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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1141
RELATING TO: Retirement
SPONSOR(S): Representative(s) Justice and others
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

Benefits under the Florida Retirement System (FRS) are determined based on an average final compensation calculation of a career service employees' final five years of employment. Current law specifically exempts any payments of a nonrecurring nature from that calculation. Florida law specifically defines "bonus" as "a payment made in addition to an employee's regular or overtime salary."

Current law also identifies a payment as a bonus if any one of four circumstances applies: it is not made uniformly to all employees; it commences later than the eleventh year of employment; it is not based upon permanent eligibility; or it is made less frequently than annually. Among the specific examples of bonuses are: exit or severance pay; longevity payments; salary agreements incidental to an employee's agreement to retire; accumulated overtime, compensatory, or holiday time not taken within 11 months of the month in which the work was performed; *Quality Instructional Incentives Program payments*; and lump sum payments in recognition of employee accomplishment.

This bill includes bonus payments made pursuant to the Florida Mentor Teacher School Pilot Program and Excellent Teaching Program as part of average final compensation for the purposes of computing a pension benefit under the FRS.

This bill does not appear to have a fiscal impact on local governments.

See "Fiscal Comments" section for the impact on school districts.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Florida Retirement System

The Florida Retirement System (FRS) is a defined benefit, non-participatory, multi-employer pension plan covering the employees, survivors and dependents of some 800 state and local government employers. The FRS was created in 1970 as the successor benefit plan to the separate Teachers' Retirement System, Highway Patrol retirement plan, and State and County Officers' and Employees Retirement System. In 1972, it incorporated the separate Judicial Retirement System. Today it covers about 600,000 active employees and nearly 200,000 retirees.

The FRS offers an annuitized monthly benefit payable over a retiree's lifetime that is calculated as a percentage of the highest five years of a member's average final pay. The FRS is composed of several sub classes of membership with separate benefit accrual rates: Regular (1.60 percent); Special Risk (3.0 percent); Special Risk, Administrative Support (1.6 percent); Senior Management (2.0 percent); Justices and Judges (3.33 percent); and Elected Officers (3.0 percent).¹

Normal retirement occurs at the earlier completion of 30 years of service or age 62, or 25 years of service or age 55 for the two Special Risk classes. The FRS plan consists predominantly of local government employees with state officers and employees comprising only about 25 percent of the total membership.² Benefit administration is the responsibility of the Division of Retirement in the Department of Management Services. The State Board of Administration, headed by the Governor, Comptroller, and Treasurer, conducts investment activities for the FRS.

Retired members receive a fixed 3 percent cost-of-living allowance each July 1 on their retirement benefit. Members who have terminated employment with vested rights, that is, the right to receive a benefit, do not have these benefits indexed to inflation until the commencement of benefit payments.

¹ Accrual rate is the pension value per year of service. Accrual rate multiplied times total creditable service length in years multiplied times average final compensation (inclusive of up to 500 hours of annual leave) equals an Option 1 Benefit. There are three other reduced payment options with survivors' benefits. Effective July 1, 2001 the three separate minimum benefit qualification, or vesting periods of 7, 8, and 10 years will be collapsed into one uniform 6-year period.

² Senate Staff Analysis on SB 982 (HB 1141 companion), Senate Committee on Governmental Operations and Productivity, March 29, 2001.

Florida specifically exempts from the average final compensation calculation any payments of a nonrecurring nature. Section 121.021(47), F.S., specifically defines "bonus" as ". . . a payment made in addition to an employee's regular or overtime salary."

That subsection identifies a payment as a bonus if any one of four circumstances applies: it is not made uniformly to all employees; it commences later than the eleventh year of employment; it is not based upon permanent eligibility; or it is made less frequently than annually. Among the specific examples bonuses are: exit or severance pay; longevity payments; salary agreements incidental to an employee's agreement to retire; accumulated overtime, compensatory, or holiday time not taken within 11 months of the month in which the work was performed; *Quality Instructional Incentives Program payments*; and lump sum payments in recognition of employee accomplishment.

The Florida Mentor Teacher School Pilot Program

Section 231.700, F.S., sets forth the Florida Mentor Teacher School Pilot Program, which was created to attract, retain, and motivate high-quality teachers. The program is to be implemented by the 2001-2002 school year. The pilot schools will be selected by the Commissioner of Education by July 1, 2001. Each approved school will receive an equivalent grant based upon the number of schools selected by the commissioner and the amount of the legislative appropriation.

The Excellent Teacher Program

Section 236.08106, F.S., creates the Excellent Teaching Program to provide categorical funding for monetary incentives and bonuses for teaching excellence. The Department of Education distributes to each school district, or to the National Board of Professional Teaching Standards, an amount as prescribed annually by the Legislature for the Excellent Teaching Program.

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 121.021, F.S., to permit the incorporation of bonus payments made pursuant to the Florida Mentor Teacher School Pilot Program and Excellent Teaching Program as part of average final compensation for the purposes of computing a pension benefit under the FRS.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill permits additional amounts to be recognized as salary for the purposes of computation of average final compensation. This impact's school districts and employees of charter schools leased from public employers that will have to assess 10 percent on the bonus payments for their normal cost contributions.³ The public schools receive about 60 percent of their funding from General Revenue and 40 percent from ad valorem taxes.

The Department of Management Services reports that 568 teachers were eligible for and received payments of \$8,089,740.62 under the Excellent Teaching Program during the fiscal year ending June 30, 2000. FY 2001 costs are estimated at \$9,638,686.62 for 1,268 teachers.⁴ School boards requested and received permission to have their employer share of Social Security matching payments (7.65 percent) deducted from the award amounts due to the shortage of funds. Extending this financial policy to the provisions of this bill would permit the existing stream of funds to be used at about a 90 percent rate.⁵ That would produce an adjusted bonus payment rate of about 83 percent of the original award amount.

The department indicated in its analysis that its consulting actuary was unable to determine the full costs of the proposal without an actuarial study.⁶

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 spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

³While nominally private entities, charter schools may employ leased public school instructional personnel who retain their FRS benefit status.

⁴ Senate Staff Analysis on SB 982, March 29, 2001

⁵ *Id.*

⁶ *Id.*

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:

A. CONSTITUTIONAL ISSUES:

In its current form, this bill fails to fund the benefit improvement it provides. Consequently, this bill appears to violate Article X, Section 14, of the State Constitution, which requires funding of benefit costs.

Proponents of the bill assert that the increase in salary (caused by the inclusion of bonus monies in the calculation of "salary") does not trigger the need for an actuarial study, even though it will indirectly effect the calculation of retirement benefits.⁷

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Jennifer D. Krell, J.D.

J. Marleen Ahearn, Ph.D., J.D.

⁷ Meeting with Marshall Ogletree, representing the Florida Education Association, April 3, 2001.