

**STORAGE NAME:** h1489s1.go

**DATE:** March 30, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
ANALYSIS**

**BILL #:** CS/HB 1489

**RELATING TO:** FRS Preservation of Benefit Plan Trust Fund

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

**COMPANION BILL(S):** HB 1013 (compare), CS/SB 1858 (compare), CS/SB 1856 (compare)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
  - (2) FINANCE & TAXATION
  - (3) GENERAL APPROPRIATIONS
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill creates a separate trust fund referred to as "The Florida Retirement System Preservation of Benefits Plan Trust Fund" to consist of Florida Retirement System (FRS) monthly retirement contributions required for payment of restored benefits under the FRS Preservation of Benefits Plan, as specified in s. 121.1001, F.S. The purpose of this new trust fund is to provide retirement benefits that would otherwise be paid from the Florida Retirement System except for the maximum benefit limitations of s. 415(b) of the Internal Revenue Code.

This bill creates the trust fund in s. 121.095, F.S.

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 already 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. Thus, this law is depriving the federal government of taxes that would otherwise be paid on these benefits when received.

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 nightmare, states have no other alternative until and unless Congress acts to exempt public pension plans.

Section 415(m), IRC, prescribes that in establishing a "qualified governmental excess benefits arrangement" a trust must be maintained solely for providing benefits under the arrangement and to ensure tax exempt status. Article III, s. 19, Florida Constitution, requires that no trust fund be created by law without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

Additionally, s. 215.3207, F.S., requires that the bill must include statutory language specifying: the name of the trust fund; the agency or branch of state government responsible for administering the fund; the requirements or purposes that the trust fund is established to meet; and the sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Florida Retirement System Preservation of Benefits Plan Trust Fund. The purpose of this new trust fund is to provide retirement benefits that would otherwise be paid from the FRS Trust Fund except for the maximum benefit limitations of s. 415(b) of the Internal Revenue Code.

The name of the trust fund is the Florida Retirement System Preservation of Benefits Plan Trust Fund; the agency or branch of state government responsible for administering the fund is the Division of Retirement; a separate trust fund is required to provide earned retirement benefits in excess of federal limitations to members, under a secondary plan. 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. The amount so determined shall be paid by the employer to the Preservation of Benefits Plan Trust Fund to pay the benefits under the Preservation of Benefits Plan.

The benefit liabilities of the Preservation of Benefits Plan shall be funded on a month-to-month basis. The Preservation of Benefits Plan Trust Fund assets required hereunder shall not be accumulated to pay future benefits.

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?

No.

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

The administrative responsibilities of the Division of Retirement will be increased.

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

No. It will ensure that already earned, prefunded benefits are 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?

It would help ensure that earned, prefunded benefits are received by individuals.

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

No.

5. Family Empowerment:

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

This bill does not purport to provide service 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 s. 121.095, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 121.095, F.S., establishing the Florida Retirement System Preservation of Benefits Trust Fund.

Section 2. Provides and effective date of July 1, 1999, if HB 1013 or similar legislation is adopted in the same legislative session or an extension thereof, but it shall not take effect unless it is enacted by a three-fifths vote of the membership of each house of the Legislature.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

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 to take any 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 revenue 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 and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

\_\_\_\_\_  
Jimmy O. Helms

\_\_\_\_\_  
Jimmy O. Helms