

By the Committee on Governmental Oversight and Accountability;
and Senator Hooper

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1 A bill to be entitled
2 An act relating to the State Board of Administration;
3 amending s. 121.091, F.S.; prohibiting the State Board
4 of Administration from paying benefits to a Florida
5 Retirement System investment plan member convicted of
6 specified felonies; requiring the state board to
7 return to a member contributions that were accumulated
8 up to the date of conviction; prohibiting the state
9 board from paying benefits until the resolution of the
10 proceedings of any potentially disqualifying offenses;
11 amending s. 121.4501, F.S.; authorizing the state
12 board to develop investment products to be offered in
13 the investment plan; revising the process for a
14 member's spouse to acknowledge that he or she is not
15 the primary beneficiary of the member's benefits;
16 authorizing a member to request a waiver of such
17 acknowledgement under certain circumstances; amending
18 s. 215.47, F.S.; revising the types of investments in
19 real property and related personal property which the
20 state board may invest in; authorizing the state board
21 and certain affiliated entities and ventures to issue
22 securities and borrow money through specified means;
23 authorizing the state board to use the proceeds of
24 loans or financing obligations as loans to or sources
25 of funding for certain entities or ventures; requiring
26 the ownership of an entity holding title to real
27 property to be vested in the name of the Florida
28 Retirement System Trust Fund; revising the funds in
29 which the state may invest no more than 80 percent of

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30 its moneys available for investments; revising the
31 requirements of the proposed plan the state board must
32 present to the Investment Advisory Council to invest
33 in unauthorized investments; deleting authorization
34 for the council to obtain independent investment
35 counsel to provide expert advice on state board
36 investment activity; revising the threshold for the
37 amount that may be invested in alternative
38 investments; reenacting ss. 112.661(5) (a),
39 420.503(3) (a), and 1002.36(4) (e), F.S., relating to
40 authorized investments, the definition of "authorized
41 investments", and investments made on behalf of the
42 Florida School for the Deaf and the Blind,
43 respectively, to incorporate the amendments made to s.
44 215.47, F.S., in references thereto; providing an
45 effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Paragraphs (i) and (k) of subsection (5) of
50 section 121.091, Florida Statutes, are amended to read:

51 121.091 Benefits payable under the system.—Benefits may not
52 be paid under this section unless the member has terminated
53 employment as provided in s. 121.021(39) (a) or begun
54 participation in the Deferred Retirement Option Program as
55 provided in subsection (13), and a proper application has been
56 filed in the manner prescribed by the department. The department
57 may cancel an application for retirement benefits when the
58 member or beneficiary fails to timely provide the information

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59 and documents required by this chapter and the department's
60 rules. The department shall adopt rules establishing procedures
61 for application for retirement benefits and for the cancellation
62 of such application when the required information or documents
63 are not received.

64 (5) TERMINATION BENEFITS.—A member whose employment is
65 terminated prior to retirement retains membership rights to
66 previously earned member-noncontributory service credit, and to
67 member-contributory service credit, if the member leaves the
68 member contributions on deposit in his or her retirement
69 account. If a terminated member receives a refund of member
70 contributions, such member may reinstate membership rights to
71 the previously earned service credit represented by the refund
72 by completing 1 year of creditable service and repaying the
73 refunded member contributions, plus interest.

74 (i) The division or the state board may not pay benefits to
75 any member convicted of a felony committed on or after October
76 1, 2008, defined in s. 800.04 against a victim younger than 16
77 years of age, or defined in chapter 794 against a victim younger
78 than 18 years of age, through the use or attempted use of power,
79 rights, privileges, duties, or position of the member's public
80 office or employment position. However, the division or the
81 state board shall return the member's accumulated contributions,
82 if any, that the member accumulated as of the date of
83 conviction.

84 (k) Benefits may ~~shall~~ not be paid by the division or the
85 state board pending final resolution of such charges against a
86 member or beneficiary if the resolution of such charges could
87 require the forfeiture of benefits as provided in paragraph (f),

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88 paragraph (g), paragraph (h), paragraph (i), ~~or~~ paragraph (j),
89 or chapter 112.

90 Section 2. Paragraph (b) of subsection (20) of section
91 121.4501, Florida Statutes, is amended, and paragraph (h) is
92 added to subsection (8) of that section, to read:

93 121.4501 Florida Retirement System Investment Plan.—

94 (8) INVESTMENT PLAN ADMINISTRATION.—The investment plan
95 shall be administered by the state board and affected employers.
96 The state board may require oaths, by affidavit or otherwise,
97 and acknowledgments from persons in connection with the
98 administration of its statutory duties and responsibilities for
99 the investment plan. An oath, by affidavit or otherwise, may not
100 be required of a member at the time of enrollment.

101 Acknowledgment of an employee's election to participate in the
102 program shall be no greater than necessary to confirm the
103 employee's election. The state board shall adopt rules to carry
104 out its statutory duties with respect to administering the
105 investment plan, including establishing the roles and
106 responsibilities of affected state, local government, and
107 education-related employers, the state board, the department,
108 and third-party contractors. The department shall adopt rules
109 necessary to administer the investment plan in coordination with
110 the pension plan and the disability benefits available under the
111 investment plan.

112 (h) The state board, consistent with its fiduciary
113 responsibilities, may develop one or more investment products to
114 be offered in the investment plan.

115 (20) DESIGNATION OF BENEFICIARIES.—

116 (b) If a member is married, but does not designate his or

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117 her spouse as designates a primary beneficiary, the spouse must
118 be notified and acknowledge that he or she has not been so
119 designated. Notwithstanding the foregoing, if the spouse cannot
120 be located or fails to affirmatively acknowledge that he or she
121 has not been so designated, the member may request that the
122 acknowledgement requirement be waived by the state board by
123 submitting an affidavit setting forth the particular facts and
124 circumstances ~~other than the member's spouse, the member's~~
125 ~~spouse must sign the beneficiary designation form to acknowledge~~
126 ~~the designation.~~ This requirement does not apply to the
127 designation of one or more contingent beneficiaries to receive
128 benefits remaining upon the death of the primary beneficiary or
129 beneficiaries.

130 Section 3. Paragraph (e) of subsection (2) and subsections
131 (3), (6), and (15) of section 215.47, Florida Statutes, are
132 amended to read:

133 215.47 Investments; authorized securities; loan of
134 securities.—Subject to the limitations and conditions of the
135 State Constitution or of the trust agreement relating to a trust
136 fund, moneys available for investments under ss. 215.44-215.53
137 may be invested as follows:

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

139 (e) Certain interests in real property and related personal
140 property which may be owned through affiliated limited liability
141 entities or joint ventures, which include, but are not limited
142 to, including mortgages and related instruments secured by ~~on~~
143 ~~commercial or industrial~~ real property, and instruments
144 containing ~~with~~ provisions for equity or income participation or
145 with provisions for convertibility to equity ownership; and

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146 interests in real property-related collective investment funds.
147 The State Board of Administration and its affiliated limited
148 liability entities or joint ventures may issue securities and
149 borrow money through loans or other financial obligations,
150 including bonds, equity securities, and other security
151 instruments, any of which may be unsecured or secured by
152 investments in real property or related cash flows, guaranteed
153 by the related fund, or governed by financial covenants. The
154 proceeds of such loans or financing obligations may be loaned to
155 or otherwise used as a source of funding for affiliated limited
156 liability entities or joint ventures. Associated expenditures
157 for acquisition and operation of assets purchased under this
158 provision or of investments in private equity or other private
159 investment partnerships or limited liability companies must
160 ~~shall~~ be included as a part of the cost of the investment.

161 1. The title to real property, or ownership of the entity
162 holding title to real property, acquired under this paragraph
163 shall be vested in the name of the respective fund.

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

166 3. Real property acquired under ~~the provisions of~~ this
167 paragraph may shall not be considered state lands or public
168 lands and property as defined in chapter 253, and ~~the provisions~~
169 ~~of~~ that chapter does ~~do~~ not apply to such real property.

170 (3) With no more than 80 percent of any fund in equity
171 securities or securities convertible into equity securities of
172 any entity ~~common stock, preferred stock, and interest-bearing~~
173 ~~obligations of a corporation having an option to convert into~~
174 ~~common stock,~~ provided that all of the following apply:

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175 (a) That the entity is either:

176 1. ~~The corporation is~~ Organized under the laws of the
177 United States, any state or organized territory of the United
178 States, or the District of Columbia; or

179 2. ~~(b) The corporation is~~ Listed on any one or more of the
180 recognized national stock exchanges in the United States and
181 conforms with the periodic reporting requirements under the
182 Securities Exchange Act of 1934.

183 (b)(e) Not more than 75 percent of the fund may be in
184 internally managed equity securities ~~common stock~~.

185
186 The board may ~~shall~~ not invest more than 10 percent of the
187 equity assets of any fund in the equity securities ~~common stock,~~
188 ~~preferred stock, and interest-bearing obligations having an~~
189 ~~option to convert into common stock,~~ of any one issuing entity
190 ~~corporation~~; and the board may ~~shall~~ not invest more than 3
191 percent of the equity assets of any fund in such securities of
192 any one issuing entity ~~corporation~~ except to the extent a higher
193 percentage of the same issue is included in a nationally
194 recognized market index, based on market values, at least as
195 broad as the Standard and Poor's Composite Index of 500
196 Companies, or except upon a specific finding by the board that
197 such higher percentage is in the best interest of the fund.

198 (6) With no more than 5 percent of any fund to be invested
199 as deemed appropriate by the board, notwithstanding investment
200 limitations otherwise expressed in this section. Before ~~Prior~~ to
201 the board engages ~~engaging~~ in any investment activity not
202 otherwise authorized under ss. 215.44-215.53, excluding
203 investments in publicly traded securities, options, financial

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204 futures, or similar instruments, the board shall present to the
205 Investment Advisory Council a proposed plan for such investment.
206 Such said plan must ~~shall~~ include, but not be limited to, a
207 detailed analysis of the investment, the expected benefits and
208 potential risks of such activity, and the methods for
209 monitoring and measuring the performance of the investment; ~~a~~
210 ~~complete description of the type, nature, extent and purpose of~~
211 ~~the investment, including description of issuer, security in~~
212 ~~which investment is proposed to be made, voting rights or lack~~
213 ~~thereof and control to be acquired, restrictions upon voting,~~
214 ~~transfer, and other material rights of ownership, and the~~
215 ~~existence of any contracts, arrangements, understandings, or~~
216 ~~relationships with any person or entity (naming the same) with~~
217 ~~respect to the proposed investment; and assurances that~~
218 ~~sufficient investment expertise is available to the board to~~
219 ~~properly evaluate and manage such activity. The Investment~~
220 ~~Advisory Council may obtain independent investment counsel to~~
221 ~~provide expert advice with regard to such proposed investment~~
222 ~~activity by the board, and the board shall defray such costs.~~

223 (15) With no more, in the aggregate, than 30 ~~20~~ percent of
224 any fund in alternative investments through participation in an
225 alternative investment vehicle as those terms are defined in s.
226 215.4401(3)(a), or in securities or investments that are not
227 publicly traded and not otherwise authorized by this section.

228 Section 4. For the purpose of incorporating the amendments
229 made by this act to section 215.47, Florida Statutes, in a
230 reference thereto, paragraph (a) of subsection (5) of section
231 112.661, Florida Statutes, is reenacted to read:

232 112.661 Investment policies.—Investment of the assets of

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233 any local retirement system or plan must be consistent with a
234 written investment policy adopted by the board. Such policies
235 shall be structured to maximize the financial return to the
236 retirement system or plan consistent with the risks incumbent in
237 each investment and shall be structured to establish and
238 maintain an appropriate diversification of the retirement system
239 or plan's assets.

240 (5) AUTHORIZED INVESTMENTS.—

241 (a) The investment policy shall list investments authorized
242 by the board. Investments not listed in the investment policy
243 are prohibited. Unless otherwise authorized by law or ordinance,
244 the investment of the assets of any local retirement system or
245 plan covered by this part shall be subject to the limitations
246 and conditions set forth in s. 215.47(1)-(6), (8), (9), (11) and
247 (17).

248 Section 5. For the purpose of incorporating the amendments
249 made by this act to section 215.47, Florida Statutes, in a
250 reference thereto, paragraph (a) of subsection (3) of section
251 420.503, Florida Statutes, is reenacted to read:

252 420.503 Definitions.—As used in this part, the term:

253 (3) "Authorized investments" means any of the following
254 securities:

255 (a) Investments permitted under s. 215.47(1) and (2),
256 without regard to any limitation set forth therein.

257 Section 6. For the purpose of incorporating the amendments
258 made by this act to section 215.47, Florida Statutes, in a
259 reference thereto, paragraph (e) of subsection (4) of section
260 1002.36, Florida Statutes, is reenacted to read:

261 1002.36 Florida School for the Deaf and the Blind.—

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262 (4) BOARD OF TRUSTEES.—

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

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

268 2. Procure professional services, such as medical, mental
269 health, architectural, and engineering.

270 3. Procure legal services without the prior written
271 approval of the Attorney General.

272 4. Determine eligibility of students and procedure for
273 admission.

274 5. Provide for the students of the school necessary
275 bedding, clothing, food, and medical attendance and such other
276 things as may be proper for the health and comfort of the
277 students without cost to their parents, except that the board of
278 trustees may set tuition and other fees for nonresidents.

279 6. Provide for the proper keeping of accounts and records
280 and for budgeting of funds.

281 7. Enter into contracts.

282 8. Sue and be sued.

283 9. Secure public liability insurance.

284 10. Do and perform every other matter or thing requisite to
285 the proper management, maintenance, support, and control of the
286 school at the highest efficiency economically possible, the
287 board of trustees taking into consideration the purposes of the
288 establishment.

289 11. Receive gifts, donations, and bequests of money or
290 property, real or personal, tangible or intangible, from any

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291 person, firm, corporation, or other legal entity. However, the
292 board of trustees may not obligate the state to any expenditure
293 or policy that is not specifically authorized by law. If the
294 bill of sale, will, trust indenture, deed, or other legal
295 conveyance specifies terms and conditions concerning the use of
296 such money or property, the board of trustees shall observe such
297 terms and conditions.

298 12. Deposit outside the State Treasury such moneys as are
299 received as gifts, donations, or bequests and may disburse and
300 expend such moneys, upon its own warrant, for the use and
301 benefit of the Florida School for the Deaf and the Blind and its
302 students, as the board of trustees deems to be in the best
303 interest of the school and its students. Such money or property
304 does not constitute and may not be considered a part of any
305 legislative appropriation.

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

311 14. Invest such moneys in securities enumerated under s.
312 215.47(1), (2)(c), (3), (4), and (10), and in The Common Fund,
313 an Investment Management Fund exclusively for nonprofit
314 educational institutions.

315 15. After receiving approval from the Administration
316 Commission, exercise the power of eminent domain in the manner
317 provided in chapter 73 or chapter 74.

318 Section 7. This act shall take effect upon becoming a law.