

By Senators Silver, Holzendorf, Casas and Forman

38-686-00

1 A bill to be entitled
2 An act relating to public employee retirement
3 systems; creating the Portable Retirement
4 Option for Public Education Employees within
5 the 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's and reflects the growing trend in which the
24 typical worker holds multiple jobs and careers during his or
25 her 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 gives employees the ability to own, control, and direct
8 their individual retirement programs and will greatly reduce
9 the numbers of employees who receive no retirement benefits
10 because they do not hold their jobs long enough to vest, and

11 WHEREAS, such an optional retirement program should be
12 portable and permit employees greater freedom and flexibility,
13 thereby assisting employers in attracting and retaining a
14 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 requires 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, contribute, and
7 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 on the effective date of this section to current employees,
13 new employees, or retirees as a result of implementing this
14 alternative retirement option.

15 (c) The alternative retirement option required by this
16 section must be established and administered in accordance
17 with the requirements for qualified retirement plans under
18 section 401(a) of 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 the 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" means the current
5 retirement plan for education employees administered by the
6 Florida Retirement System.

7 (f) "Defined contribution plan" means the new portable
8 retirement option for education employees administered by the
9 manager.

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

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

14 (i) "Employer" means any public school district.

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

19 (k) "Existing employee" means any employee as of the
20 date of implementation of the portable retirement option.

21 (l) "Existing retirement system" means any state or
22 local public retirement system in existence upon the
23 employer's implementation of the portable retirement option,
24 including, but not limited to, those established under
25 sections 121.011, 122.01, 122.05, 238.01, and 240.3195,
26 Florida Statutes.

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

29 (n) "Implementation date" means July 1, 2001.

30 (o) "Individual account" means an account established
31 for each participant to record the deposit of contributions to

1 the portable retirement option. An employer contribution
2 account is maintained for employer contributions and earnings
3 thereon. A participant contribution account is maintained for
4 the participant contributions to the portable retirement
5 option and earnings thereon.

6 (p) "Manager" means the Division of Retirement, which
7 is the agency assigned administrative responsibility for the
8 implementation of the portable retirement option.

9 (q) "Participant" means an employee who elects to
10 participate in the portable retirement option.

11 (r) "Participant contribution" means an amount
12 contributed voluntarily to the participant contribution
13 account.

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

19 (t) "Portable retirement option commission" means the
20 commission assigned the responsibility for overseeing the
21 implementation of the plan; approval of additional plan
22 vendors; selection of the vendor providing transfer education;
23 disability coverage; and the ongoing oversight of plan service
24 providers.

25 (u) "Retirement" means an employee's withdrawal from
26 the active employment of an employer and completion of all
27 conditions precedent to retirement.

28 (v) "Transfer education" means a specific education
29 effort designed to assist existing members in making the
30 decision to transfer to the new portable retirement option or
31 remain in the Florida Retirement System.

1 (4) CREATION.--The Florida Retirement System shall
2 establish and implement a portable retirement option for
3 existing and future public education employees under which
4 contracts providing retirement, death, and disability benefits
5 may be purchased for employees.

6 (5) ELIGIBILITY AND PARTICIPATION.--

7 (a) Any public education employee except an employee
8 electing to participate in the optional retirement program
9 established under section 121.35, Florida Statutes, or the
10 Senior Management Service Optional Annuity Program established
11 under section 121.055, Florida Statutes, may voluntarily elect
12 membership in the portable retirement option on or after the
13 implementation date, as provided in this section. Such
14 employees electing to participate in the portable retirement
15 option may not continue to participate in any applicable
16 existing retirement system, but may participate in applicable
17 supplemental plans, including those offered under ss. 403(b)
18 and 457 of the Internal Revenue Code.

19 (b) Existing employees electing to participate in the
20 portable retirement option must provide written notice to the
21 employer and the Florida Retirement System on a form provided
22 by the manager and signed by the employee of their election
23 and the provider they have chosen. Transfer procedures shall
24 be established by the Florida Retirement System. Each employee
25 will have an election period of not less than 90 days after
26 the implementation date of the portable retirement option. In
27 addition, the portable retirement option plan shall be open to
28 employee transfers from the Florida Retirement System for 90
29 days as of June 1 of each year after the implementation date,
30 but transfer under the reopening periods is not permissible
31 for employees who have reached their normal retirement date.

1 Employees failing to make an election during the applicable
2 time period will automatically remain in the Florida
3 Retirement System. A decision to transfer from the Florida
4 Retirement System to the portable retirement option is
5 irrevocable. The Florida Retirement System, within 45 days
6 after notification, shall transfer to the named provider a
7 payment equal to the actuarial equivalent single-sum value of
8 the employee's accrued service benefit on the date of
9 transfer. The amount so transferred shall be credited to the
10 employee's employer contribution account.

11 (c) New employees electing to participate in the
12 portable retirement option must provide written notice to the
13 employer and the Florida Retirement System of their election
14 and the provider they have chosen. Employees who fail to elect
15 to participate in the portable retirement option will
16 automatically participate in the current deferred benefit
17 plan. A new employee shall have the limited right to transfer
18 from the Florida Retirement System to the portable retirement
19 option under the same terms and conditions as existing
20 employees under paragraph (b), as if the date of employment
21 were the date of implementation.

22 (6) CONTRIBUTIONS.--

23 (a) Each employer shall contribute on behalf of each
24 participant in the portable retirement option an amount equal
25 to 10 percent of compensation, plus the portion of the
26 contribution rate required in section 112.363(8), Florida
27 Statutes, which would otherwise be assigned to the Retiree
28 Health Insurance Subsidy Trust Fund, less an amount approved
29 by the manager which shall be deducted to provide for the
30 administration of the portable retirement option.

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1 (b) The payment of the contributions to the portable
2 retirement option that is required by this subsection for each
3 participant and any voluntary participant contributions shall
4 be made by the employer to the designated provider contracting
5 for payment of benefits for the participant under the program.
6 Each participant shall vest immediately in all employer
7 contributions.

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

12 (7) BENEFITS.--

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

28 (b) The benefits payable to any person under the
29 portable retirement option, and any contribution accumulated
30 under such program, shall not be subject to assignment,
31 execution, or attachment or to any legal process.

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

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

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

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

7 (g) The manager will design disability coverage for
8 members in the portable retirement option, to be provided from
9 external providers approved by the Portable Retirement Option
10 Commission, so that portable retirement option benefits plus
11 supplemental disability benefits are comparable to the amount
12 of benefits provided under the Florida Retirement System, and
13 contributions to fund the disability coverage will be provided
14 from the employer contribution allocation.

15 (8) READMISSION TO THE PLAN.--

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

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

12 (10) IMPLEMENTATION AND OVERSIGHT.--

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

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

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

12 (c) The manager shall be responsible for providing
13 staff support to the commission for its functions, and as
14 facilitator for commission meetings. The manager shall also
15 provide information, advice, and counsel as requested by the
16 commission in carrying out its duties.

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

25 (11) MANAGEMENT OF THE PLAN.--

26 (a) The Division of Retirement shall act as manager of
27 the portable retirement option. The manager shall identify
28 plan providers for the portable retirement option. Plan
29 providers shall include the plan providers included in the
30 optional retirement plan pursuant to section 121.35, Florida
31 Statutes. Through a competitive bidding process, the manager

1 shall select additional providers, one of which must be a
2 provider who can offer one or more mutual fund options. No
3 more than three additional providers shall be selected. In
4 addition to the required mutual fund option, the manager may
5 consider a group annuity contract, individual retirement
6 annuities, interests in trusts, additional mutual funds, or
7 other financial instruments as necessary or appropriate for
8 the plan to provide retirement and related benefits comparable
9 to those provided in the existing retirement systems. The
10 manager shall consider all of the following in selecting
11 additional plan providers:

12 1. The experience of the plan provider in 10 other
13 states that provide retirement annuities or trustee mutual
14 fund arrangements as defined contribution primary pension
15 plans for public employees.

16 2. The financial stability of the plan provider as
17 shown by national rating services.

18 3. The intrastate and interstate portability of the
19 product offered by the plan provider, including flexibility in
20 offering early withdrawal options.

21 4. Product compliance with the Internal Revenue Code.

22 5. The ratio of assigned plan provider employees to
23 participants.

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

26 7. The capability of the plan provider to meet the
27 selection criteria.

28 8. The educational services of the plan provider,
29 including personal counseling, group seminars, and
30 retirement-related financial planning services.

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1 (b) As part of the investment options available in
2 paragraph (a), each provider must offer a conservative asset
3 allocation option for those members who choose not to actually
4 manage their accounts.

5 (c) The manager shall develop and recommend policy
6 procedures needed for the selection process and the selection
7 of additional plan providers, subject to the approval of the
8 commission.

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

19 (e) The manager, working cooperatively with the school
20 districts, will develop the policies and procedures necessary
21 for the local administration of the portable retirement
22 option. Ongoing plan administration shall be under the
23 coordination of each local employer in conjunction with the
24 service providers.

25 (12) REPORTING REQUIREMENTS.--

26 (a) The applicable service providers shall prepare or
27 cause to be prepared, at least quarterly, a statement for each
28 participant's individual account. The statement shall include
29 the current market value of the account, including earnings or
30 losses, self-directed investment options, an itemization of
31 changes in the account contributions for the period, and other

1 information required by the manager. Service providers shall
2 provide summary reports to the employer annually.

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

15 Section 3. Construction.--

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

21 (2) Any section or provision of this act which may be
22 susceptible to more than one construction shall be interpreted
23 in favor of the construction most likely to satisfy
24 requirements imposed by section 401(a) of the Internal Revenue
25 Code.

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

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

SENATE SUMMARY

Creates a portable retirement option, which is a defined contribution plan, for eligible public education employees. Prescribes duties of the Division of Retirement and qualifications for and duties of plan providers. Creates a Portable Retirement Option Commission, with duties for plan implementation and responsibility for continuing oversight.