STORAGE NAME: h1013s1a.ga
DATE: April 16, 1999

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL APPROPRIATIONS
ANALYSIS

BILL #: CS/HB 1013

RELATING TO: FRS Preservation of Benefits Plan

SPONSOR(S): Committee on Governmental Operations, Representative Bloom and others

COMPANION BILL(S): HB 1489 (compare), and CS/SB 1856 (compare), CS/SB 1858 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
(2) GENERAL APPROPRIATIONS YEAS 22 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

This bill creates the Florida Retirement System Preservation of Benefits Plan to provide retirement benefits that would otherwise be limited by the maximum benefit limitations of s. 415(b) of the Internal Revenue Code. This bill will provide a mechanism for FRS members to receive benefits that exceed the federal maximum. Although only one member is currently having his benefits reduced, a query of FRS active member data indicates that a number of members may exceed the federal limitations when they retire in the coming years.

Although it is commonly perceived that such excess benefit arrangements only help those who are highly paid, in truth, any member who retires at a relatively young age may be subject to these limits. This bill provides retirees with retirement benefits they have rightly earned and for which retirement contributions have been paid.

This bill has no fiscal impact on state or local revenues or expenditures.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 415(b), Internal Revenue Code, establishes a maximum dollar amount that any member of a defined benefit plan (including a member of the Florida Retirement System) may receive. This law, initially passed to prevent excessive sheltering of income in the private sector, is causing problems for public pension plans.

FRS benefits are prefunded. Therefore, the contributions necessary to provide the entire promised benefit have been paid, and except for s. 415, IRC, the full benefit earned would be paid to the member upon retirement. The member pays federal income taxes upon receipt of the monthly benefit. If the full benefit is not paid, then no taxes are due or paid on the unpaid benefit.

A separate federal law allows public pension plans to circumvent the maximum benefit limitation established under section 415 by establishing an “excess benefit plan” under s. 415(m). Although this can be an administrative burden, states have no other alternative until and unless Congress acts to exempt public pension plans.

Currently, there is no such plan available to Florida Retirement System (FRS) members. All FRS members’ benefits are subject to the maximum benefit limitations of s. 415(b) of the Internal Revenue Code, as specified in s. 121.30(5), F.S., and s. 60S-4.002(3), F.A.C. Member’s benefits are also limited by s. 121.091(1), F.S., and s. 60S-4.002(3), F.A.C., which state that a member’s initial retirement benefit may not exceed 100% of his or her average final compensation (average of the highest 5 years of salary).

The 1999 calendar-year annual federal maximum for someone who retires between ages 62-65, under options 1, 3, or 4, is $130,000 (option 2 has a different applicable limit of $126,006). This maximum limit is indexed for age so that retirees younger than age 62 have a lower maximum and those older than age 65 have a higher maximum.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Florida Retirement System Preservation of Benefits Plan to provide retirement benefits, rightly earned and for which retirement contributions have been paid, that would otherwise be limited by the maximum benefit limitations of s. 415(b) of the Internal Revenue Code.

The plan is established as a qualified governmental excess benefit arrangement pursuant to s. 415(m) of the Internal Revenue Code. FRS monthly retirement contributions paid to the Division of Retirement by the payee’s past employer shall be reduced by the employer as directed by the Division of Retirement by an amount necessary to meet the requirements for payment of restored benefits under the Preservation of Benefits Plan.

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?

The Division of Retirement is authorized to adopt rules necessary to implement the provisions of this bill, including rules providing the procedures by which the Preservation of Benefits Plan is to be implemented in accordance with s. 415(m) of the Internal Revenue Code.

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

The administrative workload of the Division of Retirement will likely increase as a result of this bill.

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

Retirement benefits that members have rightly earned and for which retirement contributions have been paid will be received.

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?

No.

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.

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?

No.

4. Individual Freedom:

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

This bill provides a mechanism that will allow retirees to receive retirement benefits they have rightly earned and for which retirement contributions have been paid.

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

No.

5. <u>Family Empowerment:</u>

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:

Amends s. 121.091; and creates s. 121.1001, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 121.091(14)(d), F.S., 1998 Supplement, providing that a payee whose retirement benefits are reduced by the application of maximum benefit limits under s. 415(b) of the Internal Revenue Code, as specified in s. 121.30(5), F.S., shall have the portion of his or her calculated benefit in the Florida Retirement System defined benefit plan which exceeds such federal limitation paid through the Florida Retirement System Preservation of Benefits Plan, as provided in s. 121.1001.

Section 2 creates s. 121.1001, F.S., to establish, effective July 1, 1999, the Florida Retirement System Preservation of Benefits Plan as a qualified governmental excess benefit arrangement pursuant to s. 415(m) of the Internal Revenue Code; provide that a payee of the FRS shall participate in the Preservation of Benefits Plan whenever his or her calculated benefit in the FRS defined benefit plan exceeds the maximum established under s. 415(b) of the Internal Revenue Code; provide for benefits payable under the Preservation of Benefits Plan; provide that FRS monthly retirement contributions paid to the division by the payee's past employer shall be reduced by the employer as directed by the division by an amount necessary to meet the requirements; for payment of restored benefits under the plan; provide that the Division of Retirement shall compile and maintain all records necessary or appropriate for the administration of the plan; and authorize the division to adopt rules providing the procedures by which the plan will be implemented.

Section 3 provides that the Legislature hereby determines and declares that the provisions of this act fulfill an important state interest.

Section 4 provides that this act shall take effect July 1, 1999.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects</u>:

   None.

2. <u>Recurring Effects</u>:

   None.

3. <u>Long Run Effects Other Than Normal Growth</u>:

   None.

4. <u>Total Revenues and Expenditures</u>:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. <u>Non-recurring Effects</u>:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   None.

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

   None.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities 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:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its March 30, 1999, committee meeting, the Committee on Governmental Operations adopted one amendment which been engrossed into CS/HB 1013. This amendment placed the Preservation of Benefits Plan into a separate statutory section and clarified the implementation of the program.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Staff Director:
Jimmy O. Helms	Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON GENERAL APPROPRIATIONS:

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