

By Representatives Bloom and Sanderson

1                                   A bill to be entitled  
2           An act relating to the Florida Retirement  
3           System; amending s. 121.091, F.S.; creating the  
4           Florida Retirement System Preservation of  
5           Benefits Plan; providing a statement of public  
6           purpose; providing an effective date.

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

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10           Section 1. Subsection (15) is added to section  
11 121.091, Florida Statutes, 1998 Supplement, to read:

12           121.091 Benefits payable under the system.--Benefits  
13 may not be paid under this section unless the member has  
14 terminated employment as provided in s. 121.021(39)(a) or  
15 begun participation in the Deferred Retirement Option Program  
16 as provided in subsection (13), and a proper application has  
17 been filed in the manner prescribed by the division. The  
18 division may cancel an application for retirement benefits  
19 when the member or beneficiary fails to timely provide the  
20 information and documents required by this chapter and the  
21 division's rules. The division shall adopt rules establishing  
22 procedures for application for retirement benefits and for the  
23 cancellation of such application when the required information  
24 or documents are not received.

25           (15) FLORIDA RETIREMENT SYSTEM PRESERVATION OF BENEFIT  
26 PLAN.--The Florida Retirement System is a tax qualified  
27 retirement plan which must meet the requirements of s. 415 of  
28 the Internal Revenue Code. In certain cases, s. 415 of the  
29 Internal Revenue Code prevents the Florida Retirement System  
30 from paying fully earned benefits to members of the Florida  
31 Retirement System, including, but not limited to, members who

1 have participated in the Deferred Retirement Option Program,  
2 members of the judiciary, members who, because of s.  
3 121.021(22)(c) have a higher compensation limit under s.  
4 401(a)(17) of the Internal Revenue Code, and certain public  
5 safety members, police and fire personnel. The federal Small  
6 Business Job Protection Act of 1996 permits the State of  
7 Florida to adopt an Internal Revenue Code "s. 415(m) plan"  
8 solely for the purpose of providing members of the Florida  
9 Retirement System the full amount of benefits that would  
10 otherwise be paid by the Florida Retirement System, including  
11 the DROP, but for the limits of s. 415 of the Internal Revenue  
12 Code, thereby restoring and preserving benefits which cannot  
13 otherwise be paid from the Florida Retirement System due to  
14 the limitations of s. 415 of the Internal Revenue Code.

15 (a) A "Preservation of Benefit Plan," hereinafter  
16 referred to as the preservation plan, is created, established,  
17 and adopted to restore and preserve the benefits earned by  
18 members of the Florida Retirement System, including the DROP,  
19 to the extent members' benefits are reduced by the limitations  
20 on benefits imposed by s. 415 of the Internal Revenue Code.  
21 This preservation plan is intended to be a "qualified  
22 governmental excess benefit arrangement" within the meaning of  
23 s. 415(m) of the Internal Revenue Code. The preservation plan  
24 shall be deemed a portion of the Florida Retirement System  
25 solely to the extent required under, and within the meaning  
26 of, s. 415(m)(3) of the Internal Revenue Code. In accordance  
27 with s. 415(m) of the Internal Revenue Code, this preservation  
28 plan is solely for the purpose of providing to members and  
29 members' beneficiaries that part of their annual benefit  
30 otherwise payable under the Florida Retirement System,

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1 including the DROP, that exceeds the limitations on benefits  
2 imposed by s. 415 of the Internal Revenue Code.

3 (b) Participation in the preservation plan is limited  
4 to those members and members' beneficiaries whose benefits at  
5 the time of payment are reduced by operation of s. 415 of the  
6 Internal Revenue Code. Participation in the preservation plan  
7 shall commence as of the first date on which benefits are  
8 payable to the members or the members' beneficiaries are  
9 reduced by operation of s. 415 of the Internal Revenue Code.

10 Participation in the preservation plan shall cease on the  
11 first date on which benefits payable from the Florida  
12 Retirement System to the members or members' beneficiaries are  
13 no longer reduced by s. 415 of the Internal Revenue Code. A  
14 member's beneficiary shall receive benefits under the  
15 preservation plan on the first date on which the benefits  
16 payable to the beneficiary from the Florida Retirement System  
17 are reduced by s. 415 of the Internal Revenue Code. The  
18 benefits received under the preservation plan by a member's  
19 beneficiary shall cease on the first date on which the benefit  
20 is no longer reduced by s. 415 of the Internal Revenue Code.  
21 Beneficiaries shall not be participants in the preservation  
22 plan. No other member or beneficiary of the Florida Retirement  
23 System shall have any right to benefits under the preservation  
24 plan.

25 (c)1. The benefit payable under the preservation plan  
26 shall be the difference between the benefit that would be  
27 payable to the member or member's beneficiary under the  
28 Florida Retirement System, including DROP, without regard to  
29 and unreduced by s. 415 of the Internal Revenue Code, and the  
30 benefit payable to the member or the member's beneficiary

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1 under the Florida Retirement System, including DROP, with  
2 regard to and reduced by s. 415 of the Internal Revenue Code.

3 2. Appropriate adjustments shall be made in  
4 determining the benefit both reduced and unreduced with regard  
5 to s. 415 of the Internal Revenue Code in accordance with s.  
6 415 of the Internal Revenue Code and the regulations  
7 thereunder, including, but not limited to, taking into account  
8 the form of the benefit payable.

9 3. The benefit payable to a member or beneficiary  
10 pursuant to the preservation plan shall be paid in the same  
11 form, at the same times and for the same period as benefits  
12 are paid to the member or beneficiary under the Florida  
13 Retirement System.

14 4. Notwithstanding the foregoing, the Division of  
15 Retirement, in its discretion, may elect to pay a benefit  
16 under the preservation plan in a lump sum in the event the  
17 actuarial equivalent present value of the benefit at the  
18 commencement of payment is \$5,000 or less.

19 5. With respect to benefits from the Deferred Option  
20 Retirement Plan ("DROP"), the Division of Retirement shall  
21 arrange for any DROP benefits to be paid from the Florida  
22 Retirement System and not from the preservation plan.

23 6. Each employer shall make appropriate arrangements  
24 to deduct from all amounts paid under the preservation plan  
25 any taxes required to be withheld with respect to the  
26 preservation plan by any government or governmental agency. To  
27 the extent any payroll taxes, including, but not limited to,  
28 FICA taxes are due on benefits paid under the preservation  
29 plan, each employer shall:

30 a. Pay such taxes due from the employer.

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1           b. Collect such taxes due from the member or  
2 beneficiary by withholding the taxes from payments otherwise  
3 due under the preservation plan.

4           c. Take all reasonable steps to reduce such taxes.

5           (d)1. The benefits under the preservation plan shall  
6 not be subject to execution, garnishment, attachment, or any  
7 other process of any court with respect to a participant or  
8 beneficiary under the preservation plan except for qualified  
9 domestic relations orders by a court of competent  
10 jurisdiction, income deduction orders as provided in s.  
11 61.1301, and federal income tax levies.

12           2. The benefit under the preservation plan shall not  
13 be subject to any anticipation, alienation, sale, assignment,  
14 pledge, encumbrance, or charge by any person. Any attempt to  
15 anticipate, alienate, sell, assign, pledge, encumber, or  
16 charge the benefit shall be void.

17           3. The benefits under the preservation plan are not  
18 transferrable by inter vivos gift or testamentary disposition.

19           (e)1. The preservation plan shall be under the  
20 exclusive management and control of the Division of Retirement  
21 which may adopt and enforce rules and regulations for the  
22 administration of the preservation plan and engage legal,  
23 administrative, actuarial, investment, accounting, consulting,  
24 or other professional services as deemed necessary and  
25 appropriate.

26           2. With respect to the administration of the  
27 preservation plan, the Division of Retirement shall act  
28 separately and apart from its duties with respect to the  
29 remainder of the Florida Retirement System. No costs or  
30 expenses of administering the preservation plan shall be paid  
31 directly or indirectly by the remainder of the Florida

1 Retirement System. The costs of administering the preservation  
2 plan shall be the responsibility of the employers, in  
3 proportion to the benefits being paid under the preservation  
4 plan to their former employees.

5 3. The Division of Retirement shall determine all  
6 issues relating to the rights of participants, beneficiaries,  
7 and their legal representatives under the terms of the  
8 preservation plan, including, but not limited to, eligibility,  
9 the amount and time of payment of the benefit, if any, and the  
10 calculation of the benefit under the preservation plan.

11 4. The Division of Retirement shall compile and  
12 maintain all records necessary or appropriate for the  
13 administration of the preservation plan, including, but not  
14 limited to, the making of the requisite calculations and  
15 disbursements under the preservation plan.

16 5. The Division of Retirement shall obtain such  
17 information from the employers with respect to members of the  
18 Florida Retirement System as shall be necessary to determine  
19 the rights and benefits of participants and beneficiaries  
20 under the preservation plan. The Division of Retirement may  
21 rely conclusively upon the information furnished by the  
22 employers.

23 6. The Division of Retirement shall furnish to the  
24 employers, upon request, reports concerning the administration  
25 of the preservation plan as are reasonable and appropriate.

26 7. The Division of Retirement shall determine any  
27 factual questions arising in connection with the preservation  
28 plan's operation or administration after such investigation or  
29 hearing as the Division of Retirement deems necessary and  
30 appropriate.

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1           8. To the extent allowed by law, the Division of  
2 Retirement's interpretations, determinations, rules, and  
3 calculations shall be conclusive, final, and binding on the  
4 employers, all participants, and all persons claiming any  
5 rights hereunder, including beneficiaries.

6           (f)1. The preservation plan shall be unfunded within  
7 the meaning of the federal tax laws. No participant or  
8 beneficiary contributions, accelerations, or deferrals,  
9 directly or indirectly, by election or otherwise, shall be  
10 made or allowed under the preservation plan. Benefits due  
11 under the preservation plan as determined by the Division of  
12 Retirement, on the advice of its actuary, shall be paid for by  
13 the employers.

14           2. Provided that the financial requirements of the  
15 Defined Benefits Pension Plan portion of the Florida  
16 Retirement System are met, employer contributions to the  
17 Defined Benefits Pension Plan portion of the Florida  
18 Retirement System for any fiscal year shall be reduced by an  
19 amount determined by the Division of Retirement, on advice of  
20 its actuary, as necessary to meet the requirement for  
21 benefits, employer taxes, if any, and administrative expenses  
22 under the preservation plan. The amount so determined shall be  
23 paid by employers directly into the preservation plan and to  
24 the taxing authority, if any, as applicable, to pay the  
25 benefits, employer taxes, if any, and administrative expenses  
26 under the preservation plan.

27           3. Contributions to the preservation plan shall be  
28 deposited in a separate trust fund established and  
29 administered by the Division of Retirement, as trustee. This  
30 trust fund shall be maintained and utilized solely for the  
31 purpose of providing benefits under the preservation plan.

1 Income accruing to the trust fund shall constitute income  
2 derived from the exercise of an essential governmental  
3 function upon which such trust fund shall be exempt from tax  
4 under s. 115 of the Internal Revenue Code. The trust fund  
5 moneys and assets used to provide benefits under the  
6 preservation plan shall not be commingled with the moneys and  
7 assets of the remainder of the Florida Retirement System or of  
8 any other qualified plan. The preservation plan and the trust  
9 fund created hereunder shall never receive any transfer of  
10 moneys or assets from the remainder of the Florida Retirement  
11 System or any other qualified plan.

12 4. Title to the beneficial ownership of any assets,  
13 whether cash or other investments which the employers may  
14  earmark to pay any amount under the preservation plan, shall  
15 at all times remain in the employer until used to pay benefits  
16 under the preservation plan, administrative expenses or  
17 employer taxes, if any. Participants and other persons  
18 receiving benefits under the preservation plan shall not have  
19 any property or ownership interest whatsoever in any specific  
20 assets of the employer.

21 5. The obligation of the employer to make payments  
22 pursuant to the preservation plan shall be according to law.  
23 No participant or other person receiving benefits hereunder  
24 shall have a preferred claim or lien on any assets of the  
25 employer.

26 6. The benefit liabilities of the preservation plan  
27 shall be funded on a plan year to plan year basis. The trust  
28 fund assets required hereunder shall not be accumulated to pay  
29 benefits payable in future years. Any assets of the trust fund  
30 not used for paying benefits for a current plan year shall be  
31 used, as determined by the Division of Retirement, for the



1 payment of the administrative expenses of the preservation  
2 plan for the current plan year or for future plan years.

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4 Nothing in this section shall be construed to remove  
5 Preservation of Benefit Plan participants from the scope of s.  
6 8(d), Art. II of the State Constitution, s. 112.3173, and  
7 paragraph (5)(f). Preservation of Benefit Plan participants  
8 who commit a specified felony offense while employed shall be  
9 subject to forfeiture of all retirement benefits, including  
10 Preservation of Benefit Plan benefits, pursuant to those  
11 provisions of law.

12           Section 2. The Legislature finds that a proper and  
13 legitimate state purpose is served when employees and retirees  
14 of the state and of its political subdivisions, and the  
15 dependents, survivors, and beneficiaries of such employees and  
16 retirees, are extended the basic protections afforded by  
17 governmental retirement systems that provide fair and adequate  
18 benefits and that are managed, administered, and funded in an  
19 actuarially sound manner, as required by s. 14, Art. X of the  
20 State Constitution and part VII of chapter 112, Florida  
21 Statutes. Therefore, the Legislature hereby determines and  
22 declares that the provisions of this act fulfill an important  
23 state interest.

24           Section 3. This act shall take effect July 1, 1999.

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27           HOUSE SUMMARY

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29           Creates the Florida Retirement System Preservation of  
30           Benefit Plan to restore and preserve the benefits earned  
31           by members of the Florida Retirement System, including  
          the DROP, to the extent the members' benefits are reduced  
          by the limitations imposed by s. 415 of the Internal  
          Revenue Code. See bill for details.