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DATE: April 20, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4333

RELATING TO: Public Employee Retirement Systems

SPONSOR(S): Representative Sanderson and others

COMPANION BILL(S): SB 754 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates the Public Employees Portable Retirement Option Act to **require** state and local public agency employers to provide certain state and local public agency employees a defined contribution alternative basic pension plan that is fully portable, immediately vested, and fully funded on a current basis **from employer contributions**.

This bill provides that such plans are to be administered by employers or the State Board of Administration (SBA) to offer employees the option of participating in the Portable Retirement Plan (PRP) in lieu of continued membership in their existing retirement system. The SBA may delegate to service providers the day-to-day operations of the plan, and all administrative costs and payments shall be made from the fund, if created by law, or otherwise from the participants in the PRP.

For each employee electing to participate in the PRP, the existing retirement system would be required to transfer the actuarial present value of the employee's "accrued service benefit," as defined in the bill, to the plan administrator. Any employee, except employees electing to participate in the State University System Optional Retirement Plan or the Senior Management Optional Annuity Program, may voluntarily elect membership in the PRP.

This bill does not comply with the requirements of Article X, Section 14, of the State Constitution since no actuarial study has been completed to determine the actuarial impact on the existing Florida Retirement System (FRS) or the actuarial soundness of the new PRP. The consulting actuaries to the FRS, Milliman and Robertson, have been requested to evaluate the actuarial impact of the bill on the current FRS defined benefit plan. This review is underway but not completed.

The bill has an indeterminate fiscal impact on state and local government. See "Fiscal Research & Economic Impact Statement," at page 16; "Applicability of the Mandates Provision," at page 18; and, "Comments" at page 18.

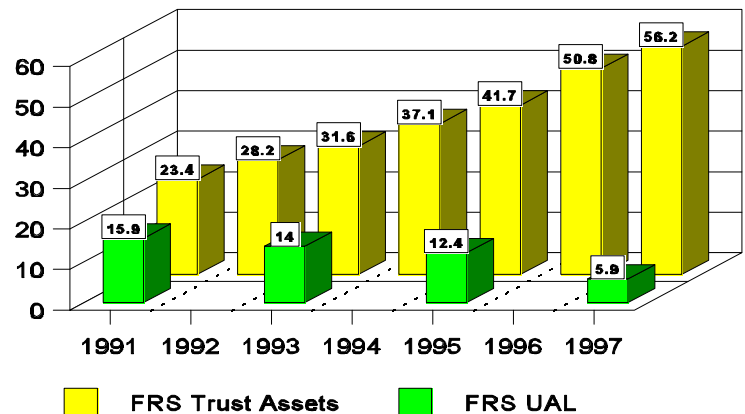
II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Retirement System (FRS) was established in 1970 and encompassed formerly separate retirement plans covering state and local government employees and officers, teachers, the Highway Patrol, and the Judicial Branch. To provide actuarially funded benefits for all existing retirement plans, the FRS had to amortize the unfunded liabilities of prior generations of public employees through the assessment of a required contribution to pay off the unfunded actuarial liability or UAL on its participating employer payroll contributions. As of the July 1, 1997, valuation date, the FRS UAL stood at \$5,943,190,000, a reduction of almost \$10 billion from the same valuation date in 1991. The following example to the right depicts the correlation between growth in the FRS trust fund portfolio and its associated UAL.

FRS Asset Growth vs. UAL

\$ in Billions



In the 1997 report "Survey of State and Local Government Employee Retirement Systems," the Public Pension Coordinating Council ranked the FRS as the fourth largest state pension fund in terms of membership in the United States, behind California, New York, and Texas, respectively. The report also indicated that FRS ranked first in the country for systems with 400,000 or more members as having the lowest administrative cost per member served (\$18.34). By comparison California's administrative cost per member served is \$88.67. Actual membership growth rates for the FRS as reported by the Division of Retirement are as follows:

FRS Growth of Active Members 1992-97

Year	# Members	Nominal Growth
1992	545,953	N/A
1993	552,581	1.2%
1994	572,390	3.6%
1995	586,625	2.5%
1996	586,796	.03%
1997	589,791	.51%

State employees, including University System employees, account for about 24 percent of the FRS membership. The remaining members are employed by local government employers, including counties, district school boards, community colleges, and some cities and special districts.

The FRS is designed to afford a measure of portability to Florida public employees allowing them to change jobs within the public sector without penalizing their vesting rights to FRS retirement benefits. A public employee who leaves the state to seek employment opportunities in the private sector may later return as a public employee of an agency or entity enrolled in the FRS and continue to earn credit toward his/her retirement benefits from the last date of service without penalty. However, at no time may the employee take their FRS retirement benefit with them outside of an employer enrolled in the FRS. The FRS enhances pension portability options by providing members the opportunity to obtain option service credit for various types of service as shown in the following table:

Service Credit Options		
F.S. Cite	Service Option Availability	Description
s. 121.011(3)(e)	Periods of Suspension	Members reinstated without compensation following a period of suspension may claim credit for the suspension period.
s. 121.053	Post retirement service by an Elected Officer	Vested members of the Elected State and County Officers' Class may purchase elected officer credit if they had previously retired and then had Post retirement service as an elected officer that was either uncredited or under credited.
s. 121.081(1)	Past Service	Members employed by a city or special district previous to the employer electing to participate in FRS, may purchase credit for service.
s. 121.081(2)	Prior Service	Members may purchase credit for service under the consolidated FRS for which contributions were previously refunded.
s. 121.021(20) & s. 121.111	Military Service	Members may purchase credit for actual "wartime service" or leave-of-absence military service.
s. 121.1115	Out-of-State Public Service	Members may purchase credit for periods of public employment in another state.
s. 121.1115	Federal Service	Members may purchase credit for periods of public employment with the federal government.
s. 121.1122	In-state Public Service	Members may purchase credit for in-state public service.
s. 121.1122	Service in Certain Schools/Colleges	Members may purchase credit for periods employed in chartered schools or a nonpublic nonsectarian school or college accredited by the Southern Association of Colleges and Schools.
s. 121.121	Leaves of Absence	Members may purchase credit for authorized leaves of absence.

Service Credit Options		
F.S. Cite	Service Option Availability	Description
s. 121.122	Service as a Reemployed Retiree	Members may purchase renewed member credit for Post retirement service as a reemployed retiree.

FRS Benefits Under the Retirement Plan

The FRS is an employer-funded pension plan which promises vested members a retirement benefit based on a formula determined by years of service, average final compensation, and member classification accrual rates. This type of pension plan is commonly known as a *defined benefit plan*, and since 1975 FRS members have not been required to contribute to receive a pension benefit. The formula, in combination with up to 500 hours of annual leave, yields the base retirement benefit which is then adjusted annually for inflation at 3 percent. To receive the full retirement benefit, members must first reach their "normal retirement date" based on membership classification and age and/or length of service.

The FRS also provides disability and survivor benefits which are payable to joint annuitants and other beneficiaries under certain circumstances.

Existing Options to the FRS

While membership in the FRS is compulsory for most members, there are defined contribution options for those members who are eligible and choose to participate. These options are used as recruiting tools for those highly qualified employees who do not see a 10 year vesting period as advantageous. Consequently, these defined contribution options provide immediate vesting and portability and determine future retirement benefits based upon the value of the contribution made and the interest accumulated in the individual account. The following table depicts the defined contribution plan options to the FRS.

Defined Contribution Options to FRS		
F.S. Cite	Plan Name	Who it effects
s. 121.35(4)	State University System Optional Retirement Program	A defined contribution plan which faculty and certain other employees of the State University System may participate in.
s. 121.051(2)(c)	State Community College System Optional Retirement Program	A defined contribution plan provided by community college boards of trustees and available to faculty and certain other Regular Class members of the State Community College System.

Defined Contribution Options to FRS		
F.S. Cite	Plan Name	Who it effects
s. 121.055(6)(d)	Senior Management Service Optional Annuity Program (SMS-OAP)	A defined contribution plan for state senior managers eligible for membership in the Senior Management Service Class. State and county elected officers may also elect to participate in the plan within 6 mos. of assuming office.
s. 121.055(1)(b)2.	Local government established annuity plans	A defined contribution plan for Senior Management Service Class employees electing not to participate in SMSC and elected officials of municipal and special district governing bodies who also elect not to participate in SMSC.

Public Employee Retirement Savings Plans

Existing tax code permits governmental and quasi-governmental employers to offer three main types of income-deferral arrangements to supplement retirement benefits. Sections 112.21 and 112.215, F.S., authorize the following deferred compensation arrangements:

- * A **457 plan** under the internal revenue code permits an employee of the state, a local government, or certain other quasi-governmental entities to defer compensation for retirement. Currently, an employee may defer up to \$8,000 or about 25 percent of gross salary annually, whichever is less. The cap will index in increments of \$500 or more and adjusts with inflation. There exists a "catch-up" provision in the code for those individuals approaching normal retirement age who have contributed less than the maximum allowable amount.
- * A **403(b)** plan is a tax sheltered annuity program offering a deferred compensation arrangement and is limited to employees of public educational systems and other tax exempt organizations like hospitals and nonprofit groups. Employees may defer up to \$10,000 annually and the cap is indexed for inflation. "Catch-up" provisions also exist in the code.
- * A **401(k)** plan is only available as a qualified plan to public sector employees if the public employer adopted the plan prior to May 6, 1986. The State of Florida did not adopt this plan, thus state employees are now foreclosed from this option. However, for the few governmental entities which did adopt such a plan in the State of Florida, employees hired after the May 6, 1986, date may be added to the plan. Employees under such a plan are allowed to defer up to \$10,000 annually with separate limits applying to employer contributions.

Comparing and Contrasting DB and DC Plans

Defined contribution (DC) plans generally give an employer greater control over employee retirement costs. The following table summarizes the advantages and

disadvantages of defined benefit (DB) and defined contribution plans from an *employer* perspective.

Objective	Defined Benefit	Defined Contribution
Funding Certainty	Plan liabilities are influenced by future salary increases, investment earnings, and employee turnover.	Employer liability is funded annually as contributions are made to employee accounts.
Predictable Costs	Change in actuarial projections can vary annual cash expenditure from year to year.	Expected cash expenditures are basically influenced by employee salaries.
Recruitment Tool	Benefits are not portable outside the plan system and less appealing to a mobile workforce.	Benefits are portable and are appealing to a mobile workforce.
Reward Long Service Employees	Benefits are based upon length of service and average final years of compensation.	Benefits are based upon accumulated contributions and earnings.
Administrative Expenses	Generally more expensive because of actuarial valuation in addition to record keeping and investment management.	Generally less expensive because no actuarial valuation is needed and can be administered by a third party.
Investment Risk	Investment risk is assumed by the employer.	Investment risk is assumed by the employee.

Source: Bureau of Labor Statistics: Employee Benefits in State and Local Government.

1991 data from the Bureau of Labor Statistics indicated that tenure for the total workforce was approximately 7.2 years in comparison to 9.3 years for public administration. Defined contribution plans work best in situations characterized by career mobility. The following table summarizes the advantages and disadvantages of defined benefit and defined contribution plans from an *employee* perspective.

Objective	Defined Benefit	Defined Contribution
Ultimate Benefit Potential	Benefits are predetermined at retirement.	There is greater potential to earn greater benefits through superior investment results. Thus benefits at retirement are not constrained by formula.
Easily Understandable	Benefits are based on variables that are difficult to calculate; e.g., future earnings and years of service at retirement.	Participant is presented with a monthly statement of accumulated contributions and earnings.
Access to Benefits While Employed	Benefits are not available for withdrawal under any circumstances while actively employed.	Benefits are available for withdrawal under the provisions of IRS guidelines.

Objective	Defined Benefit	Defined Contribution
Reward Long Service Employees	Benefits are based upon length of service and average final years of compensation.	Benefits are based upon accumulated contributions and earnings.
Recruitment Tool	Benefits are not portable and less appealing to a mobile workforce	Benefits are portable and are appealing to a mobile workforce.
Investment Risk	Investment risk is assumed by the employer.	Investment risk is assumed by the employee.

Source: Bureau of Labor Statistics: Employee Benefits in State and Local Government.

Who Actually Wins and Who Loses		
Classification	Determination	DB or DC
Healthy Retirees	Defined benefit plans pay benefits to retirees for life.	DB
Savvy Investors	Those who direct investment in a superior fashion will receive higher benefits than those who are less successful investors.	DC
Retirees in Times of High Inflation	Inflation can erode the value of a defined contribution account while those enrolled in defined benefit plans will likely experience cost of living adjustments after retirement.	DB
Death & Disability Beneficiaries	In the event of death or disability, a defined contribution member's account balance may be inadequate due to short service.	DB
Career Mobile Members	DC plans can be left to be credited with future investment earnings or rolled over into another qualified plan or IRA.	DC
Early Retirees	Retirees prior to normal retirement receive a benefit of higher value than those who leave later.	DB
Older Members	The value of benefits earned by older members under a DB plan is significantly higher than those earned by younger members of either plan because the investment has longer to work.	DB
Career Members	DB members in a few instances make no contribution and always assume no risk under the promised benefit.	DB
Employers	Employer assumes more risk in a DB plan and is exposed to more variables which influence employer contribution costs.	DC
Taxpayers	The financial predictability and control offered by DC plans can result in lower tax burdens.	DC
Women	Woman typically outlive men by an average of 7 or more years. A DB plan pays benefits to retirees for life.	DB

Pension Fund Actions by Other States

Michigan: Michigan is the newest state to offer both a defined benefit plan and a defined contribution plan to state employees, excepting law enforcement and school system employees. The new program establishes a second tier in the plan. All new employees, effective March 1, 1997, are automatically enrolled in Tier II of the plan. Employees hired prior to March 1, 1997, have the option of transferring to the new plan or may remain in the old.

Tier II of the plan is a defined contribution plan which requires the employer to contribute 4 percent of gross payroll. Employees have the option of contributing another 3 percent which the employer is required to match. Employees may make additional contribution beyond 3 percent, up to the IRS allowable cap. Vesting in the program is immediate and the employee incrementally vests 25 percent of the employer's contribution for each year of completed service. After four years of completed service the employee is entitled to 100 percent of all contributions made thereafter by the employer. The program is completely portable.

Washington State: Washington State has cultivated a three tier retirement plan. The Tier 1 plan is the original defined benefit plan and was closed in 1978. This plan gave employees access to *full retirement benefits* at any age provided they accumulated 30 years of service. Full benefits were also awarded to those age 55 with 25 years of service, or age 60 with a minimum of five years of service. The minimum vesting period for employees in this plan is five years.

The Tier II defined benefit plan began after the closure of the Tier 1 plan in 1978 and effectively increased the normal retirement age from age 60 to age 65. On July 1, 1996, Tier III of the plan went into effect which provides two independent plans: an employer-funded defined benefit plan and an employee-funded defined contribution plan. When added together, these two plans will comprise the employee's total retirement benefit.

One of the provisions in the plan provides flexibility to the mobile employee by allowing a member terminating before retirement eligibility to withdraw all member contributions, plus interest earned at market rate, without destroying eligibility to receive the employer-funded defined benefit portion when retirement eligibility criteria has been met.

West Virginia: The original retirement plan, now closed to new members, gave employees access to *full retirement benefits* at any age provided they accumulated 35 years of service. Full benefits were also awarded to those age 50 with 30 years of service, or age 60 with a minimum of five years of service. The minimum vesting period for employees in this plan is five years. Under the program employees contributed 6 percent of their salary with the employer contributing \$2.50 for every dollar contributed by the employee.

On July 1, 1991, West Virginia adopted a new defined contribution plan where the employee contributes 4.5 percent of gross salary while employer contributes 7.5 percent. To provide flexibility to the mobile employee, a member terminating service

before reaching retirement eligibility is permitted to withdraw all member contributions, plus interest earned at market rate. In addition, the employee is permitted to withdraw a portion of the employer's contribution with interest specifically: one-third after 6 years, two-thirds after 9 years, and 100 percent after 12 years of completed service.

Colorado: On July 1, 1995, Colorado adopted a new hybrid plan which added a matching employer contribution to refunds and provided a lump-sum payment option at retirement. Employees pay 8 percent of their gross salary and the employer contributes another 11.6 percent of payroll. The employer cost includes an amount for a health care subsidy for retired employees.

Under the program the employer "match" is either 25 percent of the member contribution account balance for refunds made before retirement age or 50 percent for payments made after retirement eligibility. The money purchase refunds and lump-sum options theoretically provide portability to an employee seeking an alternative plan. However, experience shows that lump-sum payment plans have major negative tax consequences if not rolled over into another qualified plan and often the money is spent quickly and is seldom used for retirement purposes.

South Dakota: In South Dakota, the need for pension system reform attracted political attention when the university system began having trouble recruiting new professors. Consequently, the state has recently implemented a cost-neutral choice plan with a unique portable retirement option (PRO). The employee may elect an employer administered defined contribution plan instead of the standard defined benefit plan. The defined contribution plan becomes the vehicle for maintaining the employee benefit values if the employee moves to a new employer. If the employee does not change employers, the employee can elect at the time of retirement to go back to the standard defined benefit plan computation. The choice is kept cost neutral by not including the standard survivor and disability benefits in the defined contribution plan. However, the employee can still receive these benefits by paying the additional premium.

B. EFFECT OF PROPOSED CHANGES:

Section 1. Creates an unnumbered section, cited as the "Public Employees Portable Retirement Act," requiring alternative retirement plans for certain state and local public agency employees; requires state and local public agencies to provide a defined contribution alternative basic pension plan for state and local public agency employees that is fully portable, immediately vested, and fully funded on a current basis from employer contributions.

Provides that in no event may the state or any local public agency **fail** to continue to offer membership in any retirement system in existence at the time of the enactment of this legislation, to current employees, new employees, or retirees as a result of implementing this alternative retirement plan; provides for establishment and administration in accordance with the requirements for section 401(a) qualified retirement plans under the Internal Revenue Code of 1986, as amended.

Provides for definitions of: Accrued service benefit, Administrator, Compensation, Employee, Employer, Employer contribution, Existing employee, Existing retirement system, Individual account or account, Participant, Fund, Portable retirement plan (PRP), and Retirement.

CREATION

Requires each employer to implement a portable retirement plan providing the opportunity for retirement savings for its respective employees; provides for tailoring the PRP to each employer's individual needs; and provides for orderly administration.

ADMINISTRATION

Authorizes the State Board of Administration (SBA) and employers to exercise all powers necessary to effectuate the provisions of this bill; provides that the SBA may delegate to service providers the day-to-day operations of the plan; provides for administrative costs and payments to be made from the fund, if created by law, otherwise they are to be paid by the participants in the PRP.

CONTRIBUTION

Provides that employer contributions **may** equal the normal cost portion of the existing retirement system's contribution rate applicable to the employee [electing to participate] plus the equivalent of the health insurance subsidy contribution amount if the employee is otherwise authorized to receive such; provides that in no event shall employer contributions fall below levels necessary to maintain the PRP as a qualified plan under Internal Revenue Code requirements; provides for immediate vesting of each participant in all employer contributions; and requires the employer to continue to pay any existing contributions specified to offset unfunded accrued liabilities of the existing retirement system for a designated amortized period [**this period of time is not stipulated, presumably, because it may differ among the existing retirement systems covered by this legislation**].

ELIGIBILITY FOR THE PLAN

Provides that, notwithstanding existing retirement systems, any employee, except employees electing to participate in the State University System Optional Retirement Program or the Senior Management Service Optional Annuity Program, may voluntarily elect membership in the PRP [**no exception is made for employees electing to participate in the State Community College System Optional Retirement Program under s. 121.051(2)(c) F.S., or Senior Management Service Class employees Local Government established annuity plans under s. 121.055(1)(b)2., F.S.**]. Employees electing to participate in the PRP are prohibited from participation in any applicable existing retirement system, but may participate in any and all applicable supplemental plans including those offered under ss. 403(b) and 457, of the Internal Revenue Code.

Provides for written notice to the employer of an employee's election to participate in the PRP; provides for the designation of an election to participate period of 90 days from implementation for existing employees or 90 days from the first day of employment for new employees; provides for automatic participation in the existing retirement system for failure to make an election to participate in the PRP; provides for notification by the administrator of the PRP to the existing retirement system of the employee's election to participate and the employee's service record and compensation history within 45 days of that election; provides that the existing retirement system, within 45 days, shall transfer to the administrator a payment equal to the actuarial present value of the

employee's accrued service benefit on the date of the transfer; and provides that the amount so transferred shall be credited to the employee's individual account.

READMISSION TO THE PLAN

Any employee whose employment terminates and who is later reemployed by an employer shall be eligible for membership in either the existing retirement system or the PRP. A provision is made for readmission as a result of suspension, approved leave of absence, approved maternity or paternity break in service, or any other approved break in service authorized by an employer. In all cases where a question exists as to the readmission to membership in a plan, the employer shall decide the question.

MANAGEMENT OF THE PLAN

- (a) The SBA shall act as manager of the plan and shall have the following responsibilities:

The manager (SBA) shall identify plan providers for the plan.

Plan providers shall include the plan providers included in the optional retirement plan pursuant to s. 121.35, F.S., (State University System Optional Retirement Plan).

The manager shall select additional providers, one of which must be a mutual fund.

No more than a total of three additional providers shall be selected.

In addition to the required mutual fund, the manager may consider a group annuity contract, individual retirement annuities, interests in trusts, additional mutual funds or other financial instruments as necessary or appropriate for the plan to provide retirement and related benefits comparable to those provided in the existing retirement systems.

The manager shall consider all of the following in selecting additional plan providers:

1. The experience of the plan provider in 10 other states providing retirement annuities or trustee mutual fund arrangements as defined contribution primary pension plans for public employees.
2. The financial stability of the plan provider as evidenced by national rating services.
3. The intrastate and interstate portability of the product offered by the plan provider, including flexibility in offering early withdrawal options.
4. Product compliance with the Internal Revenue Code.
5. The ratio of assigned plan provider employees to participants.

6. The ability of the plan provider to coordinate and apply employer contribution data with the employer.
 7. The capability of the plan provider to effectively meet the goals of the plan.
 8. The educational services of the plan provider including personal counseling, group seminars, and retirement related financial planning services.
- (b) Selection of additional plan providers shall be conducted through a competitive selection process.
- (c) The manager shall periodically review each plan provider to ensure compliance with the criteria established. Pursuant to review, plan provider contracts which are not in compliance may be terminated. Subject to any applicable requirement in the agreement, the manager may provide for the transfer of a participant's individual account to another approved provider selected by the participant.
- (d) If requested by the employer, an existing retirement system shall provide an actuarially determined optional disability benefit option and employer contribution rate for employees who elect to participate in the PRP.

REPORTING REQUIREMENTS

The employer, administrator, or service provider shall prepare, or cause to be prepared, at least quarterly, a statement for each participant's individual account. The statement shall include the current market value of the account, including self-directed investment options, and itemization of changes in the account, and other information as may be required by the administrator or the employer. The service provider shall provide summary reports to the employer annually. The administrator or employer shall arrange for an independent audit of the plan's assets unless the audit is provided for by a third-party organization.

Section 2. Provides that the provisions of this bill fulfill an important state interest.

Section 3. Provides an effective date of January 1 of the year following the year in which enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

There is no grant of authority in this bill to promulgate rules, however, it is very likely that such a grant of specific authority is necessary to establish and administer the program envisioned by this bill. There is a provision in the bill that provides in all cases where a question exists as to the

readmission to membership in a retirement plan, the employer shall decide the question.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Employers, however that term is construed, would be required to start up a new defined contribution alternative basic pension program for state and local employees that is fully portable, immediately vested, and fully funded on a current basis from employer contributions. These employers would be required to continue to offer membership in existing retirement systems. Employers must designate an election period for existing and new employees to make an election to participate in the new portable retirement plan (PRP). The existing retirement system would be required to determine the actuarial present value of each employee's accrued service benefit and transfer that amount to the administrator of the PRP for each existing employee that elects membership in the PRP.

This bill designates the SBA as manager of the plan. It is unclear if the SBA is to be the plan manager for all plans, both at the state and local levels, or if it is to be the plan manager at the state level only. This bill delegates major new responsibilities, obligations, and work to the SBA in the identification, recruitment, and selection of plan providers on a competitive basis. The SBA is further required to review plan providers and contracts on a periodic basis to ensure compliance with established criteria and to determine noncompliance and whether or not providers should be terminated. The SBA will also have responsibility, in the event of termination of a provider, to transfer participant's individual accounts to another approved plan provider selected by the participant.

- (3) any entitlement to a government service or benefit?

Employees at the state and local level would be eligible to participate in a new portable retirement plan that is immediately vested, and fully funded from employer contributions. Typically, defined contribution plans require some contribution on the part of the member. They allow for loans against the individual account, and withdrawals under certain circumstances. In employer funded defined benefit plans the employee does not receive funds until retirement. Whether or not this would create inequality with existing retirement systems is unclear.

- b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

This bill provides that administrative costs and payments to plan providers shall be paid from the fund (Public Employees' Portable Retirement Plan Fund which may be created under this bill and funded by the state for the payment of administrative costs of the PRP), if created by law, or otherwise these costs will be paid by the participants in the PRP.

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No, however, local employers or PRP participants would be responsible for their share of administrative costs to plan providers.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

If the PRP fund is not created and funded by the state, since it is permissible in the bill, PRP participants would be responsible for administrative costs.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. This bill allows existing retirement system members and new employees to elect to participate in a new portable retirement plan.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

This bill does not comply with the requirements of Article X, Section 14 of the Constitution since no actuarial study has been completed to determine the actuarial impact on the existing Florida Retirement System or the actuarial soundness of the new PRP.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates an unnumbered section of the Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Please refer to Section II. B, Effect of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

This bill defines "employer" to mean the state or local public agency, including, but not limited to, any school district. The state employer, however that term is construed, will incur costs associated with issuing bid proposals, negotiating with potential vendors and/or third party administrators, and starting a new retirement plan. Without clarification as to what entity or entities would be considered the employer at the state level and specific details regarding the new plan or plans, these costs cannot be estimated.

2. Recurring Effects:

The state employer, however that term is construed, will incur costs associated with administering a new retirement plan or securing a plan provider and a third-party administrator. The bill provides that a fund **may** be created and funded by the state for the payment of administrative costs. If this is not done, such costs will be passed on to the employees who participate in the plan through administrative fees.

Without clarification and more specific detail, these costs cannot be accurately estimated.

3. Long Run Effects Other Than Normal Growth:

Defined contribution plans tend to shift the responsibility for ensuring that adequate funds are available for retirement from the employer to the employee. Since these plans typically rely on the investment skills of the member (who may not be trained or educated for this responsibility), allow a member to borrow against his or her retirement account during the accumulation period (which diminishes the amount available at retirement), allow lump sum distribution of the entire accumulated benefit amount at job termination and at retirement (with its concomitant tax consequences), and generally do not afford protection against inflation, defined contribution members may be at greater risk to retire with inadequate benefits or to outlive their benefits. If women invest conservatively, since they live an average of 7 years longer than men, they are more likely to have reduced account value at retirement and outlive their benefits in a defined contribution plan. The future social costs may be high if a significant number of older Floridians find themselves with inadequate resources to support themselves.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Please refer to fiscal impact on state agencies/state funds expressed above since the impacts would be the same.

2. Recurring Effects:

Same as state agencies/state funds impact.

3. Long Run Effects Other Than Normal Growth:

Same as state agencies/state funds impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

If more public employers contract with investment providers (such as banks, insurance companies, mutual funds, etc.), these entities will have greater opportunity for increased business and profit.

3. Effects on Competition, Private Enterprise and Employment Markets:

If more public employers contract with investment providers (such as banks, insurance companies, mutual funds, etc.), these entities will have greater opportunity for increased business and profit.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill will require counties and some municipalities to spend money or take action that requires the expenditure of money. If they do not already, they will have to provide a new portable retirement plan for local agency employees and either provide for the administrative costs associated with that plan or pass these costs on to the employees who participate in the plan. These costs are indeterminate. It is possible, therefore, that counties and municipalities could pass the costs of the plans to their employees. The bill would then be exempt from the requirements of Section 18, Article VII, of the State Constitution as having an insignificant fiscal impact.

Even if the is not exempt because of an insignificant fiscal impact, the bill does require similarly situated persons (state government, school districts) to comply and includes a finding that it fulfills an important state interest, so it meets an exception to Section 18, Article VII, of the State Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

This bill raises the following concerns:

1. This bill defines "employee" to mean any person employed by an employer. Does this mean that other personal services (OPS) employees, who are not currently provided retirement benefits, would be eligible to participate? If so, the employer would be required to make a retirement contribution on their behalf and no appropriation provision has been made in anticipation of this likelihood. There may be other categories of

employees, not currently provided for, who would become eligible under this definition. (See Amendment 1 below).

2. This bill defines "administrator" to mean an employee of an employer who has been designated by the employer as administrator of the plan, or a representative body or other authority designated by the employer. The SBA has been designated in the bill as the manager. It is unclear who the administrator at the state level will be. Is the State of Florida the employer or is each agency an employer who is required to have an administrator? Does the SBA manage the plan in its entirety, both at the state and local levels, or only for state employees?
3. Although State University System Optional Retirement Program participants, under s. 121.35(4), and Senior Management Service Optional Annuity Program participants, under s. 121.055(6)(d), are excepted from participation in the portable retirement plan (PRP), State Community College System Optional Retirement Program participants, under s. 121.051(2)(c), and Local Government Senior Management Service Class employees, under s. 121.055(1)(b)2., are not excepted. This seems to be an oversight. (See Amendment 2 below).
4. Employees electing to participate in the PRP may not participate in any applicable existing retirement system, but may participate in any and all applicable supplemental plans including those offered under the Internal Revenue Code ss. 403(b) and 457. Missing from this list is 401(k) plans, which some local employers may utilize as a supplemental plan. (See Amendment 9 below).
5. This bill is not accompanied by a separate bill establishing the trust fund referenced in section 1 of the bill. In fact, the Portable Retirement Plan Fund, mentioned in the bill appears permissive by virtue of reference to, "if created by law." Additionally, it is unclear whether or not the fund is only for the payment of administrative costs which presupposes that everything else will be delegated to service providers. It is imperative that violation of Internal Revenue Code requirements in the handling of pension funds be avoided.
6. This bill does not disclaim the application of Part VII of Chapter 112, F.S., which gives the Division of Retirement oversight review over all alternative plans. It must be assumed then that the Division will have oversight review over the PRP's.
7. This bill does not provide specific grants of rule-making authority to the Division or the State Board of Administration with regard to this alternative program. Their legal ability to perform compliance responsibilities will be severely compromised. The most recent revisions of the Administrative Procedures Act, Chapter 120, F.S., have elevated the requirement that an agency's administrative actions be rooted in specific statutory authority. In the absence of this authority these agencies are at risk to prevailing plaintiffs in retirement plan rule challenges. In its present form the bill does not permit these two entities to engage in rule-making. (See Amendment 7 below).
8. This bill defines terms not all of which have the same meaning as the identical terms used in present retirement law.

9. This bill does not address guidelines for administrative expenses or investment fees or charges. If the administrative and/or investment costs are inflated, returns to the plan will be diminished and participants will suffer.
10. The consulting actuaries to the Florida Retirement System, Milliman and Robertson, have been requested to evaluate the actuarial impact of two defined contribution alternatives on the current FRS defined benefit plan. This review is underway but not completed, therefore, it is unclear how seriously these alternatives may impact the current plan.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 7, 1998, the Committee on Governmental Operations adopted nine amendments to HB 4333, as follows:

Amendment 1, clarifies the definition of "employee."

Amendment 2, includes references to the State Community College System Optional Retirement Program and the Local Government Annuity Plans for Senior Managers which were inadvertently omitted from the bill.

Amendment 3, correctly referenced an alternative retirement plan rather than plans.

Amendment 4, correctly references "accrued service benefit" rather than "accrued services benefit."

Amendment 5, removes the word "respective."

Amendment 6, removes the word "CONTRIBUTION" and adds "CONTRIBUTIONS."

Amendment 7, grants specific rulemaking authority to the State Board of Administration to adopt necessary rules to effectuate the identification, selection, review, and termination of plan providers.

Amendment 8, clarifies the definition of "compensation."

Amendment 9, includes a reference to 401(k) plans that was inadvertently omitted.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Jimmy O. Helms

Jimmy O. Helms

STORAGE NAME: h4333.gg

DATE: April 20, 1998

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

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Jenny Underwood Dietzel

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