

By Senator Sanderson

31-760-02

1 A bill to be entitled
2 An act relating to retirement; amending s.
3 121.4501, F.S., relating to the Public Employee
4 Optional Retirement Program; redefining the
5 term "eligible employee"; providing for the
6 extension of time to transfer assets from the
7 defined benefit plan in the event of market
8 disruption; providing for acceptance of
9 rollovers; revising the earnings rate for funds
10 in the suspense account to be invested by the
11 board; providing for spousal notification of
12 designation of beneficiary; providing for
13 spousal rollovers to an eligible retirement
14 plan; providing authorization for statements
15 under oath; amending s. 121.571, F.S.;
16 providing a penalty for late contributions to
17 participant accounts; providing an effective
18 date.

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

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22 Section 1. Paragraph (d) of subsection (2), paragraph
23 (c) of subsection (3), subsection (6), paragraphs (c) and (e)
24 of subsection (7), and paragraph (a) of subsection (8) of
25 section 121.4501, Florida Statutes, are amended, and paragraph
26 (c) is added to subsection (5) of that section, to read:

27 121.4501 Public Employee Optional Retirement
28 Program.--

29 (d) "Eligible employee" means an officer or employee,
30 as defined in s. 121.021(11), who:

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1 1. Is a member of, or is eligible for membership in,
2 the Florida Retirement System;

3 2. Participates in, or is eligible to participate in,
4 the Senior Management Service Optional Annuity Program as
5 established under s. 121.055(6); or

6 3. Is eligible to participate in, but does not
7 participate in, the State University System Optional
8 Retirement Program established under s. 121.35 or the State
9 Community College System Optional Retirement Program
10 established under s. 121.051(2)(c).

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12 The term does not include ~~any renewed member of the Florida~~
13 ~~Retirement System~~, any member participating in the Deferred
14 Retirement Option Program established under s. 121.091(13), or
15 any employee participating in an optional retirement program
16 established under s. 121.051(2)(c) or s. 121.35.

17 (3) ELIGIBILITY; RETIREMENT SERVICE CREDIT.--

18 (c)1. Notwithstanding paragraph (b), each eligible
19 employee who elects to participate in the Public Employee
20 Optional Retirement Program and establishes one or more
21 individual participant accounts under the optional program may
22 elect to transfer to the optional program a sum representing
23 the present value of the employee's accumulated benefit
24 obligation under the defined benefit retirement program of the
25 Florida Retirement System. Upon such transfer, all service
26 credit previously earned under the defined benefit program of
27 the Florida Retirement System shall be nullified for purposes
28 of entitlement to a future benefit under the defined benefit
29 program of the Florida Retirement System. A participant is
30 precluded from transferring the accumulated benefit obligation

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1 balance from the defined benefit program upon the expiration
2 of the period afforded to enroll in the optional program.

3 2. For purposes of this subsection, the present value
4 of the member's accumulated benefit obligation is based upon
5 the member's estimated creditable service and estimated
6 average final compensation as of midnight of the day prior to
7 the opening of the election window for the employee. The
8 actuarial present value of the employee's accumulated benefit
9 obligation shall be based on the following:

10 a. The discount rate and other relevant actuarial
11 assumptions used to value the Florida Retirement System Trust
12 Fund at the time the amount to be transferred is determined,
13 consistent with the factors provided in sub-subparagraphs b.
14 and c.

15 b. A benefit commencement age, based on the member's
16 estimated creditable service as of midnight on May 31, 2002.
17 The benefit commencement age shall be the younger of the
18 following, but shall not be younger than the member's age as
19 of midnight on May 31, 2002:

20 (I) Age 62; or

21 (II) The age the member would attain if the member
22 completed 30 years of service with an employer, assuming the
23 member worked continuously from May 31, 2002, and disregarding
24 any vesting requirement that would otherwise apply under the
25 defined benefit program of the Florida Retirement System.

26 c. For members of the Special Risk Class and for
27 members of the Special Risk Administrative Support Class
28 entitled to retain special risk normal retirement date, the
29 benefit commencement age shall be the younger of the
30 following, but shall not be younger than the member's age as
31 of midnight on May 31, 2002:

1 (I) Age 55; or

2 (II) The age the member would attain if the member
3 completed 25 years of service with an employer, assuming the
4 member worked continuously from May 31, 2002, and disregarding
5 any vesting requirement that would otherwise apply under the
6 defined benefit program of the Florida Retirement System.

7 d. The calculation shall disregard vesting
8 requirements and early retirement reduction factors that would
9 otherwise apply under the defined benefit retirement program.

10 3. For each participant who elects to transfer moneys
11 from the defined benefit program to his or her account in the
12 optional program, the division shall recompute the amount
13 transferred under subparagraph 2. not later than 60 days after
14 the actual transfer of funds based upon the participant's
15 actual creditable service and actual final average
16 compensation as of the initial date of participation in the
17 optional program. If the recomputed amount differs from the
18 amount transferred under subparagraph 2. by \$10 or more, the
19 division shall:

20 a. Transfer, or cause to be transferred, from the
21 Florida Retirement System Trust Fund to the participant's
22 account in the optional program the excess, if any, of the
23 recomputed amount over the previously transferred amount
24 together with interest from the initial date of transfer to
25 the date of transfer under this subparagraph, based upon 8
26 percent effective annual interest, compounded annually.

27 b. Transfer, or cause to be transferred, from the
28 participant's account to the Florida Retirement System Trust
29 Fund the excess, if any, of the previously transferred amount
30 over the recomputed amount, together with interest from the
31 initial date of transfer to the date of transfer under this

1 subparagraph, based upon 6 percent effective annual interest,
2 compounded annually, pro rata based on the participant's
3 allocation plan.

4 4. As directed by the participant, the board shall
5 transfer or cause to be transferred the appropriate amounts to
6 the designated accounts. The board shall establish transfer
7 procedures by rule, but the actual transfer shall not be later
8 than 30 days after the effective date of the member's
9 participation in the optional program unless the major
10 financial markets for securities available for a transfer are
11 seriously disrupted by an unforeseen event that also causes
12 the suspension of trading on any national securities exchange
13 in the country where the securities were issued. In that
14 event, the 30-day period of time may be extended by a
15 resolution of the trustees. Transfers are not commissionable
16 or subject to other fees and may be in the form of securities
17 or cash as determined by the state board. Such securities
18 shall be valued as of the date of receipt in the participant's
19 account.

20 5. If the board or the division receives notification
21 from the United States Internal Revenue Service that this
22 paragraph or any portion of this paragraph will cause the
23 retirement system, or a portion thereof, to be disqualified
24 for tax purposes under the Internal Revenue Code, then the
25 portion that will cause the disqualification does not apply.
26 Upon such notice, the state board and the division shall
27 notify the presiding officers of the Legislature.

28 (5) CONTRIBUTIONS.--

29 (c) The Public Employee Optional Retirement Program
30 may accept for deposit into participant accounts contributions
31 in the form of rollovers or direct trustee-to-trustee

1 transfers by or on behalf of participants, reasonably
2 determined by the board or other program administrator to be
3 eligible for rollover or transfer to the optional retirement
4 program pursuant to the Internal Revenue Code, if the
5 contributions are made in accordance with rules adopted by the
6 board. The contributions must be accounted for in accordance
7 with any applicable requirements of the Internal Revenue Code
8 and rules of the board.

9 (6) VESTING REQUIREMENTS.--

10 (a)1. With respect to employer contributions paid on
11 behalf of the participant to the Public Employee Optional
12 Retirement Program, plus interest and earnings thereon and
13 less investment fees and administrative charges, a participant
14 shall be vested after completing 1 work year, as defined in s.
15 121.021(54), with an employer, including any service while the
16 participant was a member of the defined benefit retirement
17 program or an optional retirement program authorized under s.
18 121.051(2)(c) or s. 121.055(6).

19 2. If the participant terminates employment prior to
20 satisfying the vesting requirements, the nonvested
21 accumulation shall be transferred from the participant's
22 accounts to the state board for deposit and investment by the
23 board in the suspense account of the Public Employee Optional
24 Retirement Program Trust Fund of the board. If the terminated
25 participant is reemployed as an eligible employee within 5
26 years, the state board shall transfer to the participant's
27 account any amount of the moneys previously transferred from
28 the participant's accounts to the suspense account of the
29 Public Employee Optional Retirement Program Trust Fund, plus
30 the actual earnings on such amount while in the suspense
31 account ~~interest calculated at 3.0 percent per annum,~~

1 ~~calculated from the date of transfer to the date of~~
2 ~~reemployment.~~

3 (b)1. A participant shall be vested in the amount
4 transferred from the defined benefit program, plus interest
5 and earnings thereon and less administrative charges and
6 investment fees, upon meeting the service requirements for the
7 participant's membership class as set forth in s. 121.021(29).
8 The third-party administrator shall account for such amounts
9 for each participant. The division shall notify the
10 participant and the third-party administrator when the
11 participant has satisfied the vesting period for Florida
12 Retirement System purposes.

13 2. If the participant terminates employment prior to
14 satisfying the vesting requirements, the nonvested
15 accumulation shall be transferred from the participant's
16 accounts to the state board for deposit and investment by the
17 board in the suspense account of the Public Employee Optional
18 Retirement Program Trust Fund of the board. If the terminated
19 participant is reemployed as an eligible employee within 5
20 years, the state board shall transfer to the participant's
21 account any amount of the moneys previously transferred from
22 the participant's accounts to the suspense account of the
23 Public Employee Optional Retirement Program Trust Fund, plus
24 the actual earnings on such amount while in the suspense
25 account interest calculated at 6.0 percent per annum,
26 ~~calculated from the date of transfer to the date of~~
27 ~~reemployment.~~

28 (c) Any nonvested accumulations transferred from a
29 participant's account to the suspense account shall be
30 forfeited by the participant if the participant is not
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1 reemployed as an eligible employee within 5 years after
2 termination.

3 (7) BENEFITS.--Under the Public Employee Optional
4 Retirement Program:

5 (c) Benefits shall be payable in accordance with the
6 following terms and conditions:

7 1. To the extent vested, benefits shall be payable
8 only to a participant, or to his or her beneficiaries as
9 designated by the participant. If a participant designates a
10 beneficiary that is not the participant's spouse, the
11 participant's spouse must be notified. This requirement does
12 not apply to the designation of a contingent beneficiary
13 designated to receive benefits under this section if the
14 participant's spouse predeceases the contingent beneficiary.

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

19 3. To begin receiving the benefits, the participant
20 must be terminated from all employment with all Florida
21 Retirement System employers, as provided in s. 121.021(39), or
22 the participant must be deceased. If a participant elects to
23 receive his or her benefits upon termination of employment,
24 the participant must submit a written application to the
25 third-party administrator indicating his or her preferred
26 distribution date and selecting an authorized method of
27 distribution as provided in paragraph (d). The participant may
28 defer receipt of benefits until he or she chooses to make such
29 application, subject to federal requirements.

30 4. In the event of a participant's death, moneys
31 accumulated by, or on behalf of, the participant, less

1 withholding taxes remitted to the Internal Revenue Service,
2 shall be distributed to the participant's designated
3 beneficiary or beneficiaries, or to the participant's estate,
4 as if the participant retired on the date of death, as
5 provided in paragraph (e). No other death benefits shall be
6 available for survivors of participants under the Public
7 Employee Optional Retirement Program, except for such
8 benefits, or coverage for such benefits, as are separately
9 afforded by the employer, at the employer's discretion.

10 (e) Survivor benefits shall be payable as:

11 1. A lump-sum distribution payable to the
12 beneficiaries, or to the deceased participant's estate;

13 2. An eligible rollover distribution on behalf of the
14 surviving spouse of a deceased participant, whereby all
15 accrued benefits, plus interest and investment earnings, are
16 paid from the deceased participant's account directly to the
17 custodian of an eligible retirement plan ~~individual retirement~~
18 ~~account or an individual retirement annuity~~, as described in
19 s. 402(c)(8)(B) ~~s. 402(c)(9)~~ of the Internal Revenue Code, on
20 behalf of the surviving spouse; or

21 3. A partial lump-sum payment whereby a portion of the
22 accrued benefit is paid to the deceased participant's
23 surviving spouse or other designated beneficiaries, less
24 withholding taxes remitted to the Internal Revenue Service,
25 and the remaining amount is transferred directly to the
26 custodian of an eligible retirement plan ~~individual retirement~~
27 ~~account or an individual retirement annuity~~, as described in
28 s. 402(c)(8)(B) ~~s. 402(c)(9)~~ of the Internal Revenue Code, on
29 behalf of the surviving spouse. The proportions must be
30 specified by the participant or the surviving beneficiary.

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1 This paragraph does not abrogate other applicable provisions
2 of state or federal law providing for payment of death
3 benefits.

4 (8) ADMINISTRATION OF PROGRAM.--

5 (a) The Public Employee Optional Retirement Program
6 shall be administered by the state board and affected
7 employers. The board may require oaths, by affidavit or
8 otherwise, and acknowledgments from persons in connection with
9 the administration of its duties and responsibilities under
10 this chapter.The board shall adopt rules establishing the
11 role and responsibilities of affected state, local government,
12 and education-related employers, the state board, the
13 department, and third-party contractors in administering the
14 Public Employee Optional Retirement Program. The department
15 shall adopt rules necessary to implement the optional program
16 in coordination with the defined benefit retirement program
17 and the disability benefits available under the optional
18 program.

19 Section 2. Paragraph (a) of subsection (2) of section
20 121.571, Florida Statutes, is amended to read:

21 121.571 Contributions.--Contributions to the Public
22 Employee Optional Retirement Program shall be made as follows:

23 (2) CONTRIBUTIONS TO PARTICIPANT ACCOUNTS.--Employer
24 and participant contributions to participant accounts shall be
25 accounted for separately. Interest and investment earnings on
26 employer contributions shall accrue on a tax-deferred basis
27 until proceeds are distributed. Pursuant thereto:

28 (a) All contributions made on behalf of a participant
29 pursuant to this subsection shall be transferred by the
30 employer to the third-party administrator for deposit in the
31 participant's account. All contributions made on behalf of a

1 participant must be made timely. Employer contributions
2 received after the 5th working day of each month will be
3 considered late. The employer shall be assessed a penalty of 1
4 percent of the contributions due for each calendar month or
5 part thereof that the contributions are late. If contributions
6 made by an employer are late and if that lateness results in
7 market losses to participants, the employer shall make each
8 participant whole for market losses resulting from the late
9 contributions. The third-party administrator hired by the
10 board pursuant to s. 121.4501(8) will calculate the market
11 losses for each affected participant. The employer will also
12 pay the cost of the third-party-administrator calculation and
13 reconciliation adjustments resulting from the late
14 contributions. The employer's total penalty will be equal to
15 the sum of these three penalties. The third-party
16 administrator will notify the employer of the total amount
17 due. The employer will remit to the third-party administrator
18 the amount due within 10 working days after the date of the
19 penalty notice sent by the third-party administrator. The
20 board may adopt rules necessary to administer the provisions
21 regarding late contributions, the process for making
22 participants whole for resultant market losses, and the
23 penalties charged to the employers.

24 Section 3. This act shall take effect June 1, 2002.
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SENATE SUMMARY

Redefines the term "eligible employee" for purposes of the Public Employee Optional Retirement Program. Provides for an extension of time to transfer assets from the defined benefit plan if there is a disruption in the financial markets. Authorizes the acceptance of rollovers into participant accounts. Revises the earnings rate for funds in a suspense account. Provides for spousal notification of designation of beneficiary. Authorizes spousal rollovers to an eligible retirement plan. Authorizes statements under oath. Provides a penalty for late contributions by employers to participant accounts.