the pension or investment plan to transfer  
70 to the cash balance plan; providing for the  
71 administration of the cash balance plan; revising the  
72 education component to include the cash balance plan;  
73 making conforming changes; amending s. 121.70, F.S.,  
74 relating to legislative purposes for funding  
75 retirement benefits; conforming provisions to changes  
76 made by the act; amending s. 121.71, F.S., relating to  
77 the calculation of contribution rates; conforming  
78 provisions to changes made by the act; creating s.  
79 121.721, F.S.; establishing contribution rates for the  
80 cash balance plan; specifying how interest credit  
81 rates are to be calculated; amending s. 121.73, F.S.;  
82 expanding the section relating to allocations for  
83 disability coverage to also include coverage for  
84 members killed in the line of duty; conforming  
85 provisions to changes made by the act; amending s.  
86 121.74, F.S.; conforming provisions to changes made by  
87 the act; amending s. 121.76, F.S.; conforming a

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88 reference; amending s. 121.78, F.S.; revising  
89 provisions relating to the payment and distribution of  
90 contributions to accommodate members of the cash  
91 balance plan; amending s. 213.136, F.S.; conforming  
92 provisions to changes made by the act; amending ss.  
93 238.072, and 413.051, F.S.; conforming cross-  
94 references; providing that the act fulfils an  
95 important state interest; adjusting the required  
96 employer contribution rates for the unfunded actuarial  
97 liability of the Florida Retirement System for select  
98 classes; providing a directive to the Division of Law  
99 Revision and Information; requiring the state board to  
100 request a determination letter from the Internal  
101 Revenue Service; providing an effective date.

102  
103 Be It Enacted by the Legislature of the State of Florida:

104  
105 Section 1. The Division of Law Revision and Information is  
106 directed to redesignate present part III of chapter 121, Florida  
107 Statutes, consisting of ss. 121.70-121.78, Florida Statutes, as  
108 part IV, and to create a new part III of chapter 121, Florida  
109 Statutes, consisting of ss. 121.601 and 121.602, Florida  
110 Statutes, to be entitled "Florida Retirement System Cash Balance  
111 Plan."

112 Section 2. Section 121.601, Florida Statutes, is created to  
113 read:

114 121.601 Definitions.—As used in this part, the term:

115 (1) "Active member" means a member who is actively employed  
116 by a participating employer.

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117       (2) "Annuity savings account" means the account maintained  
118 for member contributions.

119       (3) "Approved provider" means a private sector company that  
120 is selected and approved by the state board to offer annuity  
121 products to the cash balance plan.

122       (4) "Cash balance plan" means the Florida Retirement System  
123 Cash Balance Plan created under this part.

124       (5) "Covered employment" means employment in a regularly  
125 established position as defined in s. 121.021(52).

126       (6) "Covered position" means a position with a covered  
127 employer that is eligible for membership in the Florida  
128 Retirement System.

129       (7) "De minimis account" means an account containing  
130 employer and employee contributions of up to \$5,000 made under  
131 this chapter.

132       (8) "Electronic means" means telephone transmission if the  
133 required information is received on a recorded line, or the  
134 Internet if the required information is captured online.

135       (9) "Eligible employee" means an officer or employee, as  
136 defined in s. 121.021(11), who:

137       (a) Is a member of, or is eligible for membership in, the  
138 Florida Retirement System, including a renewed member of the  
139 Florida Retirement System initially enrolled before July 1,  
140 2010; or

141       (b) Participates in, or is eligible to participate in, the  
142 Senior Management Service Optional Annuity Program established  
143 under s. 121.055(6), the State Community College System Optional  
144 Retirement Program established under s. 121.051(2)(c), or the  
145 State University System Optional Retirement Program established

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146 under s. 121.35.

147  
148 The term does not include a member participating in the Deferred  
149 Retirement Option Program established under s. 121.091(13), a  
150 retiree of a state-administered retirement system initially  
151 reemployed in a regularly established position on or after July  
152 1, 2010, or a compulsory participant of the State University  
153 System Optional Retirement Program established under s. 121.35.

154 (10) "Member" or "employee" means an eligible employee who  
155 enrolls in the cash balance plan as provided in this section, or  
156 a beneficiary or alternate payee of a member or employee.

157 (11) "Member contributions" or "employee contributions"  
158 means the sum of all amounts deducted from the salary of a  
159 member by his or her employer in accordance with s. 121.71(3)  
160 and credited to his or her individual annuity savings account in  
161 the cash balance plan, plus any interest credits on such amounts  
162 and any contributions specified in s. 121.602(4), (5), and (6).

163 (12) "Normal retirement age" means the date a member  
164 attains his or her normal retirement date as provided in this  
165 section, or the date a member is vested, whichever is later.

166 (13) "Normal retirement date" means the date a member  
167 attains normal retirement age and is vested pursuant to this  
168 part.

169 (14) "Quarter" means the 3-month period ending on the last  
170 business day of September, December, March, and June of each  
171 fiscal year.

172 (15) "Retiree" means a former member of the cash balance  
173 plan who has terminated employment and taken a benefit as  
174 provided in s. 121.602(8), other than a mandatory distribution

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175 of a de minimis account authorized by the state board or a  
176 minimum required distribution provided pursuant to s. 401(a) of  
177 the Internal Revenue Code.

178 (16) "Retirement annuity account" means the account  
179 established for the employer credits of a member.

180 (17) "Terminated" or "termination" occurs when a member  
181 ceases all employment relationships with participating employers  
182 for 3 calendar months. However, if a member is employed by a  
183 participating employer within the next 6 calendar months,  
184 termination is deemed not to have occurred. A leave of absence  
185 constitutes a continuation of the employment relationship,  
186 except that a leave of absence without pay due to disability may  
187 constitute termination if such member applies for and is  
188 approved for disability retirement in accordance with s.  
189 121.602(9). The department or state board may require other  
190 evidence of termination as it deems necessary.

191 (18) "Vested" or "vesting" means the guarantee that a  
192 member is eligible to receive a future retirement benefit upon  
193 completion of the required years of service for the employee's  
194 class of membership even though the member may have terminated  
195 covered employment before reaching the normal or early  
196 retirement date. Under the cash balance plan, a member is deemed  
197 to be vested and to have met the required years of service after  
198 completing 5 years of creditable service.

199 Section 3. Section 121.602, Florida Statutes, is created to  
200 read:

201 121.602 Florida Retirement System Cash Balance Plan.-

202 (1) CREATION.-The Trustees of the State Board of  
203 Administration shall establish a cash balance program called the

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204 "Florida Retirement System Cash Balance Plan" for members of the  
205 Florida Retirement System under which retirement benefits will  
206 be provided for eligible employees who elect to participate in  
207 the plan.

208 (a) The plan must be a qualified governmental plan pursuant  
209 to ss. 401(a) and 414(d) of the Internal Revenue Code and  
210 related regulations. Assets of the plan shall be held in trust  
211 for the Florida Retirement System. The employer and employee  
212 shall make contributions, as provided in this section and ss.  
213 121.571 and 121.71, to the Florida Retirement System Cash  
214 Balance Trust Fund for funding the benefits of the plan.

215 (b) The state board shall establish a retirement annuity  
216 account for each member of the cash balance plan, which shall be  
217 credited with employer credits plus interest credits on the  
218 employer credits. The retirement annuity account shall be used  
219 to determine the amount of a lump-sum distribution or an annuity  
220 benefit for a vested member upon retirement as provided under  
221 this part.

222 (c) The state board shall establish an annuity savings  
223 account for each member of the plan, which shall be credited  
224 with employee contributions plus interest credits on the  
225 employee contributions. For a vested member, the annuity savings  
226 account shall be used to fund the member's lump-sum distribution  
227 or annuity benefits upon retirement.

228 (d) The design and administration of the plan must comply  
229 with all applicable provisions of the Internal Revenue Code. The  
230 Legislature may amend the plan to comply with applicable federal  
231 laws and regulations.

232 (2) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.-

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233       (a) A member of the pension plan or the investment plan who  
234 is employed in a regularly established position with a  
235 participating employer may elect to:

236       1. Retain membership in the pension plan or investment  
237 plan; or

238       2. Make a one-time transfer to the cash balance plan at any  
239 time during his or her active career under the Florida  
240 Retirement System in which he or she is earning service credit  
241 in an employer-employee relationship consistent with s.  
242 121.021(17)(b), excluding leaves of absence without pay. Such  
243 election is effective the first day of the month following the  
244 receipt of the election by the third-party administrator and is  
245 not subject to requirements regarding an employer-employee  
246 relationship or receipt of contributions for the eligible  
247 employee in the effective month except when the election is  
248 received by the administrator. This one-time career transfer is  
249 irrevocable, and no other subsequent transfer is allowed.

250       (b) A member who uses the one-time transfer under  
251 subparagraph (a)2. to enroll in the cash balance plan may elect  
252 to:

253       1. Retain all service credit earned under the pension plan  
254 or the investment plan as credited under the Florida Retirement  
255 System and is entitled to a deferred benefit upon termination  
256 from the pension plan or investment plan. However, the election  
257 to enroll in the cash balance plan terminates the active  
258 membership of the member in the pension plan or investment plan,  
259 and the service of a member who has transferred to the cash  
260 balance plan is creditable for purposes of vesting only, and not  
261 creditable for purposes of benefit accrual under the pension

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262 plan or the investment plan; or

263 2. Elect to transfer a sum representing the present value  
264 of the member's accumulated benefit obligation under the pension  
265 plan or the value of the member's investment plan account to the  
266 cash balance plan. Such election is effective the first day of  
267 the month following receipt of the election by the third-party  
268 administrator. Upon transfer, all service credit earned under  
269 the pension plan or investment plan is nullified for purposes of  
270 entitlement to a future benefit under the pension plan or  
271 investment plan. Any amount transferred, regardless of the  
272 original source of the contributions, shall be deemed to be  
273 employer credits in the cash balance plan.

274 (c) If the eligible employee elects to transfer his or her  
275 accumulated benefit obligation to the cash balance plan under  
276 subparagraph (b)2., and:

277 1. The employee is a member of the pension plan, the  
278 employee must transfer the present value of the accumulated  
279 benefit obligation under the pension plan.

280 a. For purposes of this paragraph, the present value of the  
281 member's accumulated benefit obligation is based upon the  
282 member's estimated creditable service and estimated average  
283 final compensation under the pension plan, subject to  
284 recalculation under sub-subparagraph b. The actuarial present  
285 value of the member's accumulated benefit obligation is based on  
286 the following:

287 (I) The discount rate and other relevant actuarial  
288 assumptions used to value the Florida Retirement System Trust  
289 Fund at the time the amount to be transferred is determined,  
290 consistent with sub-sub-subparagraph (II).

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291 (II) The member's benefit commencement age, based on the  
292 member's estimated creditable service as of the estimate date.

293 (A) Except as provided under sub-sub-sub-subparagraph (B),  
294 the benefit commencement age is the younger of the following,  
295 which may not be younger than the member's age as of the  
296 estimate date:

297 i. For a member initially enrolled before July 1, 2011, age  
298 62 or the age the member would attain if the member completed 30  
299 years of service with an employer, assuming that the member  
300 worked continuously from the estimate date, and disregarding any  
301 vesting requirement that would otherwise apply under the pension  
302 plan.

303 ii. For a member enrolled on or after July 1, 2011, age 65  
304 or the age the member would attain if the member completed 33  
305 years of service with an employer, assuming that the member  
306 worked continuously from the estimate date, and disregarding any  
307 vesting requirement that would otherwise apply under the pension  
308 plan.

309 (B) The benefit commencement age for members of the Special  
310 Risk Class and for members of the Special Risk Administrative  
311 Support Class entitled to retain the special risk normal  
312 retirement date is the younger of the following, which may not  
313 be younger than the member's age as of the estimate date:

314 i. For a member initially enrolled before July 1, 2011, age  
315 55 or the age the member would attain if the member completed 25  
316 years of service with an employer, assuming that the member  
317 worked continuously from the estimate date, and disregarding any  
318 vesting requirement that would otherwise apply under the pension  
319 plan.

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320 ii. For a member enrolled on or after July 1, 2011, age 60  
321 or the age the member would attain if the member completed 30  
322 years of service with an employer, assuming that the member  
323 worked continuously from the estimate date, and disregarding any  
324 vesting requirement that would otherwise apply under the pension  
325 plan.

326 (III) The calculation disregards vesting requirements and  
327 early retirement reduction factors that would otherwise apply  
328 under the pension plan.

329 b. The division shall recalculate the amount transferred  
330 under sub-subparagraph a. within 60 days after the actual  
331 transfer of funds based upon the member's actual creditable  
332 service and actual final average compensation as of the initial  
333 date of participation in the cash balance plan. If the  
334 recalculated amount differs from the amount transferred by \$10  
335 or more, the division shall:

336 (I) Transfer from the Florida Retirement System Trust Fund  
337 to the member's account the excess, if any, of the recalculated  
338 amount over the previously transferred amount plus any interest  
339 from the initial date of transfer to the date of transfer under  
340 this subparagraph, based upon the effective annual interest rate  
341 equal to the assumed return on the actuarial investment which  
342 was used in the most recent actuarial valuation of the system,  
343 compounded annually.

344 (II) Transfer, or cause to be transferred, from the  
345 member's account to the Florida Retirement System Trust Fund the  
346 excess, if any, of the previously transferred amount over the  
347 recalculated amount, plus any interest from the initial date of  
348 transfer to the date of transfer under this subparagraph, based

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349 upon a 6 percent effective annual interest rate, compounded  
350 annually, pro rata based on the member's allocation under the  
351 cash balance plan.

352 c. If contribution adjustments are made due to any employer  
353 errors or corrections, including plan corrections, following  
354 recalculation of the amount transferred under this subparagraph,  
355 the member is entitled to the additional contributions or is  
356 responsible for returning any excess contributions resulting  
357 from the correction. A return of such erroneous excess pretax  
358 contribution by the plan must be made within the period allowed  
359 by the Internal Revenue Service. The present value of the  
360 member's accumulated benefit obligation may not be recalculated.

361 2. The employee is a member of the investment plan, the  
362 employee must transfer the sum representing the account balance  
363 of the investment plan as of the transfer date.

364 a. Upon receipt of the employee contributions from the  
365 member's investment plan account, the contributions shall be  
366 credited to the annuity savings account of the member.

367 b. Upon receipt of the employer contributions from the  
368 member's investment plan account, the contributions shall be  
369 credited to the retirement annuity account of the member.

370 c. Within 60 days after the transfer date, the third-party  
371 administrator shall transfer any residual contributions due to  
372 the member of the cash balance plan for the benefit of the  
373 member and credited to the retirement annuity account or the  
374 annuity savings account of the member, as applicable.

375 d. If contribution adjustments are made due to employer  
376 errors or corrections, including plan corrections, following  
377 calculation of the amount transferred under this subparagraph,

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378 the member is entitled to the additional contributions or shall  
379 return any excess contributions resulting from the correction. A  
380 return of such erroneous excess pretax contribution by the plan  
381 must be made within the period allowed by the Internal Revenue  
382 Service.

383 3. As directed by the member, the state board shall  
384 transfer the appropriate amounts to the cash balance plan within  
385 30 days after the effective date of the member's participation  
386 in the cash balance plan, unless the major financial markets for  
387 securities available for a transfer are seriously disrupted by  
388 an unforeseen event that causes the suspension of trading on the  
389 national securities exchange in the country where the securities  
390 were issued. In that event, the 30-day period may be extended by  
391 a resolution of the board. Transfers are not commissionable or  
392 subject to other fees and may be in the form of securities or  
393 cash, as determined by the board. Such securities are valued as  
394 of the date of receipt in the member's account.

395 4. If the state board receives notification from the  
396 Internal Revenue Service that this paragraph or any portion of  
397 this paragraph will cause the Florida Retirement System, or a  
398 portion thereof, to be disqualified for tax purposes under the  
399 Internal Revenue Code, the portion that will cause the  
400 disqualification does not apply. Upon such notice, the board or  
401 the division shall notify the presiding officers of the  
402 Legislature.

403 (3) PARTICIPATION; ENROLLMENT.—

404 (a) An eligible employee who is initially employed on or  
405 after July 1, 2015, in a covered position eligible to  
406 participate in the Special Risk Class and who is earning service

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407 credit in an employer-employee relationship that is consistent  
408 with s. 121.021(17)(b), excluding leaves of absence without pay,  
409 shall be enrolled in the cash balance plan at the commencement  
410 of employment.

411 1. The employee must elect to participate in the pension  
412 plan, cash balance plan, or investment plan by the last business  
413 day of the 8th month following the employee's month of hire. The  
414 employee's election must be in writing or by electronic means  
415 and filed with the third-party administrator.

416 2. If the employee files such election within the  
417 prescribed time period, enrollment in the pension plan, cash  
418 balance plan, or the investment plan is effective on the 1st day  
419 of employment. The retirement contributions paid through the  
420 month of the employee plan change shall be transferred to the  
421 pension plan, cash balance plan, or investment plan, and,  
422 effective the 1st day of the next month, the employer and  
423 employee shall pay the applicable contributions based on the  
424 employee membership class in the plan.

425 3. If the employee fails to make an election of the cash  
426 balance plan or investment plan by the last business day of the  
427 8th month following the employee's month of hire, the employee  
428 is deemed to have elected the investment plan and will be  
429 defaulted into the investment plan retroactively to the  
430 employee's date of employment.

431 4. The amount of the employee and employer contributions  
432 paid before the default to the investment plan shall be  
433 transferred to the investment plan and placed in a default fund  
434 as designated by the state board. The employee may move the  
435 contributions once an account is activated in the investment

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436 plan.

437 (b) An eligible employee who is initially employed on or  
438 after July 1, 2015, in a covered position eligible to  
439 participate in a class other than the Special Risk Class and who  
440 is earning service credit in an employer-employee relationship  
441 that is consistent with s. 121.021(17) (b), excluding leaves of  
442 absence without pay, shall be enrolled in the cash balance plan  
443 at the commencement of employment.

444 1. The employee must elect to participate in the cash  
445 balance plan or the investment plan by the last business day of  
446 the 8th month following the employee's month of hire. The  
447 employee's election must be in writing or by electronic means  
448 and filed with the third-party administrator.

449 2. If the employee files such election within the  
450 prescribed time period, enrollment in the cash balance plan or  
451 the investment plan is effective on the 1st day of employment.  
452 The retirement contributions paid through the month of the  
453 employee plan change shall be transferred to the cash balance  
454 plan or the investment plan, and, effective the 1st day of the  
455 next month, the employer and employee shall pay the applicable  
456 contributions based on the employee membership class in the  
457 plan.

458 3. If the employee fails to make an election of the cash  
459 balance plan or investment plan by the last business day of the  
460 8th month following the employee's month of hire, the employee  
461 is deemed to have elected the investment plan and will be  
462 defaulted into the investment plan retroactively to the  
463 employee's date of employment.

464 4. The amount of the employee and employer contributions

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465 paid before the default to the investment plan shall be  
466 transferred to the investment plan and placed in a default fund  
467 as designated by the state board. The employee may move the  
468 contributions once an account is activated in the investment  
469 plan.

470 (c) An employee who becomes eligible to participate in the  
471 cash balance plan pursuant to s. 121.051(2)(c)3. or s.  
472 121.35(3)(i) may elect to participate in the cash balance plan  
473 in lieu of retaining his or her membership in the State  
474 Community College System Optional Retirement Program or the  
475 State University System Optional Retirement Program.

476 1. The election must be made in writing or by electronic  
477 means and filed with the third-party administrator.

478 2. Upon making such election, the employee shall be  
479 enrolled as a member of the cash balance plan, the employee's  
480 membership in the Florida Retirement System shall be governed by  
481 this part, and the employee's participation in the State  
482 Community College System Optional Retirement Program or the  
483 State University System Optional Retirement Program terminates.

484 3. The employee's enrollment in the cash balance plan is  
485 effective on the first day of the month for which a full month's  
486 employer and employee contribution is made to the cash balance  
487 plan.

488 (d) A retiree who is initially reemployed in a regularly  
489 established position on or after July 1, 2010, is not eligible  
490 to be enrolled in renewed membership in the Florida Retirement  
491 System except as provided in s. 121.122.

492 (4) CONTRIBUTIONS AND CREDITS.—

493 (a) The employee and employer shall make the required

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494 contributions to the cash balance plan based on a percentage of  
495 the employee's gross monthly compensation, as provided in s.  
496 121.71.

497 (b) Employee contributions shall be deposited into the  
498 annuity savings account of the member pursuant to s. 121.721,  
499 and employer contributions shall be deposited into the  
500 retirement savings account pursuant to s. 121.721.

501 (c) A member may not make voluntary contributions to the  
502 cash balance plan.

503 (d) The state board, acting as a fiduciary to the cash  
504 balance plan, must ensure that all plan assets are held in a  
505 trust pursuant to s. 401 of the Internal Revenue Code. The  
506 fiduciary must ensure that such contributions are allocated as  
507 follows:

508 1. The employer and employee contribution portions  
509 earmarked for member retirement annuity and annuity savings  
510 accounts shall be credited to the appropriate account.

511 2. The employer contribution portion earmarked for  
512 administrative and educational expenses shall be transferred to  
513 the Florida Retirement System Cash Balance Plan Trust Fund.

514 3. The employer contribution portion earmarked for  
515 disability benefits shall be transferred to the Florida  
516 Retirement System Trust Fund.

517 4. The employer contribution portions earmarked for  
518 amortization of the unfunded actuarial liability of the pension  
519 plan and the cash balance plan shall be transferred to the  
520 Florida Retirement System Trust Fund.

521 (e) The third-party administrator shall monitor and notify  
522 employers of the maximum contribution levels allowed for members

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523 under the Internal Revenue Code. If a member contributes to any  
524 other tax-deferred plan, the member must ensure that total  
525 contributions made to the cash balance plan and to any other  
526 such plan do not exceed the federally allowed maximum.

527 (5) ANNUITY SAVINGS ACCOUNT CREDITS.—A member's annuity  
528 savings account is the sum of the member's mandatory credits  
529 plus the interest credits on those credits.

530 (a) The service credits shall be credited as provided in s.  
531 121.71 on a monthly basis.

532 (b) The interest credits shall be credited as provided in  
533 s. 121.721. The Legislature reserves the right to prospectively  
534 change the interest credits.

535 (c) The member's annuity savings account is vested from the  
536 date the employee becomes a member of the cash balance plan.

537 (6) EMPLOYER RETIREMENT ANNUITY CREDITS.—A member's  
538 retirement annuity account is the sum of all employer credits to  
539 the account plus the interest credits on those credits.

540 (a) The service credits shall be credited on a monthly  
541 basis as provided in s. 121.71.

542 (b) The interest credits shall be credited as provided in  
543 s. 121.721. The Legislature expressly reserves the right to  
544 prospectively change the interest credits.

545 (7) VESTING REQUIREMENTS.—

546 (a) A member is fully and immediately vested in all  
547 employee credits plus interest credits paid to an annuity  
548 savings account as provided in subsection (5).

549 (b) A member is vested in all employer credits plus  
550 interest credits paid to the retirement annuity account on  
551 behalf of the member as provided in subsection (6), upon

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552 completion of 5 years of creditable service.

553 1. If a member has not vested in the member's retirement  
554 annuity account at termination, has not withdrawn such member's  
555 annuity savings account, and is reemployed as an eligible  
556 employee within 15 years after the member's most recent  
557 termination, such member's prior years of service, employer  
558 credits, and interest credits are restored upon reemployment.

559 2. If a member has not vested in the member's retirement  
560 annuity account at termination and has not withdrawn such  
561 member's annuity savings account, but is not reemployed as an  
562 eligible employee within 15 years after the member's most recent  
563 termination, any nonvested employer credits and interest  
564 credits, including accompanying service credit, are forfeited.

565 (c) A member is vested in any benefits transferred from the  
566 pension plan or investment plan to the cash balance plan upon  
567 meeting the vesting requirements of the member's membership  
568 class set forth in s. 121.021(45) or s. 121.4501(6), as  
569 applicable. The third-party administrator shall notify the  
570 member when the member has satisfied the vesting period.

571 1. If a member has not vested in the benefit transferred  
572 from the pension plan or investment plan at termination of  
573 employment, has not withdrawn such member's annuity savings  
574 account, and is reemployed as an eligible employee within 15  
575 years after such member's most recent termination, the member's  
576 prior years of service, employer credits, and interest credits  
577 are restored upon reemployment.

578 2. If a member is not vested in the benefit transferred  
579 from the pension plan or investment plan at termination of  
580 employment, has not withdrawn such member's annuity savings

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581 account, and is not reemployed as an eligible employee within 15  
582 years after such member's most recent termination, such member's  
583 prior years of service, employer credits, and interest credits  
584 shall be forfeited.

585 (d) If the member elects to receive any of his or her  
586 vested annuity savings account upon termination of employment as  
587 provided in s. 121.021(39)(a), except for a mandatory  
588 distribution of a de minimis account authorized by the state  
589 board or a minimum required distribution provided under s.  
590 401(a)(9) of the Internal Revenue Code, the member shall forfeit  
591 all nonvested retirement annuity credits, interest credits, and  
592 accompanying service credit paid on behalf of the member to the  
593 cash balance plan.

594 (8) BENEFITS PAYMENTS.-

595 (a) Benefits may not be paid under the cash balance plan  
596 unless the member has terminated employment or is deceased and a  
597 proper application prescribed by the state board has been filed  
598 by the member or beneficiary.

599 (b) If a member elects to receive his or her benefits upon  
600 termination of employment, the member must submit a written  
601 application or an application by electronic means to the third-  
602 party administrator indicating his or her preferred benefit  
603 payment date and selecting an authorized method of benefit  
604 payment as provided in paragraph (d). The member may defer  
605 receipt of benefits until he or she chooses to make such  
606 application, subject to federal requirements.

607 (c) The state board may cancel an application for  
608 retirement benefits if the member or beneficiary fails to timely  
609 provide the information and documents required by this chapter

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610 and the rules of the board. The state board shall adopt rules  
611 establishing procedures for the application for retirement  
612 benefits and for the cancellation of such application if the  
613 required information or documents are not received.

614 (d) Upon receipt by the third-party administrator of a  
615 properly executed application for benefit payments, the total  
616 accumulated benefit is payable to the member pro rata across all  
617 Florida Retirement System benefit sources as:

- 618 1. A lump-sum or partial benefit payment to the member;  
619 2. A lump-sum direct rollover benefit payment whereby all  
620 accrued benefits, plus interest credits, are paid from the  
621 member's account directly to the custodian of an eligible  
622 retirement plan, as defined in s. 402(c)(8)(B) of the Internal  
623 Revenue Code, on behalf of the member;  
624 3. An annuity with a guaranteed benefit under any one of  
625 the options offered under the investment plan; or  
626 4. A combination of 1.-3.

627 (e) The benefit payment method selected by the member or  
628 beneficiary, and the retirement of the member, are final and  
629 irrevocable at the time a benefit payment is cashed, deposited,  
630 or transferred to another financial institution. Any additional  
631 service that remains unclaimed at retirement may not be claimed  
632 or purchased, and the type of retirement may not be changed,  
633 except that if a member recovers from a disability, the member  
634 may subsequently request benefits under subsection (9).

635 (f) Benefits in the form of vested accumulations as  
636 described in subsection (7) are payable in accordance with all  
637 of the following terms and conditions:

- 638 1. Benefits are payable only to a member, an alternate

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639 payee of a qualified domestic relations order, or a beneficiary.

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

643 3. The member must be terminated from all employment as  
644 provided in s. 121.021(39).

645 4. Benefit payments may not be made until the member has  
646 been terminated for 3 calendar months.

647 5. If a member or former member of the Florida Retirement  
648 System receives an invalid benefit payment, such person must  
649 repay the full amount within 90 days after receipt of final  
650 notification by the state board or the third-party administrator  
651 that the benefit payment was invalid, or, in lieu of repayment,  
652 the member must terminate employment from all participating  
653 employers.

654 a. If the member or former member fails to repay the full  
655 invalid benefit payment within 90 days after receipt of final  
656 notification, the person may be deemed retired from the cash  
657 balance plan by the board and is subject to s. 121.122. If such  
658 person is deemed retired, any joint and several liability set  
659 out in s. 121.091(9)(d)2. is void, and the board, the  
660 department, or the employing agency is not liable for interest  
661 credits on contributions that have not been deposited into the  
662 person's cash balance account in the cash balance plan, pending  
663 resolution of the invalid benefit payment.

664 b. The member or former member who has been deemed retired  
665 or who has been determined by the board to have taken an invalid  
666 benefit payment may appeal the agency decision through the  
667 complaint process under s. 121.4501(8)(g). As used in this

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668 subparagraph, the term "invalid benefit payment" means any  
669 payment from an account in the cash balance plan which is taken  
670 in violation of this section or s. 121.091(9).

671 (g) Benefits, including the annuity savings account, are  
672 not payable under the cash balance plan for employee hardships,  
673 unforeseeable emergencies, loans, medical expenses, educational  
674 expenses, purchase of a principal residence, payments necessary  
675 to prevent eviction from or foreclosure on an employee's  
676 principal residence, or any other reason except a requested  
677 distribution for retirement, a mandatory de minimis account  
678 distribution authorized by the third-party administrator, or a  
679 required minimum distribution provided pursuant to the Internal  
680 Revenue Code.

681 (h) The state board may cash out a de minimis account of a  
682 member who has been terminated from Florida Retirement System  
683 employment for a minimum of 6 calendar months. Such cash-out  
684 must be a complete lump-sum liquidation of the vested account  
685 balance, subject to the Internal Revenue Code, or a lump-sum  
686 direct rollover distribution paid directly to the custodian of  
687 an eligible retirement plan, as defined by the code, on behalf  
688 of the member.

689 (i) If any instrument issued for the payment of retirement  
690 benefits under this section is not presented for payment within  
691 180 days after the last day of the month in which it was  
692 originally issued, the third-party administrator or other  
693 authorized agent of the state board shall cancel the instrument  
694 and credit the amount of the instrument to the Florida  
695 Retirement System Cash Balance Plan Trust Fund. Any amounts so  
696 credited to the trust fund, not including earnings thereon, are

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697 payable upon proper application as provided in this section  
698 within 10 years after the last day of the month in which the  
699 financial instrument was originally issued, after which time  
700 such amounts and any earnings attributable to employer  
701 retirement annuity credits are forfeited. Any forfeited amounts  
702 are assets of the trust fund and not subject to chapter 717.

703 (j) A member may not receive a distribution of employee  
704 contributions if a pending qualified domestic relations order is  
705 filed against the member's cash balance plan account.

706 (k) The benefits payable to any person under the cash  
707 balance plan, and any contributions and credits accumulated  
708 under the plan, are not subject to assignment, execution,  
709 attachment, or any legal process, except for qualified domestic  
710 relations orders, income deduction orders as provided in s.  
711 61.1301, and federal income tax levies.

712 (9) DISABILITY BENEFITS.—

713 (a) For any member of the cash balance plan who becomes  
714 totally and permanently disabled, benefits must be paid in  
715 accordance with the following:

716 1. The member may elect to receive benefits pursuant to s.  
717 121.591(2); or

718 2. The member may elect to receive the vested balance of  
719 his or her cash balance annuity savings account and the vested  
720 balance of his or her retirement annuity account.

721 (b) Pursuant to s. 121.73, an employer shall contribute a  
722 percentage of gross monthly compensation to provide disability  
723 coverage for active members in the cash balance plan.

724 (10) DEATH BENEFITS.—Under the cash balance plan:

725 (a) Survivor benefits of a deceased member are payable in

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726 accordance with the following terms and conditions:

727 1. To the extent vested, benefits are payable only to a  
728 member's beneficiary or beneficiaries as designated by the  
729 member as provided in subsection (11).

730 2. Benefits shall be paid by the third-party administrator  
731 or designated approved providers in accordance with the law, the  
732 contracts, and any applicable rule or policy of the state board.

733 (b) In the event of a member's death, all vested  
734 accumulations as described in subsections (5) and (6), less  
735 withholding taxes remitted to the Internal Revenue Service,  
736 shall be distributed as provided in paragraph (c) or as  
737 described in subsection (8) as if the member retired on the date  
738 of death. No other death benefits are available for survivors of  
739 members, except for benefits, or coverage for benefits, as are  
740 otherwise provided by law or separately provided by the  
741 employer, at the employer's discretion.

742 (c) Upon receipt by the third-party administrator of a  
743 properly executed application for the distribution of benefits,  
744 the total accumulated benefit is payable by the administrator to  
745 the member's surviving beneficiary or beneficiaries as:

746 1. A lump-sum distribution payable to the beneficiary or  
747 beneficiaries as provided in subsection (11);

748 2. An eligible rollover distribution, if allowed, on behalf  
749 of the surviving beneficiary of a deceased member, whereby all  
750 accrued benefits, plus interest credits, are paid from the  
751 deceased member's account directly to the custodian of an  
752 eligible retirement plan, as described in s. 402(c)(8)(B) of the  
753 Internal Revenue Code, on behalf of the surviving beneficiary;

754 3. An annuity with a guaranteed benefit under any one of

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755 the options offered under the investment plan; or

756 4. A combination of 1.-3.

757 (d) Notwithstanding any other provision of this chapter:

758 1. The surviving spouse of any member killed in the line of  
759 duty may receive a monthly benefit equal to one-half of the  
760 monthly salary that was received by the member at the time of  
761 death for the rest of the surviving spouse's lifetime if all  
762 service and interest credits that have accumulated in the  
763 member's accounts are transferred to the pension plan; or, if  
764 the member had vested, the surviving spouse may elect to receive  
765 a benefit as provided in paragraph (c). Benefits provided by  
766 this paragraph supersede any other distribution that may have  
767 been provided by the member's designation of beneficiary.

768 2. If the surviving spouse of a member killed in the line  
769 of duty dies, the monthly payments that would have been payable  
770 to the surviving spouse had the surviving spouse lived shall be  
771 paid for the use and benefit of the member's child or children  
772 younger than 18 years of age and unmarried until the 18th  
773 birthday of the member's youngest child.

774 3. If a member killed in the line of duty leaves no  
775 surviving spouse but is survived by a child or children younger  
776 than 18 years of age, the benefits normally payable to a  
777 surviving spouse under subparagraph 1. shall be paid for the use  
778 and benefit of the member's child or children younger than 18  
779 years of age and unmarried until the 18th birthday of the  
780 member's youngest child.

781  
782 This paragraph does not abrogate other applicable provisions of  
783 state or federal law providing for payment of death benefits.

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784 (11) DESIGNATION OF BENEFICIARIES.—Section 121.4501(20)  
785 governs the designation of beneficiaries for the cash balance  
786 plan.

787 (12) PURCHASE OF CREDITABLE SERVICE.—

788 (a) Creditable service of a member includes military  
789 service in the Armed Forces of the United States as provided  
790 under s. 121.111(1).

791 (b) A member may purchase creditable service for up to 2  
792 work years of authorized leaves of absence, including any leaves  
793 of absence covered under the Family Medical Leave Act as  
794 provided under s. 121.121.

795 (c) Except as provided in this subsection, no other service  
796 for periods of employment may be purchased by or on behalf of a  
797 member.

798 (13) RETIREE HEALTH INSURANCE SUBSIDY.—All eligible  
799 employees who are members of the cash balance plan are eligible  
800 to receive the retiree health insurance subsidy, subject to s.  
801 112.363.

802 (14) SOCIAL SECURITY COVERAGE.—Social security coverage  
803 shall be provided for all eligible employees who become members  
804 of the cash balance plan. Any modification of the present  
805 agreement with the Social Security Administration, or referendum  
806 required under the Social Security Act, for the purpose of  
807 providing social security coverage for a member shall be  
808 requested by the state agency in compliance with the applicable  
809 provisions of the Social Security Act. However, retroactive  
810 social security coverage for service with the employer before  
811 December 1, 1970, may not be provided for a member who was not  
812 covered under the agreement as of November 30, 1970.

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813       (15) CASH BALANCE PLAN EDUCATION.—Section 121.4501(10)  
814 governs the education of members who are in the cash balance  
815 plan.

816       (16) MEMBER INFORMATION REQUIREMENTS.—Each quarter the  
817 state board shall provide each member of the cash balance plan a  
818 quarterly statement of benefits which provides the member with  
819 basic data about the member's retirement account. At a minimum,  
820 the statement must include:

821           (a) The member's accrued service credit;

822           (b) The member's balance of the retirement annuity account  
823 and the annuity savings account at the close of the current  
824 quarter and previous quarter;

825           (c) Itemized account contributions for the quarter;

826           (d) Any posted interest credits earned on the account;

827           (e) The amount of the account in which the member is fully  
828 vested; and

829           (f) The amount of the account in which the member is not  
830 fully vested.

831       (17) FEDERAL REQUIREMENTS.—

832           (a) This section shall be construed, and the cash balance  
833 plan shall be administered, so as to comply with the Internal  
834 Revenue Code and specifically with plan qualification  
835 requirements imposed on governmental plans under 26 U.S.C. s.  
836 401(a) of the code. The state board may adopt rules reasonably  
837 necessary to establish or maintain the qualified status of the  
838 cash balance plan under the Internal Revenue Code and to  
839 implement and administer the plan in compliance with the code  
840 and as designated under this part; however, the state board may  
841 not adopt any rule that makes a substantive change to the cash

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842 balance plan as designed under this part.

843 (b) Any provision of this chapter which is susceptible to  
844 more than one construction shall be interpreted in favor of the  
845 construction most likely to satisfy requirements imposed by s.  
846 401(a) of the Internal Revenue Code.

847 (c) Credits payable under this section for any limitation  
848 year may not exceed the maximum amount allowable for qualified  
849 cash balance plans under applicable provisions of the Internal  
850 Revenue Code. If an employee who is enrolled in the cash balance  
851 plan participates in any other plan that is maintained by the  
852 participating employer, benefits that accrue under the cash  
853 balance plan are considered primary for any aggregate limitation  
854 applicable under s. 415 of the code.

855 (18) CASH BALANCE PLAN ADMINISTRATION.—Section 121.4501(8)  
856 also governs the administration of the cash balance plan.

857 (19) STATEMENT OF FIDUCIARY STANDARDS AND  
858 RESPONSIBILITIES.—Investment of cash balance plan assets shall  
859 be made for the sole interest and exclusive purpose of providing  
860 benefits to members and beneficiaries and defraying reasonable  
861 expenses of administering the plan. The plan's assets shall be  
862 invested on behalf of the plan members with the care, skill, and  
863 diligence that a prudent person acting in a like manner would  
864 undertake. The performance of the investment duties specified in  
865 this subsection must comply with the fiduciary standards set  
866 forth in the Employee Retirement Income Security Act of 1974 at  
867 29 U.S.C. s. 1104(a) (1) (A)-(C). In case of conflict with other  
868 provisions of law authorizing investments, the investment and  
869 fiduciary standards specified in this subsection prevail.

870 (20) ACTUARIAL STUDY.—Pursuant to s. 121.031, an annual

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871 actuarial valuation and appraisal of the liability of the cash  
872 balance plan shall be conducted, and the required credits  
873 necessary to discharge any liability and maintain the plan on an  
874 actuarial reserve basis shall be provided to the Legislature by  
875 December 31 before the next legislative session. Such study  
876 shall be conducted by a qualified actuary employed or retained  
877 by the state board.

878 (21) INVESTMENT ADVISORY COUNCIL.—The Investment Advisory  
879 Council, created pursuant to s. 215.444, shall make  
880 recommendations to the board regarding investment policy,  
881 strategy, and procedures for the cash balance plan.

882 (22) INVESTMENT POLICY STATEMENT.—In making investments for  
883 the cash balance plan pursuant to ss. 215.44-215.53, the board  
884 may not make investments that are not in conformance with the  
885 Florida Retirement System Cash Balance Plan Investment Policy  
886 Statement (IPS) as developed by the executive director and  
887 approved by the board. The IPS must, at a minimum, include the  
888 investment objectives of the Cash Balance Plan Trust Fund, types  
889 of securities in which the board may invest, and evaluation  
890 criteria for measuring the investment performance of the fund.

891 (a) The executive director of the board may present  
892 recommended changes to the IPS, as necessary, for the board's  
893 approval.

894 (b) The executive director shall first present the proposed  
895 IPS and any subsequent recommended changes to the approved IPS  
896 to the Investment Advisory Council for review. The council shall  
897 present the results of its review to the board before the  
898 board's final approval of the IPS or changes in the IPS.

899 Section 4. Paragraph (b) of subsection (2) of section

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900 112.363, Florida Statutes, is amended to read:

901 112.363 Retiree health insurance subsidy.—

902 (2) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—

903 (b) For purposes of this section, a person is deemed  
904 retired from a state-administered retirement system when he or  
905 she terminates employment with all employers participating in  
906 the Florida Retirement System as described in s. 121.021(39)  
907 and:

908 1. For a member of the investment plan established under  
909 part II of chapter 121, the member ~~participant~~ meets the age or  
910 service requirements to qualify for normal retirement as set  
911 forth in s. 121.021(29) and meets the definition of retiree in  
912 s. 121.4501(2).

913 2. For a member of the ~~Florida Retirement System~~ pension  
914 plan established under part I of chapter 121, or an any employee  
915 who maintains creditable service under both the pension plan and  
916 the investment plan or under both the pension plan and the cash  
917 balance plan, the member begins drawing retirement benefits from  
918 the pension plan.

919 3. For a member of the cash balance plan established under  
920 part III of chapter 121, the member meets the age or service  
921 requirements to qualify for normal retirement as set forth in s.  
922 121.021(29) and meets the definition of retiree in s. 121.601.

923 4. For a member of both the investment plan and the cash  
924 balance plan, the member meets the definition of retiree in s.  
925 121.601 and begins drawing benefits from the cash balance plan.

926 Section 5. Paragraph (h) of subsection (3) of section  
927 121.011, Florida Statutes, is amended to read:

928 121.011 Florida Retirement System.—

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929 (3) PRESERVATION OF RIGHTS.—

930 (h) Effective July 1, 2011, the retirement system shall  
931 require employer and employee contributions as provided in s.  
932 121.071 and part IV ~~III~~ of this chapter.

933 Section 6. Section 121.012, Florida Statutes, is amended to  
934 read:

935 121.012 Inclusive provisions.—The provisions of part I of  
936 this chapter apply ~~shall be applicable~~ to parts II, and III, and  
937 IV to the extent such provisions are not inconsistent with, or  
938 duplicative of, the provisions of parts II, and III, and IV.

939 Section 7. Subsection (3) of section 121.021, Florida  
940 Statutes, is amended to read:

941 121.021 Definitions.—The following words and phrases as  
942 used in this chapter have the respective meanings set forth  
943 unless a different meaning is plainly required by the context:

944 (3) "Florida Retirement System" or "system" means the  
945 general retirement system established by this chapter,  
946 including, but not limited to: ~~;~~

947 (a) The defined benefit program administered under this  
948 part, referred to as the "Florida Retirement System Pension  
949 Plan" or "pension plan"; ~~;~~ and

950 (b) The defined contribution program administered under  
951 part II of this chapter, referred to as the "Florida Retirement  
952 System Investment Plan" or "investment plan"; and

953 (c) The cash balance program established under part III of  
954 this chapter, referred to as the "Florida Retirement System Cash  
955 Balance Plan" or "cash balance plan."

956 Section 8. Paragraph (c) of subsection (2) of section  
957 121.051, Florida Statutes, is amended, present subsections (3)

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958 through (9) of that section are redesignated as subsections (4)  
959 through (10), and a new subsection (3) is added to that section,  
960 to read:

961 121.051 Participation in the system.—

962 (2) OPTIONAL PARTICIPATION.—

963 (c) Employees of public community colleges or charter  
964 technical career centers sponsored by public community colleges,  
965 designated in s. 1000.21(3), who are members of the Regular  
966 Class of the Florida Retirement System and who comply with the  
967 criteria set forth in this paragraph and s. 1012.875 may, in  
968 lieu of participating in the Florida Retirement System, elect to  
969 withdraw from the system altogether and participate in the State  
970 Community College System Optional Retirement Program provided by  
971 the employing agency under s. 1012.875.

972 1.a. Through June 30, 2001, the cost to the employer for  
973 benefits under the optional retirement program equals the normal  
974 cost portion of the employer retirement contribution which would  
975 be required if the employee were a member of the pension plan's  
976 Regular Class, plus the portion of the contribution rate  
977 required by s. 112.363(8) which would otherwise be assigned to  
978 the Retiree Health Insurance Subsidy Trust Fund.

979 b. Effective July 1, 2001, through June 30, 2011, each  
980 employer shall contribute on behalf of each member of the  
981 optional program an amount equal to 10.43 percent of the  
982 employee's gross monthly compensation. The employer shall deduct  
983 an amount for the administration of the program.

984 c. Effective July 1, 2011, through June 30, 2012, each  
985 member shall contribute an amount equal to the employee  
986 contribution required under s. 121.71(3). The employer shall

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987 contribute on behalf of each program member an amount equal to  
988 the difference between 10.43 percent of the employee's gross  
989 monthly compensation and the employee's required contribution  
990 based on the employee's gross monthly compensation.

991 d. Effective July 1, 2012, each member shall contribute an  
992 amount equal to the employee contribution required under s.  
993 121.71(3). The employer shall contribute on behalf of each  
994 program member an amount equal to the difference between 8.15  
995 percent of the employee's gross monthly compensation and the  
996 employee's required contribution based on the employee's gross  
997 monthly compensation.

998 e. The employer shall contribute an additional amount to  
999 the Florida Retirement System Trust Fund equal to the unfunded  
1000 actuarial accrued liability portion of the Regular Class  
1001 contribution rate.

1002 2. The decision to participate in the optional retirement  
1003 program is irrevocable as long as the employee holds a position  
1004 eligible for participation, except as provided in subparagraph  
1005 3. Any service creditable under the Florida Retirement System is  
1006 retained after the member withdraws from the system; however,  
1007 additional service credit in the system may not be earned while  
1008 a member of the optional retirement program.

1009 3. Effective July 1, 2003, through June 30, 2015, an  
1010 employee who has elected to participate in the optional  
1011 retirement program shall have one opportunity, at the employee's  
1012 discretion, to transfer from the optional retirement program to  
1013 the pension plan under this part ~~of the Florida Retirement~~  
1014 ~~System~~ or to the investment plan established under part II of  
1015 this chapter, subject to the terms of the applicable optional

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1016 retirement program contracts. Except as provided in subsection  
1017 (3), an employee participating in the optional retirement  
1018 program on or after July 1, 2015, is not eligible to transfer to  
1019 the Florida Retirement System.

1020 a. If the employee chooses to move to the investment plan,  
1021 any contributions, interest, and earnings creditable to the  
1022 employee under the optional retirement program are retained by  
1023 the employee in the optional retirement program, and the  
1024 applicable provisions of s. 121.4501(4) govern the election.

1025 b. If the employee chooses to move to the pension plan ~~of~~  
1026 ~~the Florida Retirement System~~, the employee shall receive  
1027 service credit equal to his or her years of service under the  
1028 optional retirement program.

1029 (I) The cost for such credit is the amount representing the  
1030 present value of the employee's accumulated benefit obligation  
1031 for the affected period of service. The cost shall be calculated  
1032 as if the benefit commencement occurs on the first date the  
1033 employee becomes eligible for unreduced benefits, using the  
1034 discount rate and other relevant actuarial assumptions that were  
1035 used to value the Florida Retirement System Pension Plan  
1036 liabilities in the most recent actuarial valuation. The  
1037 calculation must include any service already maintained under  
1038 the pension plan in addition to the years under the optional  
1039 retirement program. The present value of any service already  
1040 maintained must be applied as a credit to total cost resulting  
1041 from the calculation. The division must ensure that the transfer  
1042 sum is prepared using a formula and methodology certified by an  
1043 enrolled actuary.

1044 (II) The employee shall ~~must~~ transfer from his or her

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1045 optional retirement program account and from other employee  
1046 moneys as necessary, a sum representing the present value of the  
1047 employee's accumulated benefit obligation immediately following  
1048 the time of such movement, determined assuming that attained  
1049 service equals the sum of service in the pension plan and  
1050 service in the optional retirement program.

1051 4. Participation in the optional retirement program is  
1052 limited to employees who satisfy the following eligibility  
1053 criteria:

1054 a. The employee is otherwise eligible for membership or  
1055 renewed membership in the Regular Class of the Florida  
1056 Retirement System, as provided in s. 121.021(11) and (12) or s.  
1057 121.122.

1058 b. The employee is employed in a full-time position  
1059 classified in the Accounting Manual for Florida's Public  
1060 Community Colleges as:

1061 (I) Instructional; or

1062 (II) Executive Management, Instructional Management, or  
1063 Institutional Management and the community college determines  
1064 that recruiting to fill a vacancy in the position is to be  
1065 conducted in the national or regional market, and the duties and  
1066 responsibilities of the position include the formulation,  
1067 interpretation, or implementation of policies, or the  
1068 performance of functions that are unique or specialized within  
1069 higher education and that frequently support the mission of the  
1070 community college.

1071 c. The employee is employed in a position not included in  
1072 the Senior Management Service Class of the Florida Retirement  
1073 System as described in s. 121.055.

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1074 5. Members of the program are subject to the same  
1075 reemployment limitations, renewed membership provisions, and  
1076 forfeiture provisions applicable to regular members of the  
1077 Florida Retirement System under ss. 121.091(9), 121.122, and  
1078 121.091(5), respectively. A member who receives a program  
1079 distribution funded by employer and required employee  
1080 contributions is deemed to be retired from a state-administered  
1081 retirement system if the member is subsequently employed with an  
1082 employer that participates in the Florida Retirement System.

1083 6. Eligible community college employees are compulsory  
1084 members of the Florida Retirement System until, pursuant to s.  
1085 1012.875, a written election to withdraw from the system and  
1086 participate in the optional retirement program is filed with the  
1087 program administrator and received by the division.

1088 a. A community college employee whose program eligibility  
1089 results from initial employment shall be enrolled in the  
1090 optional retirement program retroactive to the first day of  
1091 eligible employment. The employer and employee retirement  
1092 contributions paid through the month of the employee plan change  
1093 shall be transferred to the community college to the employee's  
1094 optional program account, and, effective the first day of the  
1095 next month, the employer shall pay the applicable contributions  
1096 based upon subparagraph 1.

1097 b. A community college employee whose program eligibility  
1098 is due to the subsequent designation of the employee's position  
1099 as one of those specified in subparagraph 4., or due to the  
1100 employee's appointment, promotion, transfer, or reclassification  
1101 to a position specified in subparagraph 4., must be enrolled in  
1102 the program on the first day of the first full calendar month

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1103 that such change in status becomes effective. The employer and  
1104 employee retirement contributions paid from the effective date  
1105 through the month of the employee plan change must be  
1106 transferred to the community college to the employee's optional  
1107 program account, and, effective the first day of the next month,  
1108 the employer shall pay the applicable contributions based upon  
1109 subparagraph 1.

1110 7. Effective July 1, 2003, through December 31, 2008, any  
1111 member of the optional retirement program who has service credit  
1112 in the pension plan ~~of the Florida Retirement System~~ for the  
1113 period between his or her first eligibility to transfer from the  
1114 pension plan to the optional retirement program and the actual  
1115 date of transfer may, during employment, transfer to the  
1116 optional retirement program a sum representing the present value  
1117 of the accumulated benefit obligation under the defined benefit  
1118 retirement program for the period of service credit. Upon  
1119 transfer, all service credit previously earned under the pension  
1120 plan during this period is nullified for purposes of entitlement  
1121 to a future benefit under the pension plan.

1122 (3) OPTIONAL PLAN MEMBERSHIP IN FLORIDA RETIREMENT SYSTEM.—

1123 (a) Effective July 1, 2015, all eligible employees, except  
1124 those eligible to withdraw from the Florida Retirement System  
1125 under s. 121.052(3)(d) or s. 121.055(1)(b)2. or those eligible  
1126 for optional retirement programs under s. 121.051(1)(a), s.  
1127 121.051(2)(c), or s. 121.35, who initially enrolled on or after  
1128 July 1, 2015, are not eligible to enroll in the pension plan.

1129 (b) Employees eligible to withdraw from the Florida  
1130 Retirement System under s. 121.052(3)(d) or s. 121.055(1)(b)2.  
1131 may withdraw from the system or participate in the investment

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1132 plan or the cash balance plan as provided under those sections.  
1133 Employees eligible for optional retirement programs under s.  
1134 121.051(2) (c) or s. 121.35 may participate in the optional  
1135 retirement program, the investment plan, or the cash balance  
1136 plan as provided under those sections. Eligible employees  
1137 required to participate in the optional retirement program under  
1138 s. 121.35 pursuant to s. 121.051(1) (a) must elect to participate  
1139 in the investment plan or the cash balance plan if employed in a  
1140 position not eligible for the optional retirement program.

1141 Section 9. Paragraph (c) of subsection (3) of section  
1142 121.052, Florida Statutes, is amended to read:

1143 121.052 Membership class of elected officers.—

1144 (3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective July  
1145 1, 1990, participation in the Elected Officers' Class shall be  
1146 compulsory for elected officers listed in paragraphs (2) (a)-(d)  
1147 and (f) assuming office on or after said date, unless the  
1148 elected officer elects membership in another class or withdraws  
1149 from the Florida Retirement System as provided in paragraphs  
1150 (3) (a)-(d):

1151 (c) Before July 1, 2015, an ~~any~~ elected officer may, within  
1152 6 months after assuming office, or within 6 months after this  
1153 act becomes a law for serving elected officers, elect membership  
1154 in the Senior Management Service Class as provided in s. 121.055  
1155 in lieu of membership in the Elected Officers' Class. ~~Any~~ Such  
1156 election does not affect ~~made by a county elected officer shall~~  
1157 ~~have no effect upon~~ the statutory limit on the number of  
1158 nonelective full-time positions that may be designated by a  
1159 local agency employer for inclusion in the Senior Management  
1160 Service Class under s. 121.055(1) (b)1.

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1161 Section 10. Paragraph (f) of subsection (1) and paragraph  
1162 (c) of subsection (6) of section 121.055, Florida Statutes, are  
1163 amended to read:

1164 121.055 Senior Management Service Class.—There is hereby  
1165 established a separate class of membership within the Florida  
1166 Retirement System to be known as the "Senior Management Service  
1167 Class," which shall become effective February 1, 1987.

1168 (1)

1169 (f) Effective July 1, 1997, through June 30, 2015:

1170 1. Except as provided in subparagraphs ~~subparagraph~~ 3. and  
1171 4., an elected state officer eligible for membership in the  
1172 Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who  
1173 elects membership in the Senior Management Service Class under  
1174 s. 121.052(3)(c) may, within 6 months after assuming office or  
1175 within 6 months after this act becomes a law for serving elected  
1176 state officers, elect to participate in the Senior Management  
1177 Service Optional Annuity Program, as provided in subsection (6),  
1178 in lieu of membership in the Senior Management Service Class.

1179 2. Except as provided in subparagraphs ~~subparagraph~~ 3. and  
1180 4., an elected officer of a local agency employer eligible for  
1181 membership in the Elected Officers' Class under s. 121.052(2)(d)  
1182 who elects membership in the Senior Management Service Class  
1183 under s. 121.052(3)(c) may, within 6 months after assuming  
1184 office, or within 6 months after this act becomes a law for  
1185 serving elected officers of a local agency employer, elect to  
1186 withdraw from the Florida Retirement System, as provided in  
1187 subparagraph (b)2., in lieu of membership in the Senior  
1188 Management Service Class.

1189 3. A retiree of a state-administered retirement system who

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1190 is initially reemployed in a regularly established position on  
1191 or after July 1, 2010, as an elected official eligible for the  
1192 Elected Officers' Class may not be enrolled in renewed  
1193 membership in the Senior Management Service Class or in the  
1194 Senior Management Service Optional Annuity Program as provided  
1195 in subsection (6), and may not withdraw from the Florida  
1196 Retirement System as a renewed member as provided in  
1197 subparagraph (b)2., as applicable, in lieu of membership in the  
1198 Senior Management Service Class.

1199 4. On or after July 1, 2015, an elected officer eligible  
1200 for membership in the Elected Officers' Class may not be  
1201 enrolled in the Senior Management Service Class or in the Senior  
1202 Management Service Optional Annuity Program except as provided  
1203 in subsection (6).

1204 (6)

1205 (c) *Participation.*—

1206 1. An eligible employee who is employed on or before  
1207 February 1, 1987, may elect to participate in the optional  
1208 annuity program in lieu of participating in the Senior  
1209 Management Service Class. Such election must be made in writing  
1210 and filed with the department and the personnel officer of the  
1211 employer on or before May 1, 1987. An eligible employee who is  
1212 employed on or before February 1, 1987, and who fails to make an  
1213 election to participate in the optional annuity program by May  
1214 1, 1987, shall be deemed to have elected membership in the  
1215 Senior Management Service Class.

1216 2. Except as provided in subparagraph 6., an employee who  
1217 becomes eligible to participate in the optional annuity program  
1218 by reason of initial employment commencing after February 1,

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1219 1987, may, within 90 days after the date of commencing  
1220 employment, elect to participate in the optional annuity  
1221 program. Such election must be made in writing and filed with  
1222 the personnel officer of the employer. An eligible employee who  
1223 does not within 90 days after commencing employment elect to  
1224 participate in the optional annuity program shall be deemed to  
1225 have elected membership in the Senior Management Service Class.

1226 3. A person who is appointed to a position in the Senior  
1227 Management Service Class and who is a member of an existing  
1228 retirement system or the Special Risk or Special Risk  
1229 Administrative Support Classes of the Florida Retirement System  
1230 may elect to remain in such system or class in lieu of  
1231 participating in the Senior Management Service Class or optional  
1232 annuity program. Such election must be made in writing and filed  
1233 with the department and the personnel officer of the employer  
1234 within 90 days after such appointment. An eligible employee who  
1235 fails to make an election to participate in the existing system,  
1236 the Special Risk Class of the Florida Retirement System, the  
1237 Special Risk Administrative Support Class of the Florida  
1238 Retirement System, or the optional annuity program shall be  
1239 deemed to have elected membership in the Senior Management  
1240 Service Class.

1241 4. Except as provided in subparagraph 5., an employee's  
1242 election to participate in the optional annuity program is  
1243 irrevocable if the employee continues to be employed in an  
1244 eligible position and continues to meet the eligibility  
1245 requirements set forth in this paragraph.

1246 5. Effective from July 1, 2002, through September 30, 2002,  
1247 an active employee in a regularly established position who has

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1248 elected to participate in the Senior Management Service Optional  
1249 Annuity Program has one opportunity to choose to move from the  
1250 Senior Management Service Optional Annuity Program to the  
1251 Florida Retirement System Pension Plan.

1252 a. The election must be made in writing and must be filed  
1253 with the department and the personnel officer of the employer  
1254 before October 1, 2002, or, in the case of an active employee  
1255 who is on a leave of absence on July 1, 2002, within 90 days  
1256 after the conclusion of the leave of absence. This election is  
1257 irrevocable.

1258 b. The employee shall receive service credit under the  
1259 pension plan equal to his or her years of service under the  
1260 Senior Management Service Optional Annuity Program. The cost for  
1261 such credit is the amount representing the present value of that  
1262 employee's accumulated benefit obligation for the affected  
1263 period of service.

1264 c. The employee must transfer the total accumulated  
1265 employer contributions and earnings on deposit in his or her  
1266 Senior Management Service Optional Annuity Program account. If  
1267 the transferred amount is not sufficient to pay the amount due,  
1268 the employee must pay a sum representing the remainder of the  
1269 amount due. The employee may not retain ~~any~~ employer  
1270 contributions or earnings from the Senior Management Service  
1271 Optional Annuity Program account.

1272 6. A retiree of a state-administered retirement system who  
1273 is initially reemployed on or after July 1, 2010, may not renew  
1274 membership in the Senior Management Service Optional Annuity  
1275 Program.

1276 7. Effective July 1, 2015, the Senior Management Service

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1277 Optional Annuity Program is closed to new members. Members  
1278 enrolled in the program before July 1, 2015, may retain their  
1279 membership in the program.

1280 Section 11. Paragraph (d) of subsection (9) of section  
1281 121.091, Florida Statutes, is amended to read:

1282 121.091 Benefits payable under the system.—Benefits may not  
1283 be paid under this section unless the member has terminated  
1284 employment as provided in s. 121.021(39) (a) or begun  
1285 participation in the Deferred Retirement Option Program as  
1286 provided in subsection (13), and a proper application has been  
1287 filed in the manner prescribed by the department. The department  
1288 may cancel an application for retirement benefits when the  
1289 member or beneficiary fails to timely provide the information  
1290 and documents required by this chapter and the department's  
1291 rules. The department shall adopt rules establishing procedures  
1292 for application for retirement benefits and for the cancellation  
1293 of such application when the required information or documents  
1294 are not received.

1295 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

1296 (d) This subsection applies to a retiree ~~retirees~~, as  
1297 defined in s. 121.4501(2), of the Florida Retirement System  
1298 Investment Plan and s. 121.601 of the Florida Retirement System  
1299 Cash Balance Plan, subject to the following conditions:

1300 1. A retiree may not be reemployed with an employer  
1301 participating in the Florida Retirement System until such person  
1302 has been retired for 6 calendar months.

1303 2. A retiree employed in violation of this subsection and  
1304 an employer that employs or appoints such person are jointly and  
1305 severally liable for reimbursement of any benefits paid to the

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1306 retirement trust fund from which the benefits were paid. The  
1307 employer must have a written statement from the retiree that he  
1308 or she is not retired from a state-administered retirement  
1309 system.

1310 Section 12. Section 121.151, Florida Statutes, is amended  
1311 to read:

1312 121.151 Investments.—The Board of Administration, created  
1313 by authority of the State Constitution, shall invest and  
1314 reinvest available funds of the System Trust Fund and the  
1315 Florida Retirement System Cash Balance Plan Trust Fund in  
1316 accordance with ~~the provisions of~~ ss. 215.44-215.53.

1317 Section 13. Paragraph (c) of subsection (3) of section  
1318 121.35, Florida Statutes, is amended to read:

1319 121.35 Optional retirement program for the State University  
1320 System.—

1321 (3) ELECTION OF OPTIONAL PROGRAM.—

1322 (c) An ~~Any~~ employee who becomes eligible to participate in  
1323 the optional retirement program on or after January 1, 1993,  
1324 shall be a compulsory participant of the program unless such  
1325 employee elects membership in the Florida Retirement System.  
1326 Such election must ~~shall~~ be ~~made~~ in writing and filed with the  
1327 personnel officer of the employer. An ~~Any~~ eligible employee who  
1328 fails to make such election within the prescribed time period  
1329 shall be deemed to have elected to participate in the optional  
1330 retirement program.

1331 1. An ~~Any~~ employee whose optional retirement program  
1332 eligibility results from initial employment before July 1, 2015,  
1333 shall be enrolled in the program at the commencement of  
1334 employment. If, within 90 days after commencement of employment,

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1335 the employee elects membership in the Florida Retirement System,  
1336 such membership is ~~shall be~~ effective retroactive to the date of  
1337 commencement of employment as provided in s. 121.4501(4).

1338 2. An employee whose optional retirement program  
1339 eligibility results from initial employment on or after July 1,  
1340 2015, shall be enrolled in the program at the commencement of  
1341 employment. If, within 90 days after commencement of employment,  
1342 the employee elects membership in the Florida Retirement System,  
1343 such membership is effective retroactive to the date of  
1344 commencing employment as provided in s. 121.602(3).

1345 ~~3.2.~~ An ~~Any~~ employee whose optional retirement program  
1346 eligibility results from a change in status due to the  
1347 subsequent designation of the employee's position as one of  
1348 those specified in paragraph (2)(a) or due to the employee's  
1349 appointment, promotion, transfer, or reclassification to a  
1350 position specified in paragraph (2)(a) shall be enrolled in the  
1351 optional retirement program upon such change in status and ~~shall~~  
1352 ~~be~~ notified by the employer of such action. If, within 90 days  
1353 after the date of such notification, the employee elects to  
1354 retain membership in the Florida Retirement System, such  
1355 continuation of membership is ~~shall be~~ retroactive to the date  
1356 of the change in status.

1357 ~~4.3.~~ Notwithstanding subparagraphs 1., 2., and 3. ~~the~~  
1358 ~~provisions of this paragraph,~~ effective July 1, 1997, an ~~any~~  
1359 employee who is eligible to participate in the Optional  
1360 Retirement Program and who fails to execute a contract with one  
1361 of the approved companies and to notify the department in  
1362 writing as provided in subsection (4) within 90 days after the  
1363 date of eligibility shall be deemed to have elected membership

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1364 in the Florida Retirement System, except as provided in s.  
1365 121.051(1) (a). This provision ~~shall~~ also applies ~~apply~~ to an ~~any~~  
1366 employee who terminates employment in an eligible position  
1367 before executing the required investment ~~annuity~~ contract and  
1368 notifying the department. Such membership is ~~shall be~~  
1369 retroactive to the date of eligibility, and all appropriate  
1370 contributions shall be transferred to the Florida Retirement  
1371 System Trust Fund and the Health Insurance Subsidy Trust Fund.

1372 Section 14. Subsection (4), paragraph (a) of subsection  
1373 (5), paragraphs (c), (g), and (h) of subsection (10), and  
1374 paragraph (a) of subsection (15) of section 121.4501, Florida  
1375 Statutes, are amended to read:

1376 121.4501 Florida Retirement System Investment Plan.—

1377 (4) PARTICIPATION; ENROLLMENT.—

1378 (a)1. Effective June 1, 2002, through February 28, 2003, a  
1379 90-day election period was provided to each eligible employee  
1380 participating in the Florida Retirement System, preceded by a  
1381 90-day education period, allowing each eligible employee to  
1382 elect membership in the investment plan; an employee who failed  
1383 to elect the investment plan during the election period remained  
1384 in the pension plan. An eligible employee who was employed in a  
1385 regularly established position during the election period was  
1386 granted the option to make one subsequent election, as provided  
1387 in paragraph (e). With respect to an eligible employee who did  
1388 not participate in the initial election period or who is  
1389 employed initially in a regularly established position after the  
1390 close of the initial election period but before July 1, 2015, on  
1391 June 1, 2002, by a state employer:

1392 a. ~~Any such employee may elect to participate in the~~

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1393 ~~investment plan in lieu of retaining his or her membership in~~  
1394 ~~the pension plan. The election must be made in writing or by~~  
1395 ~~electronic means and must be filed with the third-party~~  
1396 ~~administrator by August 31, 2002, or, in the case of an active~~  
1397 ~~employee who is on a leave of absence on April 1, 2002, by the~~  
1398 ~~last business day of the 5th month following the month the leave~~  
1399 ~~of absence concludes. This election is irrevocable, except as~~  
1400 ~~provided in paragraph (g). Upon making such election, the~~  
1401 ~~employee shall be enrolled as a member of the investment plan,~~  
1402 ~~the employee's membership in the Florida Retirement System is~~  
1403 ~~governed by the provisions of this part, and the employee's~~  
1404 ~~membership in the pension plan terminates. The employee's~~  
1405 ~~enrollment in the investment plan is effective the first day of~~  
1406 ~~the month for which a full month's employer contribution is made~~  
1407 ~~to the investment plan.~~

1408 ~~b. Any such employee who fails to elect to participate in~~  
1409 ~~the investment plan within the prescribed time period is deemed~~  
1410 ~~to have elected to retain membership in the pension plan, and~~  
1411 ~~the employee's option to elect to participate in the investment~~  
1412 ~~plan is forfeited.~~

1413 ~~2. With respect to employees who become eligible to~~  
1414 ~~participate in the investment plan by reason of employment in a~~  
1415 ~~regularly established position with a state employer commencing~~  
1416 ~~after April 1, 2002:~~

1417 ~~a. Any such employee shall, by default, be enrolled in the~~  
1418 ~~pension plan at the commencement of employment, and may, by the~~  
1419 ~~last business day of the 5th month following the employee's~~  
1420 ~~month of hire, elect to participate in the investment plan. The~~  
1421 ~~employee's election must be made in writing or by electronic~~

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1422 means and ~~must be~~ filed with the third-party administrator. The  
1423 election to participate in the investment plan is irrevocable,  
1424 except as provided in paragraph (e) ~~(g)~~.

1425 ~~a.b.~~ If the employee files such election within the  
1426 prescribed time period, enrollment in the investment plan is  
1427 effective on the first day of employment. The retirement  
1428 contributions paid through the month of the employee plan change  
1429 shall be transferred to the investment program, and, effective  
1430 the first day of the next month, the employer and employee must  
1431 pay the applicable contributions based on the employee  
1432 membership class in the program.

1433 ~~b.e.~~ An employee who fails to elect to participate in the  
1434 investment plan within the prescribed time period is deemed to  
1435 have elected to retain membership in the pension plan, and the  
1436 employee's option to elect to participate in the investment plan  
1437 is forfeited.

1438 ~~2.3.~~ With respect to employees who become eligible to  
1439 participate in the investment plan pursuant to s.  
1440 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to  
1441 participate in the investment plan in lieu of retaining his or  
1442 her membership in the State Community College System Optional  
1443 Retirement Program or the State University System Optional  
1444 Retirement Program. The election must be ~~made~~ in writing or by  
1445 electronic means and ~~must be~~ filed with the third-party  
1446 administrator. This election is irrevocable, except as provided  
1447 in paragraph (g). Upon making such election, the employee shall  
1448 be enrolled as a member in the investment plan, the employee's  
1449 membership in the Florida Retirement System is governed by the  
1450 provisions of this part, and the employee's participation in the

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1451 State Community College System Optional Retirement Program or  
1452 the State University System Optional Retirement Program  
1453 terminates. The employee's enrollment in the investment plan is  
1454 effective on the first day of the month for which a full month's  
1455 employer and employee contribution is made to the investment  
1456 plan.

1457 ~~4. For purposes of this paragraph, "state employer" means~~  
1458 ~~any agency, board, branch, commission, community college,~~  
1459 ~~department, institution, institution of higher education, or~~  
1460 ~~water management district of the state, which participates in~~  
1461 ~~the Florida Retirement System for the benefit of certain~~  
1462 ~~employees.~~

1463 ~~(b)1. With respect to an eligible employee who is employed~~  
1464 ~~in a regularly established position on September 1, 2002, by a~~  
1465 ~~district school board employer:~~

1466 ~~a. Any such employee may elect to participate in the~~  
1467 ~~investment plan in lieu of retaining his or her membership in~~  
1468 ~~the pension plan. The election must be made in writing or by~~  
1469 ~~electronic means and must be filed with the third-party~~  
1470 ~~administrator by November 30, or, in the case of an active~~  
1471 ~~employee who is on a leave of absence on July 1, 2002, by the~~  
1472 ~~last business day of the 5th month following the month the leave~~  
1473 ~~of absence concludes. This election is irrevocable, except as~~  
1474 ~~provided in paragraph (g). Upon making such election, the~~  
1475 ~~employee shall be enrolled as a member of the investment plan,~~  
1476 ~~the employee's membership in the Florida Retirement System is~~  
1477 ~~governed by the provisions of this part, and the employee's~~  
1478 ~~membership in the pension plan terminates. The employee's~~  
1479 ~~enrollment in the investment plan is effective the first day of~~

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1480 ~~the month for which a full month's employer contribution is made~~  
1481 ~~to the investment program.~~

1482 ~~b. Any such employee who fails to elect to participate in~~  
1483 ~~the investment plan within the prescribed time period is deemed~~  
1484 ~~to have elected to retain membership in the pension plan, and~~  
1485 ~~the employee's option to elect to participate in the investment~~  
1486 ~~plan is forfeited.~~

1487 ~~2. With respect to employees who become eligible to~~  
1488 ~~participate in the investment plan by reason of employment in a~~  
1489 ~~regularly established position with a district school board~~  
1490 ~~employer commencing after July 1, 2002:~~

1491 ~~a. Any such employee shall, by default, be enrolled in the~~  
1492 ~~pension plan at the commencement of employment, and may, by the~~  
1493 ~~last business day of the 5th month following the employee's~~  
1494 ~~month of hire, elect to participate in the investment plan. The~~  
1495 ~~employee's election must be made in writing or by electronic~~  
1496 ~~means and must be filed with the third party administrator. The~~  
1497 ~~election to participate in the investment plan is irrevocable,~~  
1498 ~~except as provided in paragraph (g).~~

1499 ~~b. If the employee files such election within the~~  
1500 ~~prescribed time period, enrollment in the investment plan is~~  
1501 ~~effective on the first day of employment. The employer~~  
1502 ~~retirement contributions paid through the month of the employee~~  
1503 ~~plan change shall be transferred to the investment plan, and,~~  
1504 ~~effective the first day of the next month, the employer shall~~  
1505 ~~pay the applicable contributions based on the employee~~  
1506 ~~membership class in the investment plan.~~

1507 ~~e. Any such employee who fails to elect to participate in~~  
1508 ~~the investment plan within the prescribed time period is deemed~~

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1509 ~~to have elected to retain membership in the pension plan, and~~  
1510 ~~the employee's option to elect to participate in the investment~~  
1511 ~~plan is forfeited.~~

1512 ~~3. For purposes of this paragraph, "district school board~~  
1513 ~~employer" means any district school board that participates in~~  
1514 ~~the Florida Retirement System for the benefit of certain~~  
1515 ~~employees, or a charter school or charter technical career~~  
1516 ~~center that participates in the Florida Retirement System as~~  
1517 ~~provided in s. 121.051(2) (d).~~

1518 ~~(c)1. With respect to an eligible employee who is employed~~  
1519 ~~in a regularly established position on December 1, 2002, by a~~  
1520 ~~local employer:~~

1521 ~~a. Any such employee may elect to participate in the~~  
1522 ~~investment plan in lieu of retaining his or her membership in~~  
1523 ~~the pension plan. The election must be made in writing or by~~  
1524 ~~electronic means and must be filed with the third-party~~  
1525 ~~administrator by February 28, 2003, or, in the case of an active~~  
1526 ~~employee who is on a leave of absence on October 1, 2002, by the~~  
1527 ~~last business day of the 5th month following the month the leave~~  
1528 ~~of absence concludes. This election is irrevocable, except as~~  
1529 ~~provided in paragraph (g). Upon making such election, the~~  
1530 ~~employee shall be enrolled as a participant of the investment~~  
1531 ~~plan, the employee's membership in the Florida Retirement System~~  
1532 ~~is governed by the provisions of this part, and the employee's~~  
1533 ~~membership in the pension plan terminates. The employee's~~  
1534 ~~enrollment in the investment plan is effective the first day of~~  
1535 ~~the month for which a full month's employer contribution is made~~  
1536 ~~to the investment plan.~~

1537 ~~b. Any such employee who fails to elect to participate in~~

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1538 ~~the investment plan within the prescribed time period is deemed~~  
1539 ~~to have elected to retain membership in the pension plan, and~~  
1540 ~~the employee's option to elect to participate in the investment~~  
1541 ~~plan is forfeited.~~

1542 ~~2. With respect to employees who become eligible to~~  
1543 ~~participate in the investment plan by reason of employment in a~~  
1544 ~~regularly established position with a local employer commencing~~  
1545 ~~after October 1, 2002:~~

1546 ~~a. Any such employee shall, by default, be enrolled in the~~  
1547 ~~pension plan at the commencement of employment, and may, by the~~  
1548 ~~last business day of the 5th month following the employee's~~  
1549 ~~month of hire, elect to participate in the investment plan. The~~  
1550 ~~employee's election must be made in writing or by electronic~~  
1551 ~~means and must be filed with the third party administrator. The~~  
1552 ~~election to participate in the investment plan is irrevocable,~~  
1553 ~~except as provided in paragraph (g).~~

1554 ~~b. If the employee files such election within the~~  
1555 ~~prescribed time period, enrollment in the investment plan is~~  
1556 ~~effective on the first day of employment. The employer~~  
1557 ~~retirement contributions paid through the month of the employee~~  
1558 ~~plan change shall be transferred to the investment plan, and,~~  
1559 ~~effective the first day of the next month, the employer shall~~  
1560 ~~pay the applicable contributions based on the employee~~  
1561 ~~membership class in the investment plan.~~

1562 ~~c. Any such employee who fails to elect to participate in~~  
1563 ~~the investment plan within the prescribed time period is deemed~~  
1564 ~~to have elected to retain membership in the pension plan, and~~  
1565 ~~the employee's option to elect to participate in the investment~~  
1566 ~~plan is forfeited.~~

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1567 ~~3. For purposes of this paragraph, "local employer" means~~  
1568 ~~any employer not included in paragraph (a) or paragraph (b).~~

1569 (b)~~(d)~~ Contributions available for self-direction by a  
1570 member who has not selected one or more specific investment  
1571 products shall be allocated as prescribed by the state board.  
1572 The third-party administrator shall notify the member at least  
1573 quarterly that the member should take an affirmative action to  
1574 make an asset allocation among the investment products.

1575 (c)~~(e)~~ On or after July 1, 2011, a member of the pension  
1576 plan who obtains a refund of employee contributions retains his  
1577 or her prior plan choice upon return to employment in a  
1578 regularly established position with a participating employer.

1579 (d)~~(f)~~ A member of the investment plan who takes a  
1580 distribution of any contributions from his or her investment  
1581 plan account is considered a retiree. A retiree who is initially  
1582 reemployed in a regularly established position on or after July  
1583 1, 2010, is not eligible to be enrolled in renewed membership.

1584 (e)~~(g)~~ After the period during which an eligible employee,  
1585 who initially enrolled before July 1, 2015, had the choice to  
1586 elect the pension plan or the investment plan, or the month  
1587 following the receipt of the eligible employee's plan election,  
1588 if sooner, the employee shall have one opportunity, at the  
1589 employee's discretion, to ~~choose to~~ move from the pension plan  
1590 to the investment plan or from the investment plan to the  
1591 pension plan. Eligible employees may elect to move between plans  
1592 only if they are earning service credit in an employer-employee  
1593 relationship consistent with s. 121.021(17)(b), excluding leaves  
1594 of absence without pay. Effective July 1, 2005, such elections  
1595 are effective on the first day of the month following the

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1596 receipt of the election by the third-party administrator and are  
1597 not subject to the requirements regarding an employer-employee  
1598 relationship or receipt of contributions for the eligible  
1599 employee in the effective month, except when the election is  
1600 received by the ~~third-party~~ administrator. This paragraph is  
1601 contingent upon approval by the Internal Revenue Service.

1602 1. If the employee chooses to move to the investment plan,  
1603 the provisions of subsection (3) govern the transfer.

1604 2. If the employee chooses to move to the pension plan, the  
1605 employee must transfer from his or her investment plan account,  
1606 and from other employee moneys as necessary, ~~a sum representing~~  
1607 the present value of that employee's accumulated benefit  
1608 obligation immediately following the time of such movement,  
1609 determined assuming that attained service equals the sum of  
1610 service in the pension plan and service in the investment plan.  
1611 Benefit commencement occurs on the first date the employee is  
1612 eligible for unreduced benefits, using the discount rate and  
1613 other relevant actuarial assumptions that were used to value the  
1614 pension plan liabilities in the most recent actuarial valuation.  
1615 For an ~~any~~ employee who, at the time of the second election,  
1616 already maintains an accrued benefit amount in the pension plan,  
1617 the then-present value of the accrued benefit is deemed part of  
1618 the required transfer amount. The division must ensure that the  
1619 transfer sum is prepared using a formula and methodology  
1620 certified by an enrolled actuary. A refund of any employee  
1621 contributions or additional member payments made which exceed  
1622 the employee contributions that would have accrued had the  
1623 member remained in the pension plan and not transferred to the  
1624 investment plan is not permitted.

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1625           3. Notwithstanding subparagraph 2., an employee who chooses  
1626 to move to the pension plan and who became eligible to  
1627 participate in the investment plan by reason of employment in a  
1628 regularly established position with a state employer after June  
1629 1, 2002; a district school board employer after September 1,  
1630 2002; or a local employer after December 1, 2002, must transfer  
1631 from his or her investment plan account, and from other employee  
1632 moneys as necessary, a sum representing the employee's actuarial  
1633 accrued liability. A refund of ~~any~~ employee contributions or  
1634 additional member participant payments made which exceed the  
1635 employee contributions that would have accrued had the member  
1636 remained in the pension plan and not transferred to the  
1637 investment plan is not permitted.

1638           4. An employee's ability to transfer from the pension plan  
1639 to the investment plan pursuant to paragraph (a) and this  
1640 paragraph ~~paragraphs (a)-(d)~~, and the ability of a current  
1641 employee to have an option to later transfer back into the  
1642 pension plan under subparagraph 2., shall be deemed a  
1643 significant system amendment. Pursuant to s. 121.031(4), any  
1644 resulting unfunded liability arising from actual original  
1645 transfers from the pension plan to the investment plan must be  
1646 amortized within 30 plan years as a separate unfunded actuarial  
1647 base independent of the reserve stabilization mechanism defined  
1648 in s. 121.031(3)(f). For the first 25 years, a direct  
1649 amortization payment may not be calculated for this base. During  
1650 this 25-year period, the separate base shall be used to offset  
1651 the impact of employees exercising their second program election  
1652 under this paragraph. The actuarial funded status of the pension  
1653 plan is ~~will~~ not be affected by such second program elections in

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1654 any significant manner, after due recognition of the separate  
1655 unfunded actuarial base. Following the initial 25-year period,  
1656 any remaining balance of the original separate base shall be  
1657 amortized over the remaining 5 years of the required 30-year  
1658 amortization period.

1659 5. If the employee chooses to transfer from the investment  
1660 plan to the pension plan and retains an excess account balance  
1661 in the investment plan after satisfying the buy-in requirements  
1662 under this paragraph, the excess may not be distributed until  
1663 the member retires from the pension plan. The excess account  
1664 balance may be rolled over to the pension plan and used to  
1665 purchase service credit or upgrade creditable service in the  
1666 pension plan.

1667 (f) An employee initially enrolled before July 1, 2015,  
1668 shall have one opportunity in his or her working career, at the  
1669 employee's discretion, to transfer from the pension plan to the  
1670 cash balance plan or from the investment plan to the cash  
1671 balance plan as provided in s. 121.602(2). An eligible employee  
1672 may elect to transfer between plans only if he or she is earning  
1673 service credit in an employer-employee relationship consistent  
1674 with s. 121.021(17)(b), excluding leaves of absence without pay.  
1675 Such elections are effective on the first day of the month  
1676 following the receipt of the election by the third-party  
1677 administrator and are not subject to the requirements regarding  
1678 an employer-employee relationship or receipt of contributions  
1679 for the eligible employee in the effective month, except when  
1680 the election is received by the administrator. This one-time  
1681 career transfer is irrevocable, and no other transfer is  
1682 allowed. If the employee chooses to transfer from the investment

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1683 plan or from the pension plan to the cash balance plan, s.  
1684 121.602(2) governs the transfer.

1685 (g) An employee initially enrolled on or after July 1,  
1686 2015, is not eligible to enroll in the pension plan.

1687 (5) CONTRIBUTIONS.—

1688 (a) The employee and employer shall make the required  
1689 contributions to the investment plan based on a percentage of  
1690 the employee's gross monthly compensation, as provided in part  
1691 IV ~~III~~ of this chapter.

1692 (10) EDUCATION COMPONENT.—

1693 (c) The state board, in coordination with the department,  
1694 shall provide for an initial and ongoing transfer education  
1695 component to provide system members with information necessary  
1696 to make informed plan choice decisions. The transfer education  
1697 component must include, but is not limited to, information on:

1698 1. The amount of money available to a member for  
1699 transferring to the investment plan or the cash balance plan ~~to~~  
1700 ~~transfer to the defined contribution program.~~

1701 2. The features of and differences between the pension  
1702 plan, the investment plan, and the cash balance plan ~~and the~~  
1703 ~~defined contribution program~~, both generally and specifically,  
1704 as those differences may affect the member.

1705 3. The expected benefit available if the member were to  
1706 retire under each of the retirement plans ~~programs~~, based on  
1707 appropriate alternative sets of assumptions.

1708 4. The rate of return from investments in the investment  
1709 plan ~~defined contribution program~~ and the period of time over  
1710 which such rate of return must be achieved to equal or exceed  
1711 the expected monthly benefit payable to the member under the

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1712 pension plan or the benefit payable to the member under the cash  
1713 balance plan.

1714 5. The historical rates of return for the investment  
1715 alternatives available in the investment plan ~~defined~~  
1716 ~~contribution programs.~~

1717 6. The benefits and historical rates of return on  
1718 investments available in a typical deferred compensation plan or  
1719 a typical plan under s. 403(b) of the Internal Revenue Code for  
1720 which the employee may be eligible.

1721 7. The program choices available to employees of the State  
1722 University System and the comparative benefits of each available  
1723 program, if applicable.

1724 8. Payout options available in each of the retirement plans  
1725 ~~programs.~~

1726 (g) Funding for education of new employees may reflect  
1727 administrative costs to the investment plan and the cash balance  
1728 ~~pension~~ plan.

1729 (h) Pursuant to subsection (8), all Florida Retirement  
1730 System employers have an obligation to regularly communicate the  
1731 existence of the ~~two~~ Florida Retirement System plans and the  
1732 plan choice in the natural course of administering their  
1733 personnel functions, using the educational materials supplied by  
1734 the state board and the Department of Management Services.

1735 (15) STATEMENT OF FIDUCIARY STANDARDS AND  
1736 RESPONSIBILITIES.—

1737 (a) Investment of ~~defined-contribution~~ plan assets shall be  
1738 made for the sole interest and exclusive purpose of providing  
1739 benefits to members and beneficiaries and defraying reasonable  
1740 expenses of administering the plan. The plan's ~~program's~~ assets

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1741 shall be invested on behalf of the ~~program~~ members with the  
1742 care, skill, and diligence that a prudent person acting in a  
1743 like manner would undertake. The performance of the investment  
1744 duties set forth in this paragraph must ~~shall~~ comply with the  
1745 fiduciary standards set forth in the Employee Retirement Income  
1746 Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case  
1747 of conflict with other provisions of law authorizing  
1748 investments, the investment and fiduciary standards set forth in  
1749 this subsection ~~shall~~ prevail.

1750 Section 15. Section 121.70, Florida Statutes, is amended to  
1751 read:

1752 121.70 Legislative purpose and intent.—

1753 (1) This part provides for a uniform system for funding  
1754 benefits provided under the Florida Retirement System Pension  
1755 Plan established under part I of this chapter, ~~(referred to in~~  
1756 ~~this part as the pension plan)~~ and under the Florida Retirement  
1757 System Investment Plan established under part II of this  
1758 chapter, and under the Florida Retirement System Cash Balance  
1759 Plan established under part III of this chapter ~~(referred to in~~  
1760 ~~this part as the investment plan)~~. The Legislature recognizes  
1761 and declares that the Florida Retirement System is a single  
1762 retirement system, consisting of three ~~two~~ retirement plans and  
1763 other nonintegrated programs. Employees and employers  
1764 participating in the Florida Retirement System collectively  
1765 shall make ~~shall be responsible for making~~ contributions to  
1766 support the benefits provided under the three ~~both~~ plans. The  
1767 employees and employers shall make contributions based upon a  
1768 uniform or blended contribution rate system ~~rates~~ determined as  
1769 a percentage of the employee's gross monthly compensation for

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1770 the employee's class or subclass of Florida Retirement System  
1771 membership, irrespective of the retirement plan in which the  
1772 individual employee is enrolled. ~~This shall be known as a~~  
1773 ~~uniform or blended contribution rate system.~~

1774 (2) In establishing a uniform contribution rate system, it  
1775 is the intent of the Legislature to:

1776 (a) Provide greater stability and certainty in financial  
1777 planning and budgeting for Florida Retirement System employers  
1778 by eliminating the fiscal instability that would be caused by  
1779 multiple dual rates coupled with employee-selected plan  
1780 participation;

1781 (b) Provide greater fiscal equity and uniformity for system  
1782 employers by effectively distributing the financial burden and  
1783 benefit of short-term system deficits and surpluses,  
1784 respectively, in proportion to total system payroll; and

1785 (c) Allow employees to make their retirement plan selection  
1786 decisions free of circumstances that may cause employers to  
1787 favor one plan choice over another.

1788 Section 16. Subsections (1), (3), (4), and (5) of section  
1789 121.71, Florida Statutes, are amended to read:

1790 121.71 Uniform rates; process; calculations; levy.-

1791 (1) In conducting the system actuarial study required under  
1792 s. 121.031, the actuary shall follow all specified requirements  
1793 ~~specified~~ to determine, by Florida Retirement System employee  
1794 membership class, the dollar contribution amounts necessary for  
1795 the next fiscal year for the pension plan and the cash balance  
1796 plan as determined by independent valuations of each plan. ~~In~~  
1797 ~~addition,~~ The actuary shall also determine, by Florida  
1798 Retirement System membership class, based on an estimate for the

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1799 next fiscal year of the gross compensation of employees  
 1800 participating in the investment plan, the dollar contribution  
 1801 amounts necessary to make the allocations required under ss.  
 1802 121.72 and 121.73. For each employee membership class and  
 1803 subclass, the actuarial study must establish a uniform rate  
 1804 necessary to fund the benefit obligations under the ~~both~~ Florida  
 1805 Retirement System retirement plans by dividing the sum of total  
 1806 dollars required by the estimated gross compensation of members  
 1807 in the ~~both~~ plans.

1808 (3) Required employee retirement contribution rates for  
 1809 each membership class and subclass of the Florida Retirement  
 1810 System for the ~~both~~ retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2011
1812	
1813 Regular Class	3.00%
1814 Special Risk Class	3.00%
1815 Special Risk Administrative	
1816 Support Class	3.00%

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1817	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	3.00%
1818	Elected Officers' Class— Justices, Judges	3.00%
1819	Elected Officers' Class— County Elected Officers	3.00%
1820	Senior Management Service Class	3.00%
1821	DROP	0.00%

1822           (4) Required employer retirement contribution rates for  
1823 each membership class and subclass of the Florida Retirement  
1824 System ~~for both retirement plans~~ are as follows:  
1825

1826	Membership Class	Percentage of Gross Compensation, Effective July 1, 2013
------	------------------	--

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1827	Regular Class	3.53%	
1828	Special Risk Class	11.00%	
1829	Special Risk Administrative Support Class	4.17%	
1830	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52%	
1831	Elected Officers' Class— Justices, Judges	10.05%	
1832	Elected Officers' Class— County Elected Officers	8.44%	
1833	Senior Management Class	4.81%	
1834	DROP	4.63%	
1835			
1836	(5) In order to address unfunded actuarial liabilities of		
1837	the system, the required employer retirement contribution rates		
1838	for each membership class and subclass of the Florida Retirement		

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1839 System ~~for both retirement plans~~ are as follows:

1840

Percentage of  
Gross  
Compensation,  
Effective  
July 1, 2013

Membership Class

1841

1842

Regular Class 2.19%

1843

Special Risk Class 6.83%

1844

Special Risk  
Administrative  
Support Class 30.56%

1845

Elected Officers' Class—  
Legislators, Governor,  
Lt. Governor,  
Cabinet Officers,  
State Attorneys,  
Public Defenders 24.85%

1846

Elected Officers' Class—  
Justices, Judges 17.00%

1847

Elected Officers' Class— 23.36%

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County Elected Officers

1848

Senior Management Service

Class

12.27%

1849

DROP

7.01%

1850

1851 Section 17. Section 121.721, Florida Statutes, is created  
1852 to read:

1853 121.721 Credits to cash balance plan member accounts and  
1854 interest on accounts; percentage amounts.-

1855 (1) The service credits established in this section shall  
1856 be used to fund retirement benefits under the cash balance plan  
1857 and shall be transferred monthly by the Division of Retirement  
1858 from the Florida Retirement System Contributions Clearing Trust  
1859 Fund to the Cash Balance Plan Trust Fund and credited to each  
1860 participating member's account based on the membership class of  
1861 the member.

1862 (2) The service credits are stated as a percentage of each  
1863 cash balance plan member's gross compensation for the calendar  
1864 month. A change in a contribution percentage is effective the  
1865 1st day of the month for which retirement contributions may be  
1866 made on or after the beginning date of the change. Credit  
1867 percentages may be modified by general law.

1868 (3) Employer and member credits as provided under s.  
1869 121.602(5) and (6) shall be accounted for separately.

1870 (4) Credit allocations from the Florida Retirement System  
1871 Contributions Clearing Account Trust Fund to the cash balance  
1872 plan member annuity savings account for each member of the cash

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1873 balance plan are as follows:

1874

Percentage  
of Gross  
Compensation,  
Effective  
July 1, 2015

1875

Membership Class

1876

Regular Class

3.00%

1877

Special Risk Class

3.00%

1878

Special Risk

Administrative

Support Class

3.00%

1879

Elected Officers' Class-

Legislators, Governor,

Lt. Governor,

Cabinet Officers,

State Attorneys,

Public Defenders

3.00%

1880

Elected Officers' Class-

Justices, Judges

3.00%

1881

Elected Officers' Class-

3.00%

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County Elected Officers

1882

Senior Management Service

Class

3.00%

1883

1884

(5) Service credit allocations from the Florida Retirement

1885

System Contributions Clearing Account Trust Fund to the cash

1886

balance plan employer retirement annuity account for each member

1887

of the cash balance plan are as follows:

Percentage

of Gross

Compensation,

Effective

Membership Class

July 1, 2015

1888

1889

Regular Class

3.05%

1890

Special Risk Class

9.30%

1891

Special Risk

Administrative

Support Class

3.05%

1892

Elected Officers' Class-

Legislators, Governor,

Lt. Governor,

Cabinet Officers,

5.58%

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State Attorneys,  
Public Defenders

1893

Elected Officers' Class-  
Justices, Judges

9.11%

1894

Elected Officers' Class-  
County Elected Officers

7.55%

1895

Senior Management Service  
Class

4.28%

1896

1897 (6) (a) Beginning July 1, 2015, each member of the cash  
1898 balance plan may be credited with interest credits on the  
1899 balance of the member's accounts.

1900 (b) Effective July 1, 2015, the guaranteed interest credits  
1901 payable on the balance of each member's retirement annuity  
1902 account and annuity savings account accrues at an effective  
1903 annual rate of 2 percent, compounded monthly and credited  
1904 monthly based on the prior month's accumulated ending balances.  
1905 Such interest credits must be posted to member accounts by the  
1906 15th business day of the following month.

1907 (c) Effective July 1, 2015, additional interest credits  
1908 shall be credited as follows:

1909 1. If the annual rate of return on investments of the cash  
1910 balance plan assets for the prior plan year did not exceed 2  
1911 percent, no additional interest credits shall be allowed.

1912 2. If the annual rate of return on investments of the cash  
1913 balance plan assets for the prior plan year was greater than 2

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1914 percent, additional interest credits are payable on each  
1915 member's retirement annuity account and annuity savings account  
1916 equal to 75 percent of the difference between the annual rate of  
1917 return and 2 percent.

1918 3. All additional interest credits payable under this  
1919 paragraph shall be allocated on the 15th business day of  
1920 November following the close of the plan year based on the  
1921 member's account balances as of the preceding June 30.

1922 (d) To be eligible for an interest credit, the member must  
1923 have an account balance at the time the interest credit is  
1924 posted to the account. Interest credits may not be awarded to a  
1925 member who has taken a full distribution of the member's  
1926 accounts or who has annuitized the member's accumulated total  
1927 account balance before interest credits are posted.

1928 (e) Notwithstanding paragraphs (b) and (c), interest  
1929 credits may not be granted on the member's nonvested account  
1930 balances following the end of the second plan year after the  
1931 member has terminated without meeting the vesting requirements  
1932 of the cash balance plan.

1933 Section 18. Section 121.73, Florida Statutes, is amended to  
1934 read:

1935 121.73 Allocations for member disability coverage and  
1936 coverage for members killed in the line of duty; percentage  
1937 amounts.—

1938 (1) The allocations established in:

1939 (a) Subsection (3) shall be used to provide disability  
1940 coverage for members in the investment plan and ~~shall be~~  
1941 transferred monthly by the Division of Retirement from the  
1942 Florida Retirement System Contributions Clearing Trust Fund to

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1943 the disability account of the Florida Retirement System Trust  
 1944 Fund.

1945 (b) Subsection (4) shall be used to provide disability  
 1946 coverage for members in the cash balance plan and transferred  
 1947 monthly by the Division of Retirement from the Florida  
 1948 Retirement System Contributions Clearing Trust Fund to the  
 1949 disability account of the Florida Retirement System Cash Balance  
 1950 Plan Trust Fund.

1951 (2) The allocations contained in this section are stated as  
 1952 a percentage of each investment plan or cash balance plan  
 1953 member's gross compensation for the calendar month. A change in  
 1954 a contribution percentage is effective the 1st ~~first~~ day of the  
 1955 month for which retirement contributions may be made on or after  
 1956 the beginning date of the change. Contribution percentages may  
 1957 be modified by general law.

1958 (3) Effective July 1, 2002, allocations from the Florida  
 1959 Retirement System Contributions Clearing Trust Fund to provide  
 1960 disability coverage for members in the investment plan, and to  
 1961 offset the costs of administering such ~~said~~ coverage, are as  
 1962 follows:

Membership Class	Percentage of Gross Compensation
Regular Class	0.25%
Special Risk Class	1.33%

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1968	Special Risk Administrative Support Class	0.45%
1969	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
1970	Elected Officers' Class— Justices, Judges	0.73%
1971	Elected Officers' Class— County Elected Officers	0.41%
1972	Senior Management Service Class	0.26%
1973	<u>(4) Allocations from the Florida Retirement System</u>	
1974	<u>Contributions Clearing Trust Fund to provide disability coverage</u>	
1975	<u>for members in the cash balance plan and to offset costs of</u>	
1976	<u>administering such coverage, are as follows:</u>	
1977		
1978	<u>Membership Class</u>	<u>Percentage of Gross Compensation Effective July 1, 2015</u>

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1979	<u>Regular Class</u>	<u>0.26%</u>
1980	<u>Special Risk Class</u>	<u>0.95%</u>
1981	<u>Special Risk Administrative Support Class</u>	<u>0.26%</u>
1982	<u>Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders</u>	<u>0.24%</u>
1983	<u>Elected Officers' Class— Justices, Judges</u>	<u>0.47%</u>
1984	<u>Elected Officers' Class— County Elected Officers</u>	<u>0.27%</u>
1985	<u>Senior Management Service Class</u>	<u>0.21%</u>
1986		
1987	<u>(5) The allocations established in this subsection shall be</u>	
1988	<u>transferred monthly by the Division of Retirement from the</u>	
1989	<u>Florida Retirement System Contributions Clearing Trust Fund to</u>	
1990	<u>the in-line-of-duty death account of the Florida Retirement</u>	
1991	<u>System Cash Balance Plan Trust Fund and shall be used to provide</u>	

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1992 coverage for members of the cash balance plan killed in the line  
 1993 of duty. The allocations are as follows:

1994

Percentage of Gross  
Compensation  
Effective July 1, 2015

Membership Class

1995

1996

Regular Class

0.09%

1997

Special Risk Class

0.25%

1998

Special Risk Administrative

Support Class

0.09%

1999

Elected Officers' Class-

Legislators, Governor,

Lt. Governor, Cabinet

Officers,

State Attorneys, Public

Defenders

0.14%

2000

Elected Officers' Class-

Justices, Judges

0.18%

2001

Elected Officers' Class-

County Elected Officers

0.16%

2002

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Senior Management Service

Class

0.11%

2003  
2004  
2005  
2006  
2007  
2008  
2009  
2010  
2011  
2012  
2013  
2014  
2015  
2016  
2017  
2018  
2019  
2020  
2021  
2022  
2023  
2024  
2025  
2026  
2027  
2028  
2029

Section 19. Section 121.74, Florida Statutes, is amended to read:

121.74 Administrative and educational expenses.—In addition to contributions required to fund member accounts under ss. 121.71 and 121.73, effective July 1, 2010, through June 30, 2014, employers participating in the Florida Retirement System shall contribute an employer assessment amount equal to 0.03 percent of the payroll reported for each class or subclass of Florida Retirement System membership. Effective July 1, 2014, ~~the employer assessment is the contribution rate shall be~~ 0.04 percent of the payroll reported for each class or subclass of membership. The amount assessed ~~contributed~~ shall be transferred by the Division of Retirement from the Florida Retirement System Contributions Clearing Trust Fund to the State Board of Administration’s Administrative Trust Fund to offset the costs of administering the investment plan and the cash balance plan and the costs of providing educational services to members of the Florida Retirement System. Approval of the trustees is required before the expenditure of these funds. Payments for third-party administrative or educational expenses shall be made only pursuant to the terms of the approved contracts for such services.

Section 20. Section 121.76, Florida Statutes, is amended to read:

121.76 Contributions for social security and for retiree

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2030 health insurance subsidy.—Contributions required under this part  
2031 shall be made or deducted, as ~~may be~~ appropriate, for each pay  
2032 period and are in addition to employer and member contributions  
2033 required for social security and the Retiree Health Insurance  
2034 Subsidy Trust Fund as provided under ~~parts I and II~~ of this  
2035 chapter.

2036 Section 21. Subsection (3) of section 121.78, Florida  
2037 Statutes, is amended to read:

2038 121.78 Payment and distribution of contributions.—

2039 (3) (a) Employee and employer contributions and accompanying  
2040 payroll data received after the 5th working day of the month are  
2041 considered late. The division ~~employer~~ shall assess the employer  
2042 ~~be assessed by the division of Retirement~~ a penalty of 1 percent  
2043 of the contributions due for each calendar month or part thereof  
2044 that the contributions or accompanying payroll data are late.  
2045 Proceeds from the ~~1 percent~~ assessment ~~against contributions~~  
2046 made on behalf of members of the pension plan shall ~~must~~ be  
2047 deposited in the Florida Retirement System Trust Fund, and  
2048 proceeds from the ~~1 percent~~ assessment ~~against contributions~~  
2049 made on behalf of members of the investment plan shall be  
2050 transferred to the third-party administrator for deposit into  
2051 member accounts, as provided in paragraph (c). Proceeds from the  
2052 assessment made on behalf of members of the cash balance plan  
2053 shall be credited to the Florida Retirement System Cash Balance  
2054 Plan Trust Fund.

2055 (b) Retirement contributions paid for a prior period shall  
2056 be charged a delinquent fee of 1 percent for each calendar month  
2057 or part thereof that the contributions should have been paid.  
2058 This includes prior period contributions due to incorrect wages

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2059 and contributions from an earlier report or wages and  
2060 contributions that should have been reported but were not. The  
2061 delinquent assessments may not be waived. Proceeds from the  
2062 delinquent fee made on behalf of members of the pension plan  
2063 shall be deposited into the Florida Retirement System Trust  
2064 Fund. Proceeds from the delinquent fee made on behalf of members  
2065 of the investment plan shall be transferred to the third-party  
2066 administrator for deposit into member accounts. Proceeds from  
2067 the delinquent fee made on behalf of members of the cash balance  
2068 plan shall be deposited into the Florida Retirement System Cash  
2069 Balance Plan Trust Fund to be credited to the annuity savings  
2070 account and retirement savings accounts of the members.

2071 (c) If employee contributions or contributions made by an  
2072 employer on behalf of members of the investment plan or  
2073 accompanying payroll data are not received within the calendar  
2074 month they are due, including, but not limited to, contribution  
2075 adjustments as a result of employer errors or corrections, and  
2076 if that delinquency results in market losses to members, the  
2077 employer shall reimburse each member's account for market losses  
2078 resulting from the late contributions. If a member has  
2079 terminated employment and taken a distribution, the member is  
2080 responsible for returning any excess contributions erroneously  
2081 provided by employers, adjusted for any investment gain or loss  
2082 incurred during the period such excess contributions were in the  
2083 member's account. The state board or its designated agent shall  
2084 communicate to terminated members any obligation to repay such  
2085 excess contribution amounts. However, the state board, its  
2086 designated agents, the Florida Retirement System Investment Plan  
2087 Trust Fund, the department, or the Florida Retirement System

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2088 Trust Fund may not incur any loss or gain as a result of an  
2089 employer's correction of such excess contributions. The third-  
2090 party administrator, hired by the state board pursuant to s.  
2091 121.4501(8), shall calculate the market losses for each affected  
2092 member. If contributions made on behalf of members of the  
2093 investment plan or accompanying payroll data are not received  
2094 within the calendar month due, the employer shall also pay the  
2095 cost of the third-party administrator's calculation and  
2096 reconciliation adjustments resulting from the late  
2097 contributions. The third-party administrator shall notify the  
2098 employer of the results of the calculations and the total amount  
2099 due from the employer for such losses and the costs of  
2100 calculation and reconciliation. The employer shall remit to the  
2101 division ~~of Retirement~~ the amount due within 30 working days  
2102 after the date of the penalty notice sent by the division. The  
2103 division shall transfer that amount to the third-party  
2104 administrator, which shall deposit proceeds from the 1 percent  
2105 assessment and from individual market losses into member  
2106 accounts, as appropriate. The state board may adopt rules to  
2107 administer the provisions regarding late contributions, late  
2108 submission of payroll data, the process for reimbursing member  
2109 accounts for resultant market losses, and the penalties charged  
2110 to the employers.

2111 (d) If a cash balance plan member has terminated employment  
2112 and taken a benefit payment, the member is responsible for  
2113 returning any excess contributions erroneously provided by  
2114 employers. The state board or its designated agent shall  
2115 communicate to terminated members their obligation to repay  
2116 excess contribution amounts. However, the state board, its

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2117 designated agents, the Florida Retirement System Cash Balance  
2118 Plan Trust Fund, or the department may not incur any loss as a  
2119 result of an employer's correction of the excess contributions.

2120 (e)~~(d)~~ If employee contributions reported by an employer on  
2121 behalf of members are reduced as a result of employer errors or  
2122 corrections, and the member has terminated employment and taken  
2123 a refund, ~~or~~ distribution, or benefit payment, the employer  
2124 shall be billed and is responsible for recovering from the  
2125 member any excess contributions erroneously provided by the  
2126 employer.

2127 (f)~~(e)~~ Assessments ~~Delinquency fees~~ specified in paragraph  
2128 (a) may be waived by the division, with regard to pension plan  
2129 contributions, and by the state board, with regard to investment  
2130 plan or cash balance plan contributions, only if, in the opinion  
2131 of the division or the board, as appropriate, exceptional  
2132 circumstances beyond the employer's control prevented remittance  
2133 by the prescribed due date notwithstanding the employer's good  
2134 faith efforts to effect delivery. Such a waiver of delinquency  
2135 may be granted an employer only once each plan year.

2136 (g)~~(f)~~ If the employer submits excess employer or employee  
2137 contributions, the employer shall receive a credit to be applied  
2138 against future contributions owed. The employer is responsible  
2139 for reimbursing the member for any excess contributions  
2140 submitted if a ~~any~~ return of such an erroneous excess pretax  
2141 contribution by the program is made within 1 year after making  
2142 erroneous contributions or such other period allowed under  
2143 applicable Internal Revenue guidance.

2144 (h)~~(g)~~ If contributions made by an employer on behalf of  
2145 members in the investment plan are delayed in posting to member

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2146 accounts due to acts of God beyond the control of the division  
2147 ~~of Retirement~~, the state board, or the third-party  
2148 administrator, as applicable, market losses resulting from the  
2149 late contributions are not payable to the members.

2150 Section 22. Subsection (10) of section 216.136, Florida  
2151 Statutes, is amended to read:

2152 216.136 Consensus estimating conferences; duties and  
2153 principals.—

2154 (10) FLORIDA RETIREMENT SYSTEM ACTUARIAL ASSUMPTION  
2155 CONFERENCE.—The Florida Retirement System Actuarial Assumption  
2156 Conference shall develop official information with respect to  
2157 the economic and noneconomic assumptions and funding methods of  
2158 the Florida Retirement System necessary to perform the ~~system~~  
2159 actuarial studies ~~study~~ undertaken pursuant to ss. ~~s.~~ 121.031(3)  
2160 and 121.602(20). Such information must ~~shall~~ include~~r~~ an  
2161 analysis of the actuarial assumptions and actuarial methods used  
2162 in the studies ~~study~~ and a determination of whether changes to  
2163 the assumptions or methods need to be made due to experience  
2164 changes or revised future forecasts.

2165 Section 23. Section 238.072, Florida Statutes, is amended  
2166 to read:

2167 238.072 Special service provisions for extension  
2168 personnel.—All state and county cooperative extension personnel  
2169 holding appointments by the United States Department of  
2170 Agriculture for extension work in agriculture and home economics  
2171 in this state who are joint representatives of the University of  
2172 Florida and the United States Department of Agriculture, as  
2173 provided in s. 121.051(8) ~~s. 121.051(7)~~, who are members of the  
2174 Teachers' Retirement System, chapter 238, and who are prohibited

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2175 from transferring to and participating in the Florida Retirement  
 2176 System, chapter 121, may retire with full benefits upon  
 2177 completion of 30 years of creditable service and shall be  
 2178 considered to have attained normal retirement age under this  
 2179 chapter, any law to the contrary notwithstanding. In order to  
 2180 comply with ~~the provisions of~~ s. 14, Art. X of the State  
 2181 Constitution, any liability accruing to the Florida Retirement  
 2182 System Trust Fund as a result of ~~the provisions of~~ this section  
 2183 shall be paid on an annual basis from the General Revenue Fund.

2184 Section 24. Subsection (11) of section 413.051, Florida  
 2185 Statutes, is amended to read:

2186 413.051 Eligible blind persons; operation of vending  
 2187 stands.—

2188 (11) Effective July 1, 1996, blind licensees who remain  
 2189 members of the Florida Retirement System pursuant to s.  
 2190 121.051(7)(b)1. must ~~s. 121.051(6)(b)1. shall~~ pay any  
 2191 unappropriated retirement costs from their net profits or from  
 2192 program income. ~~Within 30 days after the effective date of this~~  
 2193 ~~act,~~ Each blind licensee who is eligible to maintain membership  
 2194 in the Florida Retirement System under s. 121.051(7)(b)1. s.  
 2195 ~~121.051(6)(b)1.,~~ but who elects to withdraw from the system as  
 2196 provided in s. 121.051(7)(b)3. s. ~~121.051(6)(b)3.,~~ must, on or  
 2197 before July 31, 1996, notify the Division of Blind Services and  
 2198 the Department of Management Services in writing of his or her  
 2199 election to withdraw. Failure to timely notify the divisions  
 2200 shall be deemed a decision to remain a compulsory member of the  
 2201 Florida Retirement System. However, if, at any time after July  
 2202 1, 1996, sufficient funds are not paid by a blind licensee to  
 2203 cover the required contribution to the Florida Retirement

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2204 System, that blind licensee shall become ineligible to  
2205 participate in the Florida Retirement System on the last day of  
2206 the first month for which no contribution is made or the amount  
2207 contributed is insufficient to cover the required contribution.  
2208 For any blind licensee who becomes ineligible to participate ~~in~~  
2209 ~~the Florida Retirement System~~ as described in this subsection,  
2210 no creditable service shall be earned under the Florida  
2211 Retirement System for any period following the month that  
2212 retirement contributions ceased to be reported. However, ~~any~~  
2213 such person may participate in the Florida Retirement System in  
2214 the future if employed by a participating employer in a covered  
2215 position.

2216 Section 25. The Legislature finds that a proper and  
2217 legitimate state purpose is served when employees and retirees  
2218 of the state and its political subdivisions, and the dependents,  
2219 survivors, and beneficiaries of such employees and retirees, are  
2220 extended the basic protections afforded by governmental  
2221 retirement systems. These persons must be provided benefits that  
2222 are fair and adequate and that are managed, administered, and  
2223 funded in an actuarially sound manner, as required by s. 14,  
2224 Article X of the State Constitution and part VII of chapter 112,  
2225 Florida Statutes. Therefore, the Legislature determines and  
2226 declares that this act fulfills an important state interest.

2227 Section 26. (1) Effective July 1, 2015, in order to fund  
2228 the benefit changes provided in this act, the required employer  
2229 contribution rates for the unfunded actuarial liability of the  
2230 Florida Retirement System established in s. 121.75(5), Florida  
2231 Statutes, shall be adjusted as follows:

2232 (a) Elected Officers' Class.—Rates for Legislators, the

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2233 Governor, the Lieutenant Governor, Cabinet Officers, State  
2234 Attorneys, and Public Defenders shall be increased by .  
2235 percentage points.

2236 (b) Elected Officers' Class.—Rates for County Elected  
2237 Officers shall be increased by . percentage points.

2238 (c) Senior Management Service Class.—Rates for the Senior  
2239 Management Service Class shall be increased by . percentage  
2240 points.

2241 (2) The adjustments provided in subsection (1) are in  
2242 addition to all other changes to such contribution rates which  
2243 may be enacted into law to take effect on July 1, 2013, and July  
2244 1, 2015. The Division of Law Revision and Information is  
2245 requested to adjust accordingly the contribution rates provided  
2246 in s. 121.71, Florida Statutes.

2247 Section 27. (1) The State Board of Administration shall  
2248 request a determination letter as soon as practicable from the  
2249 Internal Revenue Service as to whether this act or any portion  
2250 of this act will cause the Florida Retirement System to be  
2251 disqualified for tax purposes under the Internal Revenue Code.  
2252 If the Internal Revenue Service refuses to act upon such  
2253 request, a legal opinion from a qualified tax attorney or firm  
2254 may be substituted for the determination letter.

2255 (2) If the board receives notification from the Internal  
2256 Revenue Service that this act or any portion of this act will  
2257 cause the Florida Retirement System to be disqualified, the  
2258 portion that will cause the disqualification does not apply.  
2259 Upon such notice, the board shall notify the presiding officers  
2260 of the Legislature.

2261 Section 28. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14

Meeting Date

Topic FNS

Bill Number 7046  
*(if applicable)*

Name Leticia M Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Senior Policy Director

Address 136 S. Bronough St

Phone 850 544 6866

Street

Tall FL 32301

E-mail ladamse@flchamber.com

City

State

Zip

Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 18, 2014

Meeting Date

Topic Florida Retirement System

Bill Number SPB 7046  
*(if applicable)*

Name Richard Polangin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Government Affairs

Address 1300 N Duval St

Phone (850) 224-4206

*Street* Tallahassee, FL 32303  
*City* Tallahassee *State* FL *Zip* 32303

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Alliance for Retired Americans

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2014  
Meeting Date

Topic Florida Retirement System

Bill Number SB 7046  
*(if applicable)*

Name Matt Puckett

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lobbyist

Address 300 East Brevard St.  
*Street*

Phone 222-3329

Tallahassee, FL 32301  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Police Benevolent Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-2014

Meeting Date

Topic FRS PENSION REFORM

Bill Number 7046  
*(if applicable)*

Name LARRY CARMICHAEL

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title LEGISLATIVE CHAIR

Address 1407 DEVILS DIA

Phone 850-765-6493

Street

TALLAHASSEE

FL

32308

E-mail lkcarmichael@hotmail.com

City

State

Zip

Speaking:  For  Against  Information

Representing FLA. RETIRED EDUCATORS ASSN.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14  
Meeting Date

Topic FRS Bill Number 7046  
*(if applicable)*

Name Jim Tolley Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title President

Address 345 west Madison St. Phone \_\_\_\_\_  
*Street*

Tallahassee FL 32301 E-mail \_\_\_\_\_  
*City State Zip*

Speaking:  For  Against  Information

Representing Florida Prof Firefighters

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: SPB 7040

INTRODUCER: For consideration by the Community Affairs Committee

SUBJECT: Florida Retirement System Cash Balance Plan Trust Fund

DATE: February 19, 2014

REVISED: \_\_\_\_\_

---

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. White	Yeatman	CA	<b>Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7040 creates the Florida Retirement System Cash Balance Plan Trust Fund (trust fund). As a retirement trust fund of the Florida Retirement System (FRS), the trust fund will hold assets for members of the FRS Cash Balance Plan, and be administered by the State Board of Administration (SBA). The bill establishes a forfeiture account within the trust fund, and directs the SBA to ascertain from the Internal Revenue Service whether forfeited benefits from the plan may be used to pay for expenses of the plan in order to reduce future employer contributions.

As required by the constitution, the trust fund must be enacted by a three-fifths vote of the membership of each house of the Legislature.

**II. Present Situation:**

Article III, s. 19(f) of the Florida Constitution requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless recreated.

**III. Effect of Proposed Changes:**

**Section 1** creates the FRS Cash Balance Plan Trust Fund in s. 121.603, F.S. In its trustee capacity the trust fund will hold the assets of, and serve as a fiduciary for, members of the FRS Cash Balance Plan. The bill provides direction to the SBA concerning credits for reasonable administrative expenses, creation of a forfeiture account to hold assets derived from benefits forfeited by participants, and service charges related to the funds.

**Section 2** directs the SBA to ascertain from the Internal Revenue Service whether future employer contributions to the plan can be reduced by paying the expenses of the cash balance plan with funds derived from benefits forfeited by participants.

**Section 3** amends s. 121.4503, F.S., to allow the FRS Contributions Clearing Trust Fund to disburse the employer and employee contributions it holds into the FRS Cash Balance Trust fund.

**Section 4** provides an effective date of July 1, 2014, and makes enactment contingent upon the passage of an undesignated Senate Bill or similar legislation becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Art. 1, s. 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

Article III, s. 19(f)(1) of the Florida Constitution provides no trust fund of the state or other public body may be created without three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The constitutional restriction that trust funds terminate within four years of creation<sup>1</sup> does not apply to Florida retirement trust funds, as exempted by Art. III, s. 19(f)(3) of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The trust fund is exempt from the service charges imposed by s. 215.20, F.S., which contribute to the General Revenue Fund.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

SBA will be required to request a determination letter from the Internal Revenue Service.

#### **VI. Technical Deficiencies:**

Line 83 should contain the number 7046.

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<sup>1</sup> FLA. CONST. art III, s.19(f)(2).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 121.4503 of the Florida Statutes.

This bill creates section 121.603 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

FOR CONSIDERATION By the Committee on Community Affairs

578-01635-14

20147040\_\_

1 A bill to be entitled  
2 An act relating to trust funds; creating s. 121.603,  
3 F.S.; creating the Florida Retirement System Cash  
4 Balance Plan Trust Fund, to hold the assets of the  
5 Florida Retirement System Cash Balance Plan; requiring  
6 that the State Board of Administration administer the  
7 plan; providing that the trust fund is a retirement  
8 trust fund not subject to termination pursuant to s.  
9 19(f), Art. III of the State Constitution; providing  
10 for sources of moneys and purposes; requiring a  
11 forfeiture account to be created within the trust  
12 fund; providing for exemption from general revenue  
13 service charges; directing the state board to obtain a  
14 determination letter from the Internal Revenue Service  
15 regarding the approved use of funds in the forfeiture  
16 account; amending s. 121.4503, F.S.; allowing transfer  
17 of funds into the Florida Retirement System Cash  
18 Balance Plan Trust Fund; providing a contingent  
19 effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Section 121.603, Florida Statutes, is created to  
24 read:

25 121.603 Florida Retirement System Cash Balance Plan Trust  
26 Fund.—The Florida Retirement System Cash Balance Plan Trust Fund  
27 is created to hold the assets of the Florida Retirement System  
28 Cash Balance Plan in trust for the exclusive benefit of the  
29 plan's members and beneficiaries in accordance with s. 401 of

578-01635-14

20147040\_\_

30 the Internal Revenue Code.

31 (1) The trust fund is a retirement trust fund of the  
32 Florida Retirement System which accounts for retirement plan  
33 assets held by the state in a trustee capacity as a fiduciary  
34 for members of the Florida Retirement System Cash Balance Plan.  
35 The trust fund is not subject to termination under s. 19(f),  
36 Art, III of the State Constitution.

37 (2) The trust fund shall be administered by the State Board  
38 of Administration as trustee. Funds shall be credited to the  
39 trust fund as provided in this part, to be used for the purposes  
40 of this part, including the payment of reasonable administrative  
41 expenses of the cash balance plan.

42 (3) A forfeiture account shall be created within the trust  
43 fund to hold the assets derived from the forfeiture of benefits  
44 by participants. The forfeiture account may be used only for  
45 paying expenses of the cash balance plan and reducing future  
46 employer contributions to the plan. Expected withdrawals from  
47 the account must endeavor to reduce the account to zero each  
48 fiscal year.

49 (4) The trust fund is exempt from the service charges  
50 imposed by s. 215.20.

51 Section 2. As soon as practicable, the State Board of  
52 Administration shall request a determination letter from the  
53 Internal Revenue Service as to whether funds derived from the  
54 forfeiture of benefits by participants in the Florida Retirement  
55 System Cash Balance Plan and held within the Florida Retirement  
56 System Cash Balance Plan Trust Fund may be used to pay expenses  
57 of the cash balance plan and reduce future employer  
58 contributions to the plan.

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20147040\_\_

59 Section 3. Section 121.4503, Florida Statutes, is amended  
60 to read:

61 121.4503 Florida Retirement System Contributions Clearing  
62 Trust Fund.—

63 ~~(1)~~ The Florida Retirement System Contributions Clearing  
64 Trust Fund is created as a clearing fund for disbursing employer  
65 and employee contributions to the component plans of the Florida  
66 Retirement System and shall be administered by the Department of  
67 Management Services.

68 (1) Funds shall be credited to the trust fund as provided  
69 in this chapter and held in trust for the contributing employees  
70 and employers until such time as the assets are transferred by  
71 the department to the Florida Retirement System Trust Fund, the  
72 Florida Retirement System Investment Plan Trust Fund, the  
73 Florida Retirement System Cash Balance Plan Trust Fund, or other  
74 trust funds as authorized by law, to be used for the purposes of  
75 this chapter. The trust fund is exempt from the service charges  
76 imposed by s. 215.20.

77 (2) The Florida Retirement System Contributions Clearing  
78 trust fund is a clearing trust fund of the Department of  
79 Management Services under ~~pursuant to~~ s. 19(f), Art. III of the  
80 State Constitution, and is not subject to termination.

81 Section 4. This act shall take effect July 1, 2014, if  
82 passed by a three-fifths vote of the membership of each house  
83 and if SB \_\_\_\_ or similar legislation is adopted in the same  
84 legislative session or an extension thereof and becomes a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14

Meeting Date

Topic CB Trust Fund

Bill Number 7040  
*(if applicable)*

Name Leticia M Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Senior Policy Director

Address 136 S. Brough St.  
*Street*

Phone 850 544 6866

Tall FL 32301  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: SPB 7038

INTRODUCER: For consideration by the Community Affairs Committee

SUBJECT: Deferred Compensation

DATE: February 19, 2014

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. White	Yeatman	CA	<b>Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7038 automatically enrolls state employees in the deferred compensation program. The bill requires each state agency to notify employees of the automatic enrollment and allows employees to opt out. State employees participating in the program will be required to contribute a minimum amount and each state agency must match the employee contribution up to a specified limit.

Finally, the bill allows local governments and other governmental entities with deferred contribution plans to automatically enroll employees, and provide employer contribution-matching.

**II. Present Situation:**

The Government Employees' Deferred Compensation Act<sup>1</sup> allows the state or a local government<sup>2</sup> to permit an employee to defer any portion of that employee's otherwise payable compensation until a later date.<sup>3</sup> Typically, employees participate in order to supplement their retirement income with an additional income stream that may have realized a variety of tax advantages.<sup>4</sup>

Deferment of federal taxation on funds is allowed up to an annually indexed amount.<sup>5</sup> The maximum amount of salary that can be deferred is set by IRS regulations, and is currently the lesser of 80 percent of compensation or \$17,500. Participants aged 50 or older, may participate in the "50+ Catch-up" provision, which currently allows a maximum contribution of \$23,000. Making contributions into a deferred compensation account immediately lowers an employee's

---

<sup>1</sup> Section 112.215, F.S.

<sup>2</sup> Including, any state agency, county, municipality, other political subdivision, or constitutional county officer. Section 112.215(2), F.S.

<sup>3</sup> Section 112.215(3), F.S.

<sup>4</sup> Florida Deferred Compensation Website, *FAQ*, <https://www.myfloridaderferredcomp.com/SOFWeb/plan.aspx> (last visited Feb. 11, 2014).

<sup>5</sup> Florida Bureau of Deferred Compensation, *Deferred Compensation Plan*, available at <https://www.myfloridaderferredcomp.com/SOFWeb/publications/ImportantDocuments/DFS-J3-1176.pdf> (last visited Feb. 11, 2014) (See Section 3.05: Maximum Deferral, at 10).

amount of taxable income during working years. Account earnings are similarly sheltered from federal taxation until a distribution occurs.<sup>6</sup> A participant reports the income and earnings on their federal tax return only upon receiving distributions from the plan.<sup>7</sup>

The State of Florida's Chief Financial Officer (CFO), with the approval of the State Board of Administration (SBA), serves as the plan administrator and establishes the deferred compensation plan for state employees.<sup>8</sup> The Department of Financial Services (DFS), through its Bureau of Deferred Compensation, acts as the administering agency.

Deferred compensation can be placed in a savings account or be used to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or other approved investment products.<sup>9</sup> Funds are maintained by the following prequalified investment providers: GreatWest Retirement Solutions, ING, Nationwide Retirement Solutions, T. Rowe Price, and Valic.<sup>10</sup> By way of an automatic payroll deduction, the DFS wires a participating employee's deferral amount to the chosen investment provider, where it is immediately deposited into their account.<sup>11</sup> The participating employee bears all of the investment risk and is responsible for the payment of associated fees and costs charged by the provider.<sup>12</sup>

Counties, municipalities and other political subdivisions may adopt and establish their own deferred compensation program.<sup>13</sup> Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.<sup>14</sup> The county, municipality, other political subdivision, or constitutional officers are responsible for the programs which they establish.

### III. Effect of Proposed Changes:

**Section 1** creates s. 112.2151, F.S., to provide that state employees<sup>15</sup> be automatically enrolled in the deferred compensation program, established in s. 112.215, F.S., and allows employees to opt out. State employees hired before October 1, 2014, would be automatically enrolled on January 1, 2015. By October 1, 2014, each state agency, in consultation with the CFO, must notify state employees about the automatic enrollment, including procedures and tax consequences if they choose to opt out of the program.

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<sup>6</sup> Florida Deferred Compensation Website, *FAQ*, *supra* note 4.

<sup>7</sup> "There will be a mandatory 20% Federal income tax deduction withheld from lump sum distributions, partial distributions, and any distribution with less than a 10-year payout." *Id.*

<sup>8</sup> Section 112.215(4)(a), F.S.; see also Florida Bureau of Deferred Compensation, *Deferred Compensation Plan*, *supra* note 5.

<sup>9</sup> Section 112.215(3), F.S.

<sup>10</sup> For a comparison of investment performance, historical returns, and fees, see Florida Deferred Compensation Plan, *Quarterly Performance Report*, available at

<https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/QuarterlyPerformanceReport.pdf> (last visited Feb. 11, 2014).

<sup>11</sup> Florida Deferred Compensation Website, *FAQ*, *supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> Section 112.215(5), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> The bill defines "State employee" as an employee or officer of a state agency who works an average of at least 20 hours per week, and is paid by state warrant from salary appropriations or other agency funds. Other Personnel Services (OPS) and FTE personnel are already eligible to participate in the Deferred Compensation Program, and would also be automatically enrolled under this bill so long as they work an average of at least 20 hours per week.

State employees hired on or after October 1, 2014, would be automatically enrolled 90 days after the date of hire, but may opt out within 90 days of employment by making the appropriate filing with the program administrator.

Contributions for participation in the deferred compensation program are as follows:

- From January 1, 2015, through December 31, 2017, employees contribute at least:
  - \$25, if paid on a monthly basis; or
  - \$12.50, if paid on a biweekly basis.
- On or after January 1, 2018, employees contribute at least:
  - \$50, if paid on a monthly basis; or
  - \$25, if paid on a biweekly basis.
- On or after January 1, 2015, state agencies would match employee contributions, not to exceed the lesser of:
  - \$100, if paid on a monthly basis or \$46.15, if paid on a biweekly basis; or
  - Two percent of the employee's salary for the pay period.

In the case of bonuses, state agencies will match the employee contribution up to the lesser of \$500 or 25 percent of the bonus.

The bill allows counties, municipalities, political subdivisions, and county constitutional officers to amend their deferred compensation programs to provide automatic enrollment and employer contribution-matching.

**Section 2** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandates provision does not apply because this bill does not require cities or counties to spend money or take action that requires the expenditure of money. The bill allows local governments to amend their deferred compensation programs, but does not require them to spend funds on employer contribution-matching.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The bill may have tax implications for state employees who would not otherwise have enrolled as participants. Their before-tax contributions to the program will not be “included in their gross income for federal income tax purposes at the time of contribution.”<sup>16</sup>

The bill may also result in additional fees collected from Investment Providers to offset additional administrative costs incurred by the CFO, or DFS.<sup>17</sup>

**B. Private Sector Impact:**

Providers of deferred compensation services under the state plan may gain additional business, to the extent that state employees who become enrolled in the deferred compensation plan do not opt out, and make contributions. Similarly, if local government deferred compensation plans determine to offer automatic enrollment and employer contribution-matching, providers of local deferred compensation plans may gain business.

**C. Government Sector Impact:**

DFS estimates indeterminate additional costs associated with increased program participation and computer-related system upgrades.

State agencies must match employee contributions made to the deferred compensation program. The resulting expense is currently not available.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 112.2151 of the Florida Statutes.

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<sup>16</sup> Florida Bureau of Deferred Compensation, Deferred Compensation Plan, *available at* <https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/DFS-J3-1176.pdf> (last visited Feb. 11, 2014) (See Section 1.03: Definitions, at 6).

<sup>17</sup> *Id.* (Section 12.05: Administrative Costs, at 36).

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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FOR CONSIDERATION By the Committee on Community Affairs

578-01632-14

20147038\_\_

1                                   A bill to be entitled  
2       An act relating to deferred compensation; creating s.  
3       112.2151, F.S.; defining "state agency" and "state  
4       employee"; requiring that state employees be  
5       automatically enrolled in the deferred compensation  
6       program by specified dates; requiring the Chief  
7       Financial Officer to notify state employees of  
8       automatic enrollment by a specified date; prescribing  
9       the contents of the notice given; providing that a  
10      state employee may opt out of the program by filing an  
11      election with the program administrator; establishing  
12      contribution levels for participating state employees  
13      by specified dates; requiring a state agency to match  
14      employer contributions up to a specified amount;  
15      authorizing a county, municipality, other political  
16      subdivision, or constitutional county officer to amend  
17      a deferred compensation program to provide automatic  
18      enrollment and matching employer contributions;  
19      providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23       Section 1. Section 112.2151, Florida Statutes, is created  
24 to read:

25       112.2151 Deferred compensation program; automatic  
26 enrollment; employer contribution.-

27       (1) As used in this section, the term:

28       (a) "State agency" means a branch, department, or agency of  
29 state government.

578-01632-14

20147038\_\_

30 (b) "State employee" means an employee or officer of a  
31 state agency who is paid by state warrant from salary  
32 appropriations or other agency funds and who works an average of  
33 at least 20 hours per week.

34 (2) Except as provided in subsection (3), each state  
35 employee shall be automatically enrolled in the deferred  
36 compensation program, established pursuant to s. 112.215, as  
37 follows:

38 (a) Beginning January 1, 2015, if the employee was hired by  
39 a state agency before October 1, 2014; or

40 (b) Ninety days after the date of hire if the employee was  
41 hired by a state agency on or after October 1, 2014.

42 (3) (a) By October 1, 2014, each state agency, in  
43 consultation with the Chief Financial Officer, shall notify each  
44 state employee of the automatic enrollment in the program. The  
45 notice must contain a statement concerning the procedures for an  
46 employee to notify the state that he or she does not want to  
47 enroll in the program, the tax consequences of opting out of the  
48 program, information regarding the state match for employee  
49 contributions to the program, and the contact information for  
50 the program administrator.

51 (b) Each state employee hired on or after October 1, 2014,  
52 may elect to not enroll in the program by filing an election to  
53 opt out of the program with the program administrator within 90  
54 days after the date of hire.

55 (4) Each state employee participating in the deferred  
56 compensation program shall contribute each pay period ending on  
57 or after:

58 (a) January 1, 2015, through December 31, 2017:

578-01632-14

20147038\_\_

59 1. If paid on a monthly basis, at least \$25; or

60 2. If paid on a biweekly basis, at least \$12.50.

61 (b) January 1, 2018:

62 1. If paid on a monthly basis, at least \$50; or

63 2. If paid on a biweekly basis, at least \$25.

64 (5) (a) For each pay period ending on or after January 1,  
65 2015, as a component of the deferred compensation program  
66 created pursuant to s. 112.215, each state agency shall  
67 contribute an amount equal to the contribution paid by a state  
68 employee participating in the deferred compensation program;  
69 however, such contribution may not exceed the lesser of:

70 1. Two percent of the employee's salary for the pay period;

71 or

72 2. One hundred dollars if paid on a monthly basis or \$46.15  
73 if paid on a biweekly basis.

74 (b) For any bonus payment specifically authorized by the  
75 General Appropriations Act, each state agency shall contribute  
76 an amount equal to the contribution paid by a state employee  
77 from the bonus payment; however, such contribution by the state  
78 agency may not exceed the lesser of 25 percent of the bonus  
79 payment or \$500.

80 (6) Each county, municipality, other political subdivision,  
81 or constitutional county officer that has established a deferred  
82 compensation program pursuant to s. 112.215 may amend the  
83 program to provide automatic enrollment and an employer  
84 contribution-matching component.

85 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic 7038

Bill Number 7038  
*(if applicable)*

Name Randi Winters

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director

Address \_\_\_\_\_

Phone \_\_\_\_\_

*Street*

*City*

*State*

*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Defund Comp

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14

Meeting Date

Topic Deterred Camp

Bill Number 7038  
*(if applicable)*

Name Leticia M Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Senior Policy Director

Address \_\_\_\_\_  
*Street*

Phone 850 544 6866

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SPB 7042

INTRODUCER: For consideration by the Community Affairs Committee

SUBJECT: OGSR/Children of Agency Officers and Employees/Identifying Information

DATE: February 17, 2014      REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stearns	Yeatman		<b>Submitted as Committee Bill</b>

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**I. Summary:**

SPB 7042 removes the scheduled repeal of the public records exemption for the personal identifying information of a dependent child of a current or former officer or employee of an agency when that dependent child is insured under an agency group insurance plan. As a result, this information will remain exempt from the disclosure requirements under the public records laws.

**II. Present Situation:**

**Public Access**

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Paragraph (a) and (c) of Section 24, Art. I of the State Constitution provide the following:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of

subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. . . . Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

### **Florida's Public Records Law**

Florida's public records law is contained in ch. 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record<sup>1</sup> must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency<sup>2</sup> records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."<sup>3</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>5</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>6</sup> A bill enacting an exemption<sup>7</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>8</sup>

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is

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<sup>1</sup> Section 119.011(12), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

<sup>2</sup> Section 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>3</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>4</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

<sup>5</sup> Article I, s. 24(c) of the State Constitution.

<sup>6</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>7</sup> Section 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>8</sup> Article 1, s. 24(c) of the State Constitution.

made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>9</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

### **Exemption of Personal Identifying Information of the Dependent Children of Agency Personnel**

In 2009, the Legislature amended s. 119.071(4)(b), F.S., to create a public records exemption for the personal identifying information of a dependent child of an agency employee when that child is insured by an agency health insurance plan. The exemption was created in response to a court decision requiring a school board to release the above described information in response to a public records request.<sup>11</sup> The exemption is slated to expire on October 2, 2014, pursuant to the Open Government Sunset Review Act.

In the summer of 2013, a survey of Florida agencies conducted by Senate and House committee staff found overwhelming support for the public records exemption with a number of responses indicating that the law provided important protection from identity theft for the family members of agency employees.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 119.071, F.S., to remove the scheduled repeal of the public records exemption for the personal identifying information of a dependent child of an agency employee. As a result, the records will remain exempt from disclosure requirements under the public records laws.

**Section 2** provides the bill takes effect on October 1, 2014.

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<sup>9</sup> Attorney General Opinion 85-62, August 1, 1985.

<sup>10</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d. 289 (Fla.1991).

<sup>11</sup> *Chandler v. School Board of Polk County*, Case No. 2008CA-004389 (Fla. 10<sup>th</sup> Jud. Cir. 2008). The court further noted that the information would not be protected by the Health Insurance Portability and Accountability Act (HIPAA), located at 45 CFR, Part 160.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The continued existence of the public records exemption may protect the family members of agency employees from identity theft.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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**FOR CONSIDERATION By** the Committee on Community Affairs

578-01731-14

20147042\_\_

1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act; amending s. 119.071, F.S., relating  
4           to an exemption from public record requirements for  
5           personal identifying information of certain dependent  
6           children of current or former agency officers or  
7           employees; making an editorial change; removing the  
8           scheduled repeal of the exemption; providing an  
9           effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13           Section 1. Paragraph (b) of subsection (4) of section  
14           119.071, Florida Statutes, is amended to read:

15           119.071 General exemptions from inspection or copying of  
16           public records.—

17           (4) AGENCY PERSONNEL INFORMATION.—

18           (b)1. Medical information pertaining to a prospective,  
19           current, or former officer or employee of an agency which, if  
20           disclosed, would identify that officer or employee is exempt  
21           from s. 119.07(1) and s. 24(a), Art. I of the State  
22           Constitution. However, such information may be disclosed if the  
23           person to whom the information pertains or the person's legal  
24           representative provides written permission or pursuant to court  
25           order.

26           2.a. Personal identifying information of a dependent child  
27           of a current or former officer or employee of an agency, which  
28           dependent child is insured by an agency group insurance plan, is  
29           exempt from s. 119.07(1) and s. 24(a), Art. I of the State

578-01731-14

20147042\_\_

30 Constitution. For purposes of this exemption, "dependent child"  
31 has the same meaning as in s. 409.2554.

32 b. This exemption is remedial in nature and applies to such  
33 personal identifying information held by an agency before, on,  
34 or after the effective date of this exemption.

35 ~~e. This subparagraph is subject to the Open Government~~  
36 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
37 ~~repealed on October 2, 2014, unless reviewed and saved from~~  
38 ~~repeal through reenactment by the Legislature.~~

39 Section 2. This act shall take effect July 1, 2014.

# CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 2/18/2014 2:02:27 PM

Ends: 2/18/2014 3:26:31 PM

Length: 01:24:05

2:02:32 PM Call to order  
2:03:21 PM Tab 2 SB 66 Senator Flores  
2:04:43 PM Bill passes  
2:04:49 PM Tab 1 SB 330 Senator Simmons legislative aid Jean Smith  
2:05:50 PM Roll call on SB 330  
2:05:59 PM Bill passes  
2:06:14 PM Tab 6 SPB 7042 Senator Simpson  
2:07:28 PM Roll call on SPB 7042  
2:07:41 PM Motion adopted  
2:07:58 PM Tab 5 SPB 7038 Senator Simpson  
2:09:12 PM Senator Latvala  
2:13:44 PM Senator Smith  
2:17:39 PM Senator Bradley  
2:18:36 PM Senator Soto  
2:23:55 PM Speaker Kandi Winters  
2:25:47 PM Roll call on SPB 7038  
2:25:56 PM Motion adopted  
2:26:27 PM Tab 3 SPB 7046 Senator Simpson  
2:29:36 PM Senator Soto  
2:38:58 PM Senator Latvala  
2:52:45 PM Senator Thompson  
3:01:33 PM Senator Bradley  
3:04:07 PM Amendment 1 Barcode 265442  
3:05:05 PM Amendment 2 Barcode 303712  
3:05:54 PM Amendment 3 Barcode 338372  
3:06:31 PM Amendment 4 Barcode 363248  
3:07:22 PM Speaker Richard Polangin representing Florida Alliance for Retired Americans  
3:09:59 PM Speaker Matt Puckett representing Florida Police Benevolent Association  
3:10:50 PM Speaker Larry Carmichael representing Florida Retired Educators Association  
3:15:32 PM Speaker Jim Tolley representing Florida Professional Firefighters  
3:16:32 PM Senator Soto  
3:17:36 PM Senator Thrasher  
3:23:23 PM Roll call on SPB 7046  
3:23:49 PM Motion adopted  
3:23:58 PM Tab 4 SPB 7040 Senator Simpson  
3:25:27 PM Roll call on SPB 7040  
3:25:52 PM Motion adopted  
3:26:26 PM Adjournment