

By Representative Rubio

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

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

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

28 121.4501 Public Employee Optional Retirement
29 Program.--

30 (2) DEFINITIONS.--As used in this section, the term:

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

3 1. Is a member of, or is eligible for membership in,
4 the Florida Retirement System, including any renewed member of
5 the Florida Retirement System;

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

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

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

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

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

1 program of the Florida Retirement System. A participant is
2 precluded from transferring the accumulated benefit obligation
3 balance from the defined benefit program upon the expiration
4 of the period afforded to enroll in the optional program.

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

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

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

22 (I) Age 62; or

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

28 c. For members of the Special Risk Class and for
29 members of the Special Risk Administrative Support Class
30 entitled to retain special risk normal retirement date, the
31 benefit commencement age shall be the younger of the

1 following, but shall not be younger than the member's age as
2 of midnight on May 31, 2002:

3 (I) Age 55; or

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

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

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

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

29 b. Transfer, or cause to be transferred, from the
30 participant's account to the Florida Retirement System Trust
31 Fund the excess, if any, of the previously transferred amount

1 over the recomputed amount, together with interest from the
2 initial date of transfer to the date of transfer under this
3 subparagraph, based upon 6 percent effective annual interest,
4 compounded annually, pro rata based on the participant's
5 allocation plan.

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

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

30 (5) CONTRIBUTIONS.--
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1 (c) The Public Employee Optional Retirement Program
2 may accept for deposit into participant accounts contributions
3 in the form of rollovers or direct trustee-to-trustee
4 transfers by or on behalf of participants, reasonably
5 determined by the board or other program administrator to be
6 eligible for rollover or transfer to the optional retirement
7 program pursuant to the Internal Revenue Code, if such
8 contributions are made in accordance with rules as may be
9 adopted by the board. Such contributions shall be accounted
10 for in accordance with any applicable Internal Revenue Code
11 requirements and rules of the board.

12 (6) VESTING REQUIREMENTS.--

13 (a)1. With respect to employer contributions paid on
14 behalf of the participant to the Public Employee Optional
15 Retirement Program, plus interest and earnings thereon and
16 less investment fees and administrative charges, a participant
17 shall be vested after completing 1 work year, as defined in s.
18 121.021(54), with an employer, including any service while the
19 participant was a member of the defined benefit retirement
20 program or an optional retirement program authorized under s.
21 121.051(2)(c) or s. 121.055(6).

22 2. If the participant terminates employment prior to
23 satisfying the vesting requirements, the nonvested
24 accumulation shall be transferred from the participant's
25 accounts to the state board for deposit and investment by the
26 board in the suspense account of the Public Employee Optional
27 Retirement Program Trust Fund of the board. If the terminated
28 participant is reemployed as an eligible employee within 5
29 years, the state board shall transfer to the participant's
30 account any amount of the moneys previously transferred from
31 the participant's accounts to the suspense account of the

1 Public Employee Optional Retirement Program Trust Fund, plus
2 the actual earnings on such amount while in the suspense
3 account interest calculated at 3.0 percent per annum,
4 ~~calculated from the date of transfer to the date of~~
5 ~~reemployment.~~

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

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

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

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

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

10 1. To the extent vested, benefits shall be payable
11 only to a participant, or to his or her beneficiaries as
12 designated by the participant. If a participant designates a
13 beneficiary who is not the participant's spouse, the
14 participant's spouse shall be notified. This requirement shall
15 not apply to the designation of a contingent beneficiary
16 designated to receive benefits hereunder in the event the
17 participant's spouse dies before such contingent beneficiary.

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

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

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

14 (e) Survivor benefits shall be payable as:

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

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

25 3. A partial lump-sum payment whereby a portion of the
26 accrued benefit is paid to the deceased participant's
27 surviving spouse or other designated beneficiaries, less
28 withholding taxes remitted to the Internal Revenue Service,
29 and the remaining amount is transferred directly to the
30 custodian of an individual retirement account or an individual
31 retirement annuity, as described in s. 402(c)(9) of the

1 Internal Revenue Code, on behalf of the surviving spouse. The
2 proportions must be specified by the participant or the
3 surviving beneficiary.

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5 This paragraph does not abrogate other applicable provisions
6 of state or federal law providing for payment of death
7 benefits.

8 (8) ADMINISTRATION OF PROGRAM.--

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

23 Section 2. Paragraph (a) of subsection (2) of section
24 121.571, Florida Statutes, is amended to read:

25 121.571 Contributions.--Contributions to the Public
26 Employee Optional Retirement Program shall be made as follows:

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

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

28 Section 3. This act shall take effect June 1, 2002.
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HOUSE SUMMARY

Revises a provision of law governing the Public Employee
Optional Retirement Program to redefine the term
"eligible employee" to provide for an extension of time
to transfer assets from the defined benefit plan in the
event of a market disruption, to provide for rollovers,
to revise the earnings rate for funds in the suspense
account to be invested by the board, and to provide for
spousal notification of designation of beneficiary.
Provides for a penalty for late contributions to
participant accounts. See bill for details.