

By Senator Silver

38-703-99

1 A bill to be entitled
2 An act relating to the Florida Retirement
3 System; amending s. 121.091, F.S.; creating a
4 preservation of benefit plan within the system
5 to provide benefits to certain employees and
6 beneficiaries who are entitled to them but who
7 are prohibited from receiving them under
8 federal law; providing duties of the Division
9 of Retirement; providing an effective date.

10

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

12

13 Section 1. Subsection (15) is added to section
14 121.091, Florida Statutes, 1998 Supplement, to read:

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

28 (15) FLORIDA RETIREMENT SYSTEM PRESERVATION OF BENEFIT
29 PLAN.--The Florida Retirement System is a tax qualified
30 retirement plan that must meet the requirements of s. 415 of
31 the Internal Revenue Code. In certain cases, s. 415 of the

1 Internal Revenue Code prevents the system from paying fully
2 earned benefits to members of the system, including, but not
3 limited to, members who have participated in the Deferred
4 Retirement Option Program, members of the judiciary, members
5 who, because of s. 121.021(22)(c), have a higher compensation
6 limit under s. 401(a)(17) of the Internal Revenue Code, and
7 certain police officers and firefighters. The federal Small
8 Business Job Protection Act of 1996 permits this state to
9 adopt an Internal Revenue Code "s. 415(m) plan" solely for the
10 purpose of providing members of the system the full amount of
11 benefits that would otherwise be paid by the system, including
12 the DROP, but for the limits of s. 415 of the Internal Revenue
13 Code, thereby restoring and preserving benefits that cannot
14 otherwise be paid from the system due to the limitations of s.
15 415 of the Internal Revenue Code.

16 (a) A "Preservation of Benefit Plan," referred to in
17 this subsection as the preservation plan, is created,
18 established, and adopted to restore and preserve the benefits
19 earned by members of the system, including the DROP, to the
20 extent members' benefits are reduced by the limitations on
21 benefits imposed by s. 415 of the Internal Revenue Code. This
22 preservation plan is intended to be a "qualified governmental
23 excess benefit arrangement" within the meaning of s. 415(m) of
24 the Internal Revenue Code. The preservation plan shall be
25 deemed a portion of the system solely to the extent required
26 under, and within the meaning of, s. 415(m)(3) of the Internal
27 Revenue Code. In accordance with s. 415(m) of the Internal
28 Revenue Code, this preservation plan is solely for the purpose
29 of providing to members and members' beneficiaries that part
30 of their annual benefit otherwise payable under the system,
31

1 including the DROP, which 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 payable
8 to the members or the members' beneficiaries are reduced by
9 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 system to the
12 member or member's beneficiaries are no longer reduced by s.
13 415 of the internal Revenue Code. A member's beneficiaries
14 shall receive benefits under the preservation plan on the
15 first date on which the benefits payable to the beneficiary
16 from the system are reduced by s. 415 of the Internal Revenue
17 Code. The benefits received under the preservation plan by a
18 member's beneficiary shall cease on the first date on which
19 the benefit is no longer reduced by s. 415 of the Internal
20 Revenue Code. Beneficiaries shall not be participants in the
21 preservation plan. No other member or beneficiary of the
22 system has any right to benefits under the preservation plan.

23 (c) The benefit payable under the preservation plan is
24 the difference between the benefit that would be payable to
25 the member or the member's beneficiary under the system,
26 including the DROP, without regard to, and unreduced by, s.
27 415 of the Internal Revenue Code, and the benefit payable to
28 the member or the member's beneficiary under the system,
29 including the DROP, with regard to, and reduced by, s. 415 of
30 the Internal Revenue Code. Appropriate adjustments shall be
31 made in determining the benefit both reduced and unreduced

1 with regard to s. 415 of the Internal Revenue Code in
2 accordance with that section and the regulations under that
3 section, including, but not limited to, taking into account
4 the form of the benefit payable. The benefit payable to a
5 member or beneficiary under the preservation plan shall be
6 paid in the same form, at the same times, and for the same
7 period as benefits are paid to the member or member's
8 beneficiaries under the system. Notwithstanding the other
9 provisions of this paragraph, the division, in its discretion,
10 may elect to pay a benefit under this preservation plan in a
11 lump sum if the actuarial equivalent present value of the
12 benefit at the commencement of payment is \$5,000 or less. With
13 respect to benefits from the DROP, the division shall arrange
14 for any DROP benefits to be paid from the system and not from
15 the preservation plan. Each employer shall make appropriate
16 arrangements to deduct from all amounts paid under the
17 preservation plan any taxes required to be withheld with
18 respect to the preservation plan by any government or
19 governmental agency. To the extent any payroll taxes,
20 including, but not limited to, FICA taxes, are due on benefits
21 paid under the preservation plan, each employer shall:
22 1. Pay such taxes due from the employer;
23 2. Collect such taxes due from the member or
24 beneficiary by withholding the taxes from payments otherwise
25 due under the preservation plan; and
26 3. Take all reasonable steps to reduce such taxes.
27 (d) The benefits under the preservation plan are not
28 subject to execution, garnishment, attachment, or other
29 process of any court with respect to a participant or
30 beneficiary under the preservation plan except for qualified
31 domestic relations orders by a court of competent

1 jurisdiction, income deduction orders as provided in s.
2 61.1301, and federal income tax levies. The benefit under the
3 preservation plan shall not be subject to any anticipation,
4 alienation, sale, assignment, pledge, encumbrance, or charge
5 by any person. Any attempt to anticipate, alienate, sell,
6 assign, pledge, encumber, or charge the benefit is void. The
7 benefits under the preservation plan are not transferable by
8 inter vivos gift or testamentary disposition.

9 (e) The preservation plan is under the exclusive
10 management and control of the division, which may adopt and
11 enforce rules for the administration of the plan and engage
12 legal, administrative, actuarial, investment, accounting,
13 consulting, or other professional services it deems necessary
14 and appropriate. With respect to the administration of the
15 preservation plan, the division shall:

16 1. Act separately and apart from its duties with
17 respect to the remainder of the system. No cost or expense of
18 administering the preservation plan shall be paid directly or
19 indirectly by the remainder of the system. The costs of
20 administering the preservation plan are the responsibility of
21 the employers, in proportion to the benefits being paid under
22 the preservation plan to their former employees.

23 2. Determine all issues relating to the rights of
24 participants, beneficiaries, and their legal representatives
25 under the terms of the preservation plan, including, but not
26 limited to, eligibility, the amount and time of payment of the
27 benefit, if any, and the calculation of the benefit under the
28 preservation plan.

29 3. Compile and maintain all records necessary or
30 appropriate for the administration of the preservation plan,
31

1 including, but not limited to, the making of the requisite
2 calculations and disbursements under the preservation plan.

3 4. Obtain such information from the employers with
4 respect to members of the system as is necessary to determine
5 the rights and benefits of participants and beneficiaries
6 under the preservation plan. The division may rely
7 conclusively upon the information furnished by the employers.

8 5. Furnish to the employers, upon request, reasonable
9 and appropriate reports concerning the administration of the
10 preservation plan.

11 6. Determine any factual questions arising in
12 connection with the preservation plan's operation or
13 administration after such investigation or hearing as it deems
14 necessary and appropriate.

15
16 To the extent allowed by law, the division's interpretation,
17 determinations, rules, and calculations shall be conclusive,
18 final, and binding on the employers, all participants, and all
19 persons claiming any rights under this subsection, including
20 beneficiaries.

21 (f) The preservation plan shall be unfunded within the
22 meaning of federal tax laws. No participant or beneficiary
23 contributions, accelerations, or deferrals, directly or
24 indirectly, by election or otherwise, shall be made or allowed
25 under the preservation plan. Benefits due under the
26 preservation plan as determined by the division, on the advice
27 of its actuary, shall be paid for by the employers. If the
28 financial requirements of the defined benefits pension plan
29 portion of the system are met, employer contributions to the
30 defined benefits pension plan portion of the system for any
31 fiscal year shall be reduced by an amount determined by the

1 division, on advice of its actuary, as necessary to meet the
2 requirement for benefits, employer taxes, if any, and
3 administrative expenses under the preservation plan. The
4 amount so determined shall be paid by employers directly into
5 the preservation plan and to the taxing authority, if any, as
6 applicable, to pay the benefits, employer taxes, if any, and
7 administrative expenses under the preservation plan.

8 Section 2. This act shall take effect January 1, 2000.

9
10 *****

11 SENATE SUMMARY

12 Creates a preservation of benefit plan in the Florida
13 Retirement System to ensure that members and members'
14 beneficiaries who are entitled to benefits that they are
15 prohibited from receiving under s. 415 of the Internal
16 Revenue Code will receive those benefits.
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31