

By Senator Garcia

40-937-06

1                                   A bill to be entitled  
2           An act relating to state financial matters;  
3           amending s. 121.4501, F.S.; revising the method  
4           for calculating interest on certain moneys  
5           transferred between retirement accounts;  
6           providing for credit for military service of  
7           members of the Public Employee Optional  
8           Retirement Program; amending s. 121.591, F.S.;  
9           prescribing procedures to follow if a  
10          participant in the Public Employee Optional  
11          Retirement Program receives an invalid  
12          distribution; amending s. 215.47, F.S.;  
13          revising standards for determining eligibility  
14          of specified savings accounts, certificates of  
15          deposit, time drafts, bills of exchange, bonds,  
16          notes, and other instruments for investment by  
17          the State Board of Administration; amending s.  
18          1002.36, F.S.; conforming a cross-reference;  
19          providing an effective date.

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

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23           Section 1. Paragraph (c) of subsection (3) of section  
24 121.4501, Florida Statutes, is amended, and subsection (22) is  
25 added to that section, to read:

26           121.4501 Public Employee Optional Retirement  
27 Program.--

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

29           (c)1. Notwithstanding paragraph (b), each eligible  
30 employee who elects to participate in the Public Employee  
31 Optional Retirement Program and establishes one or more

1 individual participant accounts under the optional program may  
2 elect to transfer to the optional program a sum representing  
3 the present value of the employee's accumulated benefit  
4 obligation under the defined benefit retirement program of the  
5 Florida Retirement System. Upon such transfer, all service  
6 credit previously earned under the defined benefit program of  
7 the Florida Retirement System shall be nullified for purposes  
8 of entitlement to a future benefit under the defined benefit  
9 program of the Florida Retirement System. A participant is  
10 precluded from transferring the accumulated benefit obligation  
11 balance from the defined benefit program upon the expiration  
12 of the period afforded to enroll in the optional program.

13         2. For purposes of this subsection, the present value  
14 of the member's accumulated benefit obligation is based upon  
15 the member's estimated creditable service and estimated  
16 average final compensation under the defined benefit program,  
17 subject to recomputation under subparagraph 3. For state  
18 employees enrolling under subparagraph (4)(a)1., initial  
19 estimates will be based upon creditable service and average  
20 final compensation as of midnight on June 30, 2002; for  
21 district school board employees enrolling under subparagraph  
22 (4)(b)1., initial estimates will be based upon creditable  
23 service and average final compensation as of midnight on  
24 September 30, 2002; and for local government employees  
25 enrolling under subparagraph (4)(c)1., initial estimates will  
26 be based upon creditable service and average final  
27 compensation as of midnight on December 31, 2002. The dates  
28 respectively specified above shall be construed as the  
29 "estimate date" for these employees. The actuarial present  
30 value of the employee's accumulated benefit obligation shall  
31 be based on the following:

1           a. The discount rate and other relevant actuarial  
2 assumptions used to value the Florida Retirement System Trust  
3 Fund at the time the amount to be transferred is determined,  
4 consistent with the factors provided in sub-subparagraphs b.  
5 and c.

6           b. A benefit commencement age, based on the member's  
7 estimated creditable service as of the estimate date. The  
8 benefit commencement age shall be the younger of the  
9 following, but shall not be younger than the member's age as  
10 of the estimate date:

11           (I) Age 62; or

12           (II) The age the member would attain if the member  
13 completed 30 years of service with an employer, assuming the  
14 member worked continuously from the estimate date, and  
15 disregarding any vesting requirement that would otherwise  
16 apply under the defined benefit program of the Florida  
17 Retirement System.

18           c. For members of the Special Risk Class and for  
19 members of the Special Risk Administrative Support Class  
20 entitled to retain special risk normal retirement date, the  
21 benefit commencement age shall be the younger of the  
22 following, but shall not be younger than the member's age as  
23 of the estimate date:

24           (I) Age 55; or

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

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1           d. The calculation shall disregard vesting  
2 requirements and early retirement reduction factors that would  
3 otherwise apply under the defined benefit retirement program.

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

14           a. Transfer, or cause to be transferred, from the  
15 Florida Retirement System Trust Fund to the participant's  
16 account in the optional program the excess, if any, of the  
17 recomputed amount over the previously transferred amount  
18 together with interest from the initial date of transfer to  
19 the date of transfer under this subparagraph, based upon ~~8~~  
20 ~~percent~~ effective annual interest equal to the assumed return  
21 on the actuarial investment which was used in the most recent  
22 actuarial valuation of the system, compounded annually.

23           b. Transfer, or cause to be transferred, from the  
24 participant's account to the Florida Retirement System Trust  
25 Fund the excess, if any, of the previously transferred amount  
26 over the recomputed amount, together with interest from the  
27 initial date of transfer to the date of transfer under this  
28 subparagraph, based upon 6 percent effective annual interest,  
29 compounded annually, pro rata based on the participant's  
30 allocation plan.

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

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

25           (22) CREDIT FOR MILITARY SERVICE.--Creditable service  
26 of any member of the Public Employee Optional Retirement  
27 Program shall include military service in the Armed Forces of  
28 the United States as provided in the conditions outlined in s.  
29 121.111(1).

30           Section 2. Paragraph (a) of subsection (1) of section  
31 121.591, Florida Statutes, is amended to read:

1           121.591 Benefits payable under the Public Employee  
2 Optional Retirement Program of the Florida Retirement  
3 System.--Benefits may not be paid under this section unless  
4 the member has terminated employment as provided in s.  
5 121.021(39)(a) or is deceased and a proper application has  
6 been filed in the manner prescribed by the state board or the  
7 department. The state board or department, as appropriate, may  
8 cancel an application for retirement benefits when the member  
9 or beneficiary fails to timely provide the information and  
10 documents required by this chapter and the rules of the state  
11 board and department. In accordance with their respective  
12 responsibilities as provided herein, the State Board of  
13 Administration and the Department of Management Services shall  
14 adopt rules establishing procedures for application for  
15 retirement benefits and for the cancellation of such  
16 application when the required information or documents are not  
17 received. The State Board of Administration and the Department  
18 of Management Services, as appropriate, are authorized to cash  
19 out a de minimis account of a participant who has been  
20 terminated from Florida Retirement System covered employment  
21 for a minimum of 6 calendar months. A de minimis account is an  
22 account containing employer contributions and accumulated  
23 earnings of not more than \$5,000 made under the provisions of  
24 this chapter. Such cash-out must either be a complete lump-sum  
25 liquidation of the account balance, subject to the provisions  
26 of the Internal Revenue Code, or a lump-sum direct rollover  
27 distribution paid directly to the custodian of an eligible  
28 retirement plan, as defined by the Internal Revenue Code, on  
29 behalf of the participant. If any financial instrument issued  
30 for the payment of retirement benefits under this section is  
31 not presented for payment within 180 days after the last day

1 of the month in which it was originally issued, the  
2 third-party administrator or other duly authorized agent of  
3 the State Board of Administration shall cancel the instrument  
4 and credit the amount of the instrument to the suspense  
5 account of the Public Employee Optional Retirement Program  
6 Trust Fund authorized under s. 121.4501(6). Any such amounts  
7 transferred to the suspense account are payable upon a proper  
8 application, not to include earnings thereon, as provided in  
9 this section, within 10 years after the last day of the month  
10 in which the instrument was originally issued, after which  
11 time such amounts and any earnings thereon shall be forfeited.  
12 Any such forfeited amounts are assets of the Public Employee  
13 Optional Retirement Program Trust Fund and are not subject to  
14 the provisions of chapter 717.

15 (1) NORMAL BENEFITS.--Under the Public Employee  
16 Optional Retirement Program:

17 (a) Benefits in the form of vested accumulations as  
18 described in s. 121.4501(6) shall be payable under this  
19 subsection in accordance with the following terms and  
20 conditions:

21 1. To the extent vested, benefits shall be payable  
22 only to a participant.

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

27 3. To receive benefits under this subsection, the  
28 participant must be terminated from all employment with all  
29 Florida Retirement System employers, as provided in s.  
30 121.021(39).  
31

1           4. Benefit payments may not be made until the  
2 participant has been terminated for 3 calendar months, except  
3 that the board may authorize by rule for the distribution of  
4 up to 10 percent of the participant's account after being  
5 terminated for 1 calendar month if a participant has reached  
6 the normal retirement requirements of the defined benefit  
7 plan, as provided in s. 121.021(29).

8           5. If a member or former member of the Florida  
9 Retirement System receives an invalid distribution from the  
10 Public Employee Optional Retirement Program Trust Fund, such  
11 person shall repay the full invalid distribution to the trust  
12 fund within 90 days after receipt of final notification by the  
13 State Board of Administration or the third-party administrator  
14 that the distribution was invalid. If such person fails to  
15 repay the full invalid distribution within 90 days after  
16 receipt of final notification, the person may be deemed  
17 retired from the Public Employee Optional Retirement Program  
18 by the state board and shall be subject to s. 121.122. If such  
19 person is deemed retired by the state board, any joint and  
20 several liability set out in s. 121.091(9)(c)2. becomes null  
21 and void, and the state board, the Department of Management  
22 Services, or the employing agency are not liable for gains on  
23 payroll contributions that have not been deposited to the  
24 person's account in the Public Employee Optional Retirement  
25 Program, pending resolution of the invalid distribution. The  
26 state board shall define an invalid distribution by rule. Such  
27 definition must include distributions made under circumstances  
28 that are inconsistent with the requirements of this section,  
29 s. 121.091(9), or s. 121.4501.



1           Section 3. Subsections (1), (2), and (5) of section  
2 215.47, Florida Statutes, are amended, and subsection (17) is  
3 added to that section, to read:

4           215.47 Investments; authorized securities; loan of  
5 securities.--Subject to the limitations and conditions of the  
6 State Constitution or of the trust agreement relating to a  
7 trust fund, moneys available for investments under ss.  
8 215.44-215.53 may be invested as follows:

9           (1) Without limitation in:

10           (a) Bonds, notes, or other obligations of the United  
11 States or those guaranteed by the United States or for which  
12 the credit of the United States is pledged for the payment of  
13 the principal and interest or dividends thereof.

14           (b) State bonds pledging the full faith and credit of  
15 the state and revenue bonds additionally secured by the full  
16 faith and credit of the state.

17           (c) Bonds of the several counties or districts in the  
18 state containing a pledge of the full faith and credit of the  
19 county or district involved.

20           (d) Bonds issued or administered by the State Board of  
21 Administration secured solely by a pledge of all or part of  
22 the 2-cent constitutional fuel tax accruing under the  
23 provisions of s. 16, Art. IX of the State Constitution of  
24 1885, as amended, or of s. 9, Art. XII of the 1968 revised  
25 State Constitution.

26           (e) Bonds issued by the State Board of Education  
27 pursuant to ss. 18 and 19, Art. XII of the State Constitution  
28 of 1885, as amended, or to s. 9, Art. XII of the 1968 revised  
29 State Constitution, as amended.

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1           (f) Bonds issued by the Florida Outdoor Recreational  
2 Development Council pursuant to s. 17, Art. IX of the State  
3 Constitution of 1885, as amended.

4           (g) Bonds issued by the Florida State Improvement  
5 Commission, Florida Development Commission, Division of Bond  
6 Finance of the Department of General Services, or Division of  
7 Bond Finance of the State Board of Administration.

8           (h) Savings accounts in, or certificates of deposit  
9 of, any bank, savings bank, or savings and loan association  
10 incorporated under the laws of this state or organized under  
11 the laws of the United States doing business and situated in  
12 this state, the accounts of which are insured by the Federal  
13 Government or an agency thereof having a prime quality of the  
14 highest letter and numerical ratings as provided for by at  
15 least one nationally recognized rating service, in an amount  
16 that does not exceed 15 percent of the net worth of the  
17 institution, or a lesser amount as determined by rule by the  
18 State Board of Administration, provided such savings accounts  
19 and certificates of deposit are secured in the manner  
20 prescribed in chapter 280.

21           (i) Notes, bonds, and other obligations of agencies of  
22 the United States.

23           (j) Commercial paper of prime quality of the highest  
24 letter and numerical rating as provided for by at least one  
25 nationally recognized rating service.

26           (k) Time drafts or bills of exchange drawn on and  
27 accepted by a commercial bank, otherwise known as banker's  
28 acceptances, which are accepted by a member bank of the  
29 Federal Reserve System of prime quality of the highest letter  
30 and numerical ratings as provided for by at least one  
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1 ~~nationally recognized rating service having total deposits of~~  
2 ~~not less than \$400 million.~~

3 (l) Negotiable certificates of deposit issued by  
4 domestic or foreign financial institutions in United States  
5 dollars of prime quality of the highest letter and numerical  
6 ratings as provided for by at least one nationally recognized  
7 rating service.

8 (m) Short-term obligations not authorized elsewhere in  
9 this section to be purchased individually or in pooled  
10 accounts or other collective investment funds, for the purpose  
11 of providing liquidity to any fund or portfolio.

12 (n) Securities of, or other interests in, any open-end  
13 or closed-end management type investment company or investment  
14 trust registered under the Investment Company Act of 1940, 15  
15 U.S.C. ss. 80a-1 et seq., as amended from time to time,  
16 provided that the portfolio of such investment company or  
17 investment trust is limited to obligations of the United  
18 States Government or any agency or instrumentality thereof and  
19 to repurchase agreements fully collateralized by such United  
20 States Government obligations and provided that such  
21 investment company or investment trust takes delivery of such  
22 collateral either directly or through an authorized custodian.

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

24 (a) Bonds, notes, or obligations of any municipality  
25 or political subdivision or any agency or authority of this  
26 state, if the obligations are rated investment grade by at  
27 least one nationally recognized rating service ~~such~~  
28 ~~obligations are rated in any one of the three highest ratings~~  
29 ~~by two nationally recognized rating services. However, if~~  
30 ~~only one nationally recognized rating service shall rate such~~  
31 ~~obligations, then such rating service must have rated such~~

1 ~~obligations in any one of the two highest classifications~~  
2 ~~heretofore mentioned.~~

3 (b) Notes secured by first mortgages ~~on Florida real~~  
4 ~~property~~, insured or guaranteed by the Federal Housing  
5 Administration or the United States Department of Veterans  
6 Affairs.

7 ~~(c) Investments collateralized by first mortgages~~  
8 ~~covering single family Florida residences, provided such~~  
9 ~~mortgages do not exceed \$60,000, do not exceed 80 percent of~~  
10 ~~value, are not delinquent, and are originated by a lender~~  
11 ~~regulated by the state or Federal Government and the aggregate~~  
12 ~~of the collateral furnished is at least 150 percent of the~~  
13 ~~aggregate investment under this subsection. The mortgages~~  
14 ~~used for collateral shall be segregated by the lending~~  
15 ~~institution so that such segregation may be confirmed by~~  
16 ~~independent audit. In the event any such mortgage used as~~  
17 ~~collateral becomes more than 3 months delinquent, the lender~~  
18 ~~shall immediately substitute therefor a mortgage of equal or~~  
19 ~~greater value.~~

20 ~~(c)(d)~~ Mortgage securities which represent  
21 participation in or are collateralized by mortgage loans  
22 secured by real property. Such securities must be issued by an  
23 agency of or enterprise sponsored by the United States  
24 Government, including, but not limited to, the Government  
25 National Mortgage Association, the Federal National Mortgage  
26 Association, and the Federal Home Loan Mortgage Corporation.

27 ~~(d)(e)~~ Group annuity contracts of the pension  
28 investment type with insurers licensed to do business in this  
29 state which are rated investment grade by at least one  
30 nationally recognized rating service, ~~except that amounts~~  
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1 ~~invested by the board with any one insurer shall not exceed 3~~  
2 ~~percent of its assets.~~

3 (e)~~(f)~~ Certain interests in real property and related  
4 personal property, including mortgages and related instruments  
5 on commercial or industrial real property, with provisions for  
6 equity or income participation or with provisions for  
7 convertibility to equity ownership; and interests in  
8 collective investment funds. Associated expenditures for  
9 acquisition and operation of assets purchased under this  
10 provision or of investments in private equity or other private  
11 investment partnerships or limited liability companies shall  
12 be included as a part of the cost of the investment.

13 1. The title to real property acquired under this  
14 paragraph shall be vested in the name of the respective fund.

15 2. For purposes of taxation of property owned by any  
16 fund, the provisions of s. 196.199(2)(b) do not apply.

17 3. Real property acquired under the provisions of this  
18 paragraph shall not be considered state lands or public lands  
19 and property as defined in chapter 253, and the provisions of  
20 that chapter do not apply to such real property.

21 (f)~~(g)~~ Fixed-income obligations not otherwise  
22 authorized by this section issued by foreign governments or  
23 political subdivisions or agencies thereof, supranational  
24 agencies, foreign corporations, or foreign commercial  
25 entities, if the obligations are rated investment grade by at  
26 least one nationally recognized rating service.

27 (g)~~(h)~~ A portion of the funds available for investment  
28 pursuant to this subsection may be invested in rated or  
29 unrated bonds, notes, or instruments backed by the full faith  
30 and credit of the government of Israel.

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1           ~~(h)(i)~~ Obligations of agencies of the government of  
2 the United States, provided such obligations have been  
3 included in and authorized by the Florida Retirement System  
4 Defined Benefit Plan Investment Policy Statement established  
5 in s. 215.475.

6           ~~(i)(j)~~ United States dollar-denominated obligations  
7 issued by foreign governments, or political subdivisions or  
8 agencies thereof, supranational agencies, foreign  
9 corporations, or foreign commercial entities.

10           ~~(j)(k)~~ Asset-backed securities not otherwise  
11 authorized by this section.

12           (5) With no more than 25 ~~20~~ percent of any fund in  
13 corporate obligations and securities of any kind of a foreign  
14 corporation or a foreign commercial entity having its  
15 principal office located in any country other than the United  
16 States of America or its possessions or territories, not  
17 including United States dollar-denominated securities listed  
18 and traded on a United States exchange which are a part of the  
19 ordinary investment strategy of the board.

20           (17) The State Board of Administration may sell short  
21 any of the securities and investments authorized under this  
22 section.

23           Section 4. Paragraph (e) of subsection (4) of section  
24 1002.36, Florida Statutes, is amended to read:

25           1002.36 Florida School for the Deaf and the Blind.--

26           (4) BOARD OF TRUSTEES.--

27           (e) The board of trustees is invested with full power  
28 and authority to:

29           1. Appoint a president, faculty, teachers, and other  
30 employees and remove the same as in its judgment may be best  
31 and fix their compensation.

- 1           2. Procure professional services, such as medical,  
2 mental health, architectural, and engineering.
- 3           3. Procure legal services without the prior written  
4 approval of the Attorney General.
- 5           4. Determine eligibility of students and procedure for  
6 admission.
- 7           5. Provide for the students of the school necessary  
8 bedding, clothing, food, and medical attendance and such other  
9 things as may be proper for the health and comfort of the  
10 students without cost to their parents, except that the board  
11 of trustees may set tuition and other fees for nonresidents.
- 12           6. Provide for the proper keeping of accounts and  
13 records and for budgeting of funds.
- 14           7. Enter into contracts.
- 15           8. Sue and be sued.
- 16           9. Secure public liability insurance.
- 17           10. Do and perform every other matter or thing  
18 requisite to the proper management, maintenance, support, and  
19 control of the school at the highest efficiency economically  
20 possible, the board of trustees taking into consideration the  
21 purposes of the establishment.
- 22           11. Receive gifts, donations, and bequests of money or  
23 property, real or personal, tangible or intangible, from any  
24 person, firm, corporation, or other legal entity. However, the  
25 board of trustees may not obligate the state to any  
26 expenditure or policy that is not specifically authorized by  
27 law. If the bill of sale, will, trust indenture, deed, or  
28 other legal conveyance specifies terms and conditions  
29 concerning the use of such money or property, the board of  
30 trustees shall observe such terms and conditions.
- 31

1           12. Deposit outside the State Treasury such moneys as  
2 are received as gifts, donations, or bequests and may disburse  
3 and expend such moneys, upon its own warrant, for the use and  
4 benefit of the Florida School for the Deaf and the Blind and  
5 its students, as the board of trustees deems to be in the best  
6 interest of the school and its students. Such money or  
7 property shall not constitute or be considered a part of any  
8 legislative appropriation, and such money shall not be used to  
9 compensate any person for engaging in lobbying activities  
10 before the House of Representatives or Senate or any committee  
11 thereof.

12           13. Sell or convey by bill of sale, deed, or other  
13 legal instrument any property, real or personal, received as a  
14 gift, donation, or bequest, upon such terms and conditions as  
15 the board of trustees deems to be in the best interest of the  
16 school and its students.

17           14. Invest such moneys in securities enumerated under  
18 s. 215.47(1), (2)(c)~~(2)(d)~~, (3), (4), and (9), and in The  
19 Common Fund, an Investment Management Fund exclusively for  
20 nonprofit educational institutions.

21           Section 5. This act shall take effect July 1, 2006.

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24           SENATE SUMMARY

25           Makes various revisions with respect to state financial  
26 matters. Revises the interest rate for moneys transferred  
27 in a public employee optional retirement program  
28 participant's account. Clarifies that members of the  
29 program receive credit for military service. Provides for  
30 repayment of invalid distribution of program benefits.  
31 Revises the criteria for determining eligibility of  
certain investments to become repositories of investments  
by the State Board of Administration.