

By the Committee on Governmental Oversight and Productivity;
and Senator Garcia

585-1899-06

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).
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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, as provided pursuant to s. 121.4501(2)(j),
19 and shall be subject to the provisions of s. 121.122. If such
20 person is deemed retired by the state board, any joint and
21 several liability set out in s. 121.091(9)(c)2. becomes null
22 and void, and the state board, the Department of Management
23 Services, or the employing agency are not liable for gains on
24 payroll contributions that have not been deposited to the
25 person's account in the Public Employee Optional Retirement
26 Program, pending resolution of the invalid distribution. The
27 member or former member who has been deemed retired or who has
28 been determined by the board to have taken an invalid
29 distribution may appeal the agency decision through the
30 complaint process as provided under s. 121.4501(9)(f)3. As
31 used in this subparagraph, the term "invalid distribution"

1 means any distribution from an account in the Public Employee
2 Optional Retirement Program which is taken in violation of the
3 provisions of this section, s. 121.091(9), or s. 121.4501.

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

7 215.47 Investments; authorized securities; loan of
8 securities.--Subject to the limitations and conditions of the
9 State Constitution or of the trust agreement relating to a
10 trust fund, moneys available for investments under ss.
11 215.44-215.53 may be invested as follows:

12 (1) Without limitation in:

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

17 (b) State bonds pledging the full faith and credit of
18 the state and revenue bonds additionally secured by the full
19 faith and credit of the state.

20 (c) Bonds of the several counties or districts in the
21 state containing a pledge of the full faith and credit of the
22 county or district involved.

23 (d) Bonds issued or administered by the State Board of
24 Administration secured solely by a pledge of all or part of
25 the 2-cent constitutional fuel tax accruing under the
26 provisions of s. 16, Art. IX of the State Constitution of
27 1885, as amended, or of s. 9, Art. XII of the 1968 revised
28 State Constitution.

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

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

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

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

23 (i) Notes, bonds, and other obligations of agencies of
24 the United States.

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

28 (k) Time drafts or bills of exchange drawn on and
29 accepted by a commercial bank, otherwise known as banker's
30 acceptances, which are accepted by a member bank of the
31 Federal Reserve System and are of prime quality of the highest

1 letter and numerical ratings as provided for by at least one
2 nationally recognized statistical rating organization having
3 ~~total deposits of not less than \$400 million.~~

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

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

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

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

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

1 ~~service shall rate such obligations, then such rating service~~
2 ~~must have rated such obligations in any one of the two highest~~
3 ~~classifications heretofore mentioned.~~

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

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

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

28 ~~(d)(e)~~ Group annuity contracts of the pension
29 investment type with insurers licensed to do business in this
30 state which are rated investment grade by at least one
31 nationally recognized rating service, except that amounts

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.

22
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
24 COMMITTEE SUBSTITUTE FOR
25 SB 1670

26 The Committee Substitute make grammar and syntax changes to
27 the original bill. It also clarifies the titles of the rating
28 agencies to which reference is made in the bill. Lastly, it
29 provides more procedural clarity on the dispute resolution
30 process when a determination has been made that an invalid
31 distribution has occurred from a participant account.