SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SBs 350 and 364

SPONSOR: Governmental Oversight and Productivity Committee

SUBJECT: Temporary Employment/Retirement/OPS

DATE: March 30, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Wilson	GO	Favorable/CS
2.			FP	
3.				
4.				
5.				

I. Summary:

The Proposed Committee Substitute provides for the development of a contracted alternative Social Security retirement program for state employees filling temporary positions and funded out of the *Other Personal Services* (OPS) budget category. The bill also permits the tax sheltering of sick and annual leave in compliance with the Internal Revenue Code. Finally the bill places the unobligated employer payroll taxes into a state budget reserve from which incentive monies may be drawn by agencies meeting or exceeding their performance-based budget standards. The bill also directs that certain quality assurance measures be adopted on the background screening of provider companies.

This bill amends sections 110.1315 and 110.1316, Florida Statutes.

II. Present Situation:

When Congress amended the Social Security Act in 1990 to require Social Security Act coverage of public employees not participating in an employer-sponsored retirement plan, it also permitted public employers to offer alternative, market-based plans to such employees. Such plans are demarcated by the particular section of the tax code, 3121, and give such part-time, seasonal, or temporary employees the expectation of participation in a personally-owned product and free the public employer from payment of its 6.2% matching Social Security contribution. The Department of Management Services (DMS) reports that there are more than 43,000 working units classified as OPS on any given day in State of Florida agencies. More than three-quarters of these units are in the State University System, a large number of which are students.

A working group of state agency personnel staff (The Ad Hoc OPS FICA Alternative Task Group) briefed the issues raised in this bill in 1993-95. A separate study of the alternative Social Security option was also reviewed by a committee of the House of Representatives in 1994. No proposals for implementation were forthcoming from either group; the legislative staff recommendation at that time was not to proceed further without the collection of additional payroll information on OPS employment. The state agency working group was hosted by the Board of Regents staff and it reviewed materials provided by contract vendors and implementation of such a program in the State of Georgia. The retirement director of Florida summarized the organizational choices facing this state in a separate memorandum dated September 30, 1993. That document, along with actuarial study 94-3, commissioned by that agency's actuaries, discussed six alternatives for the retirement interests of part-time, seasonal, and temporary employees.

Data collected by the DMS, and reported in its annual *Workforce Report* estimate that typical state employees receive benefits equal to some 35 percent of salary. These appear most commonly in the form of leave, health and life insurance, and retirement contributions. OPS employees do not receive any of these benefits, nor are they eligible for representation by a collective bargaining agent. The profile which emerges of an OPS employee is one less than 30 years of age, earning a gross annual salary of $4700. One-half of all OPS in FY 93 worked six months or less and earned $1082; at least two-thirds of all such employees worked less than one year.

Within the past two years two other events have occurred. A legislative proposal was advanced, but not passed, which would have extended health insurance coverage to state OPS employees. In *Florida Public Employees Council 79, AFSCME v. Department of Juvenile Justice, Department of Children and Families, and Lawton Chiles*, (2d Cir. Ct. Case No. 98-4383), the State of Florida's largest collective bargaining agent challenged the use of OPS employment in two state agencies. Among other matters, the case argues for the provision of full employment-based benefits for OPS employees whom the plaintiffs believe are supplanting the work of full-time career employees.

III. Effect of Proposed Changes:

Section 1. Section 110.1315, F.S., is created to direct the DMS to contract for the provision of alternative Social Security Act retirement coverage for OPS employees. The selection of a provider company is to be completed by October 1, 1999, for plan commencement on March 1, 2000. The plan must be in compliance with state and federal law governing such arrangements. The plan must not charge any withdrawal or surrender fees to the participants and must provide for immediate and full vesting of all contributions. Employers and employees must be held harmless from any consequences should the Internal Revenue Service find the plan to be in violation of the federal tax code.

Section 2. Section 110.1316, F.S., is amended to provide for the development of a contractually managed tax-shielding program for the payment of sick and annual leave from terminating and retiring state employees. The plan will be funded from employer payments for such leave and must comply with applicable state and federal laws.

Section 3. An unnumbered section of Florida law is created to provide that unobligated employer contributions attributable to the above programs shall be placed in administered funds in the state planning and budgeting system. These funds will be made available for the implementation of incentives authorized under s. 216.0166, F.S., in the execution of performance-based management. The size of the fund will be determined annually by the Legislature.

Section 4. The bill requires that any contracted private company be subject to due diligence review, have proven functional systems which are date calculation compliant, and maintain internal quality assurance systems.

Section 5. The bill is effective July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Provider companies will establish enrollment and maintenance fees in order to meet their costs and profit margins. These fees will vary but can be expected to take any of the following forms: an initiation or plan establishment fee; an annual contract maintenance fee; a surrender or closure fee; an investment management/trust fee; and any other fees required by regulatory authorities for similar type plans. Similar fee structures can be found in other market-based products, including the State of Florida Deferred Compensation Plan, created under Section 457 of the Internal Revenue Code.

B. Private Sector Impact:

The advantages and disadvantages of this approach vary with individual circumstances. Generally, OPS is transitory employment not designed to establish and maintain a working career. An individual may be expected to obtain the forty quarters vesting in Social Security at multiple or other continuous employment points in a career. However, such a 3121 program will provide little benefit to any person who works a short period and cashes out their account balances at each employment termination.

C. Government Sector Impact:

Sections 1 and 2 of the bill tax shelter income on both the employer and employee’s behalf. As a result, it acts as a tax expenditure to the United States Treasury since neither employer payroll taxes nor employee taxable income would accrue to the federal government.

There will be additional, unknown costs to the DMS in the establishment of a procurement program and the performance of the due diligence requirements.

Funds otherwise payable to the federal government will be retained by the State of Florida for the funding of performance goals achieved or exceeded. Whether these funds will supplant or support existing funding levels will be determined by subsequent Legislatures. The bill in its present form does not place these amounts in any protected account.

The Legislative Appropriations System/Planning and Budgeting System reports that 6.2 percent of the OPS appropriation category for the present fiscal year is about $9.1 million. The data base management system maintained by the Comptroller's Department of Banking and Finance reports different figures as it recognizes such items differently. That system reported OPS expenditures for the prior fiscal and calendar 1998 years, respectively, to be $465 million and $491 million. A range of savings, assuming full implementation and universal enrollment, would extend from $9.1 million to some $30 million on an expenditure basis in unobligated employer payroll taxes.

The Department of Banking and Finance also reported that some $63 million was paid in all forms of leave during the prior calendar year. Applying the 6.2 percent factor to this amount would yield another $4 million in employer payroll tax savings.

Cumulative employer-based savings for State of Florida agencies could exceed $34 million on an annual basis and be made available for performance-based management.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The use of such a plan will be a temporary disincentive to employees anticipating use of their terminating leave balances for nonrecurring purchases, contributions to other tax sheltered accounts, or other personal expenditures. Regardless of when the employee actually or constructively receives these amounts, they will be taxed at the appropriate income bracket for that tax year. Such leave balances may be cashed in without penalty immediately after posting to the tax-sheltered account, if the participant so desires.

The tax sheltering of such income, or the use of the alternative OPS pension program, may result in some state agencies and their employees directly receiving cash or in-kind benefits not otherwise provided by their employer as a result of performance incentive payments.

The provisions contained in Section 4 are derived from recommendations by the Office of Statewide Prosecution in its *Presentment, No True Bill, and Recommendations* dated June 19, 1997, on the actions of the Unisys Corporation in its management of Medicaid programs in the Agency for Health Care Administration and the State Employees Health Self Insurance Trust Fund. The report documented lack of internal controls and quality assurance in the procurement process by corporation and government officials as well as in the actual operation of both programs.

VIII. Amendments:

None.