

By Senators Silver, Forman, Dyer, Geller, Klein, Dawson-White, Holzendorf, Casas and Scott

38-1017-99

1                                   A bill to be entitled  
 2           An act relating to public employee retirement  
 3           systems; creating the Public Education  
 4           Employees Portable Retirement Option within the  
 5           Florida Retirement System; providing  
 6           legislative purpose; providing definitions;  
 7           providing for administration of the plan;  
 8           providing for contributions; providing for  
 9           eligibility; providing for readmission;  
 10          providing for management; providing reporting  
 11          requirements; providing legislative intent;  
 12          providing an effective date.  
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 14          WHEREAS, the State of Florida has a long history of  
 15          serving its employees and their dependents, survivors, and  
 16          beneficiaries with the basic protections afforded by  
 17          governmental retirement systems, and  
 18          WHEREAS, it is not the intent of this act to lessen the  
 19          state's responsibility to provide a fiscally responsible  
 20          retirement, disability, and health subsidy benefit for  
 21          education employees, and  
 22          WHEREAS, the state's employee workforce parallels that  
 23          of the nation and reflects the growing trend in which the  
 24          typical worker holds multiple jobs and careers in his or her  
 25          lifetime, and  
 26          WHEREAS, the state's Workforce 2000 Study Commission  
 27          recommended to the 1998 Legislature that Florida "implement a  
 28          defined contribution retirement plan choice for the Florida  
 29          Retirement System employees and employers that is cost-neutral  
 30          in all significant aspects," and  
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1           WHEREAS, Florida's public school teachers, principals,  
2 district administrators, and other educational staff should  
3 have an option similar to that currently provided select  
4 higher education employees and specific management classes in  
5 the public sector, and

6           WHEREAS, this option is a defined contribution plan  
7 that permits employees the ability to own, control, and direct  
8 their individual retirement programs and would greatly reduce  
9 the numbers of employees who receive no retirement benefits  
10 because they do not stay on the job long enough to vest, and

11           WHEREAS, such an optional retirement program would be  
12 portable and permit employees greater freedom and flexibility,  
13 thereby assisting state employers in attracting and retaining  
14 a quality workforce, NOW, THEREFORE,

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

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18           Section 1. Short title; legislative purpose;  
19 definitions; creation of Public Education Employees Portable  
20 Retirement Option; administration; eligibility; readmission;  
21 employee education; management; reporting requirements.--

22           (1) SHORT TITLE.--This section may be cited as the  
23 "Public Education Employees Portable Retirement Option."

24           (2) PURPOSE.--

25           (a) This section shall require the creation of an  
26 alternative retirement option for current and future public  
27 education employees. The purpose of this section is to require  
28 the Florida Retirement System to provide a defined  
29 contribution retirement option that is fully portable,  
30 immediately vested, and fully funded on a current basis from  
31 employer contributions. Further, the purpose of the Public

1 Education Employees Portable Retirement Option is to increase  
2 flexibility for employees to make the transition into other  
3 public or private employment; provide an immediate retirement  
4 benefit; increase options for addressing retirement needs,  
5 personal financial planning, and career transition; provide  
6 members with the opportunity to participate in, contribute to,  
7 and manage their retirement future; and provide a fair and  
8 reasonable value for employees who leave service before  
9 retirement.

10 (b) In no event may the Florida Retirement System fail  
11 to continue to offer membership in any retirement system open  
12 at the time of the enactment of this section to current  
13 employees, new employees, or retirees as a result of  
14 implementing this alternative retirement option.

15 (c) The alternative retirement option authorized by  
16 this section shall be established and administered in  
17 accordance with the requirements for section 401(a) qualified  
18 retirement plans under the Internal Revenue Code of 1986, as  
19 amended.

20 (3) DEFINITIONS.--As used in this section, the term:

21 (a) "Accrued service benefit" means the amount of an  
22 employee's accrued retirement benefit earned through the date  
23 of election to participate in the portable retirement option.

24 (b) "Actuarial equivalent" means a benefit of equal  
25 value when computed upon the basis of an interest rate and  
26 mortality tables adopted by the manager.

27 (c) "Beneficiary" means the joint annuitant or any  
28 other person, organization, estate, or trust fund designated  
29 by a participant to receive a retirement benefit that may be  
30 payable upon the participant's death.

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1           (d) "Compensation" means the remuneration paid an  
2 employee by the employer for work performed as defined in  
3 section 121.021(22), Florida Statutes.

4           (e) "Defined benefit plan" or "DB plan" means the  
5 current retirement plan for education employees administered  
6 by the Florida Retirement System.

7           (f) "Defined contribution plan" means the PRO plan for  
8 education employees administered by the manager.

9           (g) "Disability benefit" means benefits payable in the  
10 event of disability as provided in paragraph (7)(g).

11           (h) "Employee" means any public school employee who is  
12 eligible to participate in the Florida Retirement System.

13           (i) "Employer" means a school district of this state.

14           (j) "Employer contribution" means an amount deposited  
15 by an employer into a participant's employer contribution  
16 account periodically from its own funds, coinciding with the  
17 employee's regular pay period.

18           (k) "Existing employee" means a person who is an  
19 employee on the date a PRO applicable to the employee is  
20 implemented.

21           (l) "Existing retirement system" means any state or  
22 local public retirement system in existence on the date an  
23 employer implements a PRO, including, but not limited to, one  
24 established under section 121.011, section 122.01, section  
25 122.05, section 238.01, or section 240.3195, Florida Statutes.

26           (m) "Health benefit subsidy" means benefits provided  
27 by employer contributions as provided by subsection (6)(a).

28           (n) "Individual account" or "account" means an account  
29 established for each participant to record the deposit of  
30 contributions to the PRO. An employer contribution account is  
31 maintained for employer contributions and earnings thereon. A

1 participant contribution account is maintained for participant  
2 contributions to the PRO and earnings thereon.

3 (o) "Manager" means the Division of Retirement, which  
4 is the agency assigned administrative responsibility for the  
5 implementation of the PRO.

6 (p) "Participant" means an employee who elects to  
7 participate in the PRO.

8 (q) "Participant contribution" means an amount  
9 contributed voluntarily to the participant contribution  
10 account.

11 (r) "Portable Retirement Option Commission" or "PROC"  
12 means the select committee assigned the responsibility for  
13 overseeing the implementation of the plan, approval of  
14 additional plan vendors, selection of the vendor providing  
15 transfer education, disability coverage, and the ongoing  
16 oversight of plan service providers.

17 (s) "PRO" means the alternative portable retirement  
18 option plan created by this section for education employees,  
19 with contributions accumulating in an individual account and  
20 in which the participant chooses the investment approach for  
21 his or her retirement funds.

22 (t) "Retirement" means an employee's withdrawal from  
23 active employment by an employer and completion of all  
24 conditions precedent to retirement.

25 (u) "Transfer education" means a specific education  
26 effort designed to assist existing members in deciding whether  
27 to transfer to the PRO or remain in the Florida Retirement  
28 System.

29 (4) CREATION.--The Florida Retirement System shall  
30 establish and implement a portable retirement option for  
31 current and future public education employees under which

1 contracts providing retirement, death, and disability benefits  
2 may be purchased for employees.

3 (5) ELIGIBILITY AND PARTICIPATION.--

4 (a) Any public education employee, except an employee  
5 electing to participate in the optional retirement program  
6 established under section 121.35, Florida Statutes, or the  
7 Senior Management Service Optional Annuity Program established  
8 under section 121.055, Florida Statutes, may voluntarily elect  
9 membership in the PRO. Employees electing to participate in  
10 the PRO may not participate in any applicable existing  
11 retirement system but may participate in any and all  
12 applicable supplemental plans, including those offered under  
13 ss. 403(b) and 457 of the Internal Revenue Code.

14 (b) Existing employees electing to participate in the  
15 PRO must provide written notice to the employer and the  
16 Florida Retirement System on a form provided by the manager  
17 and signed by the employee of their election and the provider  
18 they have chosen. Transfer procedures shall be established by  
19 the Florida Retirement System. Each employee will have an  
20 election period of not less than 90 days after the  
21 implementation date of the PRO. In addition, the PRO plan  
22 shall be open to employee transfers from the Florida  
23 Retirement System for 90 days as of June 1st of every year  
24 after the implementation date, but no transfer under the  
25 reopening periods shall be permitted for employees who have  
26 reached their normal retirement date. Employees failing to  
27 make an election during the applicable time period will  
28 automatically remain in the Florida Retirement System. A  
29 decision to transfer from the Florida Retirement System to the  
30 PRO is irrevocable. The Florida Retirement System, within 45  
31 days after notification, shall transfer to the named provider

1 a payment equal to the actuarial equivalent single-sum value  
2 of the employee's accrued service benefit on the date of  
3 transfer. The amount so transferred shall be credited to the  
4 employee's employer contribution account.

5 (c) New employees electing to participate in the PRO  
6 must provide written notice to the employer and the Florida  
7 Retirement System of their election and the provider they have  
8 chosen. Employees failing to make an election into PRO will  
9 automatically participate in the current defined benefit plan.  
10 A new employee shall have the limited right to transfer from  
11 the Florida Retirement System to the PRO under the same terms  
12 and conditions as existing employees under paragraph (b), as  
13 if the date of employment were the date of implementation.

14 (6) CONTRIBUTIONS.--

15 (a) Each employer shall contribute on behalf of each  
16 participant in the PRO an amount equal to 10 percent of the  
17 employee's compensation, plus the portion of the contribution  
18 rate required in section 112.363(8), Florida Statutes, that  
19 would otherwise be assigned to the Retiree Health Insurance  
20 Subsidy Trust Fund, less an amount approved by the manager  
21 which shall be deducted to provide for the administration of  
22 the PRO.

23 (b) The payment of the contributions to the PRO which  
24 is required by this subsection for each participant and any  
25 voluntary participant contributions shall be made by the  
26 employer to the designated provider contracting for payment of  
27 benefits for the participant under the program. Each  
28 participant shall vest immediately in all employer  
29 contributions.

30 (c) Each employer shall receive a debit or credit on  
31 behalf of each participant in the PRO in an amount equal to

1 the amortization assigned to such participant by the Florida  
2 Retirement System based on the percentage applicable to all  
3 other members of the Florida Retirement System in that  
4 membership class, subject to the following limitation:  
5 increments to the amortization percentage due to benefit  
6 improvements or reductions adopted subsequent to any  
7 participant's election of participation in the PRO shall not  
8 be assigned to such participants.

9 (d) Participants may make voluntary contributions to  
10 their accounts according to procedures established by the  
11 manager, subject to the limitations of the Internal Revenue  
12 Code.

13 (7) BENEFITS.--

14 (a) Benefits shall be payable under the PRO to  
15 participants, or their beneficiaries as designated by the  
16 participants in the contract with a provider company, and such  
17 benefits shall be paid only by the designated company in  
18 accordance with the terms of the annuity contract or contracts  
19 applicable to the participant. The participant must be  
20 terminated from all employment with all Florida Retirement  
21 System employers, as provided in section 121.021(39), Florida  
22 Statutes, to begin receiving the employer-funded benefit. In  
23 the event of the participant's death, benefits will be  
24 available as if the participant retired on the day the  
25 participant died. In the event of disability, benefits will be  
26 available as if the participant retired on the date of  
27 disability, and supplemental disability benefits may be  
28 available as provided in paragraph (g).

29 (b) The benefits payable to any person under the PRO,  
30 and any contribution accumulated under such program, shall not  
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1 be subject to assignment, execution, or attachment or to any  
2 legal process whatsoever.

3 (c) A participant who chooses to receive his or her  
4 benefits upon termination of employment has the responsibility  
5 to notify the provider company of the date on which he or she  
6 wishes the benefits funded by employer contributions to begin.  
7 Benefits may be deferred until such time as the participant  
8 chooses to make such application.

9 (d) Benefits funded by the participant contributions  
10 may be paid out at any time and in any form within the limits  
11 provided in the contract between the participant and his or  
12 her provider company. The participant shall notify the  
13 provider company regarding the date and provisions under which  
14 he or she wants to receive the participant-funded portion of  
15 the plan.

16 (e) Designation of beneficiaries.--Each participant  
17 may, on a form provided for that purpose, signed and filed  
18 with the manager, designate a choice of one or more persons,  
19 named sequentially or jointly, as his or her beneficiary who  
20 shall receive the benefits that are payable in the event of  
21 the participant's death, pursuant to the provisions of PRO. If  
22 no beneficiary is named in the manner provided above, or if no  
23 beneficiary designated by the participant survives the  
24 participant, the beneficiary shall be the spouse of the  
25 deceased, if living. If the participant's spouse is not alive  
26 at his or her death, the beneficiary shall be the living  
27 children of the participant. If no children survive, the  
28 beneficiary shall be the participant's father or mother, if  
29 living; otherwise, the beneficiary shall be the participant's  
30 estate. The beneficiary most recently designated by a  
31 participant on a form or letter filed with the manager shall

1 be the beneficiary entitled to any benefits payable at the  
2 time of the participant's death.

3 (f) Distribution options.--The manager is directed to  
4 develop a variety of standard distribution options for  
5 employees participating in the PRO, in the event of death,  
6 disability, retirement, or termination. The balance of  
7 participant accounts will be disbursed in accordance with  
8 these options.

9 (g) Supplemental disability coverage.--The manager  
10 will design supplemental disability coverage for members in  
11 the PRO, to be provided from external providers approved by  
12 the PROC, so that PRO benefits plus supplemental disability  
13 benefits are comparable to the amount of benefits provided  
14 under the Florida Retirement System. Contributions to fund the  
15 disability coverage will be provided from the employer  
16 contribution allocation.

17 (8) READMISSION TO THE PLAN.--

18 (a) Any employee who terminates employment while  
19 covered under the defined benefit plan and then is later  
20 reemployed by an employer shall be eligible for membership in  
21 either the defined benefit plan or the PRO. Members whose  
22 employment terminates while covered under the PRO and who are  
23 later reemployed shall be eligible for membership in the PRO  
24 plan only and may have their contributions to that plan  
25 restored, subject to rules established by the manager.

26 (b) An employee whose employment with a former  
27 employer or an existing employer is suspended as a result of  
28 an approved leave of absence, approved maternity or paternity  
29 break in service, or any other approved break in service  
30 authorized by an employer is eligible for readmission to the

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1 plan in which he or she was a member at the time the break in  
2 service began.

3 (c) In all cases in which a question exists as to the  
4 readmission to membership in a plan, the manager shall decide  
5 the question.

6 (9) TRANSFER EDUCATION PROGRAM.--(a) The manager  
7 shall supervise a comprehensive transfer education program, to  
8 be available to all eligible education employees. The program  
9 shall be provided by an independent counseling specialist  
10 selected by the Portable Retirement Option Commission.

11 (10) IMPLEMENTATION AND OVERSIGHT.--

12 (a) There is created a Portable Retirement Option  
13 Commission. The commission is responsible for overseeing the  
14 implementation of the PRO, approving additional plan  
15 providers, selecting counselors or specialists to deliver a  
16 transfer education program, disability coverage, and approving  
17 policy and procedures as recommended by the manager. Such  
18 responsibilities will terminate July 1, 2001. Thereafter, the  
19 commission will continue to meet annually to monitor ongoing  
20 plan activities, approve changes in plan services, and provide  
21 an annual status report to the Governor and the Legislature.

22 (b) The commission shall be composed of the following  
23 members. The chairperson shall be selected by a vote of  
24 members. One member shall be a school board member selected by  
25 the Florida School Boards Association, one member shall be a  
26 district superintendent selected by the Florida Association of  
27 District School Superintendents, and one member shall be a  
28 school administrator selected by the Florida Association of  
29 School Administrators. Two members shall be teachers, with one  
30 selected by the Florida Teaching Profession--National  
31 Education Association and the second selected by the Florida

1 Education Association/United, and two members shall be  
2 educational support employees with one selected by the Florida  
3 Teaching Profession--National Education Association and the  
4 second selected by the Florida Education Association/United.  
5 Commissioners shall serve for 2 years except that, for the  
6 initial appointment, three of the commission members shall be  
7 appointed for a 1-year term and four shall be appointed for a  
8 2-year term, as determined by the majority of the membership.

9 (c) The Division of Retirement is responsible for  
10 providing commission staff support for commission functions,  
11 and the director of the division shall serve as facilitator  
12 for commission meetings. The director shall also provide  
13 information, advice, and counsel as requested by the  
14 commission in carrying out its duties.

15 (d) Subject to the requirements of paragraph (a), the  
16 manager is authorized to exercise all powers necessary to  
17 effectuate the provisions of this section. The manager shall  
18 delegate to service providers the day-to-day operations of the  
19 plan. Administrative costs shall be paid from the employer  
20 contributions as provided by subsection (6)(a); any other  
21 administrative costs shall be paid from the accounts of the  
22 participants in the PRO.

23 (11) MANAGEMENT OF THE PLAN.--

24 (a) The Department of Revenue shall act as manager of  
25 the PRO. The manager shall identify plan providers for the  
26 PRO. Plan providers shall include the plan providers included  
27 in the optional retirement plan pursuant to section 121.35,  
28 Florida Statutes. Through a competitive bidding process, the  
29 manager shall select additional providers, one of which must  
30 include a provider who can offer one or more mutual fund  
31 options. No more than a total of three additional providers

1 shall be selected. In addition to the required mutual fund  
2 option, the manager may consider a group annuity contract,  
3 individual retirement annuities, interests in trusts,  
4 additional mutual funds, or other financial instruments as  
5 necessary or appropriate for the plan to provide retirement  
6 and related benefits comparable to those provided in the  
7 existing retirement systems. The manager shall consider all of  
8 the following in selecting additional plan providers:

9 1. The experience of the plan provider in 10 other  
10 states providing retirement annuities or trusteed mutual fund  
11 arrangements as defined contribution primary pension plans for  
12 public employees.

13 2. The financial stability of the plan provider as  
14 evidenced by national rating services.

15 3. The intrastate and interstate portability of the  
16 product offered by the plan provider, including flexibility in  
17 offering early withdrawal options.

18 4. Product compliance with the Internal Revenue Code.

19 5. The ratio of assigned plan provider employees to  
20 participants.

21 6. The ability of the plan provider to coordinate and  
22 apply employer contribution data with the employer.

23 7. The capability of the plan provider to meet the  
24 selection criteria.

25 8. The educational services of the plan provider,  
26 including personal counseling, group seminars, and  
27 retirement-related financial planning services.

28 (b) As part of the investment options available in  
29 paragraph (a), each provider will offer a conservative asset  
30 allocation option for those members who choose not to actually  
31 manage their accounts.

1           (c) Policy procedures needed for the selection  
2 process, and selection of additional plan providers, shall be  
3 developed and recommended by the Department of Revenue,  
4 subject to the approval of the Portable Retirement Option  
5 Commission.

6           (d) Subject to paragraph (a), the manager shall  
7 periodically review each plan provider to ensure compliance  
8 with the selection criteria established in this subsection.  
9 Pursuant to review, plan provider contracts that are not in  
10 compliance may be terminated. New plan services may be added  
11 as a result of the annual review, with providers selected  
12 through an open competitive process. Subject to any applicable  
13 requirement in the agreement, the manager may provide for the  
14 transfer of a participant's individual account to another  
15 approved plan provider selected by the participant.

16           (e) The manager, working cooperatively with the school  
17 districts in the state, will develop the policies and  
18 procedures necessary for the local administration of the PRO.  
19 Ongoing plan administration shall be under the coordination of  
20 each local employer in conjunction with the service providers.

21           (12) REPORTING REQUIREMENTS.--The applicable service  
22 providers shall prepare, or cause to be prepared, at least  
23 quarterly, a statement for each participant's individual  
24 account. The statement shall include the current market value  
25 of the account, including earnings or losses, self-directed  
26 investment options, an itemization of changes in the account  
27 contributions for the period, and other information as  
28 required by the manager. Service providers shall provide  
29 summary reports to the employer annually.

30           Section 2. The Legislature finds that a proper and  
31 legitimate state purpose is served when employees and retirees

1 of the state and of its political subdivisions, and the  
2 dependents, survivors, and beneficiaries of such employees and  
3 retirees, are extended the basic protections afforded by  
4 governmental retirement systems that provide fair and adequate  
5 benefits and that are managed, administered, and funded in an  
6 actuarially sound manner, as required by section 14, Article X  
7 of the State Constitution and part VII of chapter 112, Florida  
8 Statutes. Therefore, the Legislature hereby determines and  
9 declares that the provisions of this act fulfill an important  
10 state interest.

11 Section 3. Construction; severability.--

12 (1) The retirement plan created by this act shall be  
13 administered so as to comply with the Federal Internal Revenue  
14 Code, Title 26 U.S.C., and specifically with plan  
15 qualification requirements imposed on governmental plans by  
16 section 401(a) of the Internal Revenue Code.

17 (2) Any section or provision of this act that is  
18 susceptible to more than one construction shall be interpreted  
19 in favor of the construction most likely to satisfy  
20 requirements imposed by section 401(a) of the Internal Revenue  
21 Code.

22 (3) If any section or provision of this act is found  
23 to be in conflict with the plan qualification requirements for  
24 the governmental plans in section 401(a) of the Internal  
25 Revenue Code, the conflicting part of this act is inoperative  
26 solely to the extent of the conflict, and such finding shall  
27 not affect the operation of the remainder of this act.

28 Section 4. This act shall take effect July 1, 2000.  
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SENATE SUMMARY

Creates a Portable Retirement Option plan for public school employees, which is a defined contribution plan that is an alternative to the defined benefit plan offered under the Florida Retirement System.