

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 1128

INTRODUCER: Governmental Oversight and Accountability and Senator Ring

SUBJECT: Local Government Retirement Plans

DATE: April 9, 2011 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.	Leadbeater/Betta	Meyer, C.	BC	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill makes a number of changes affecting local government pension plans:

- Accrued unused sick or annual leave may not be included in calculations of retirement benefits; overtime may be included, but is capped at 300 hours;
- Actuarial or cash surpluses in a local plan may not be used outside the plan;
- Local plans may not reduce contributions required to fund normal cost;
- Local plans are eligible to enter the Florida Retirement System only if the plan has no unfunded actuarial liabilities;
- If a plan's actuarial liability is funded below 80 percent, then 50 percent of certain premium tax revenues must be used to pay unfunded plan liabilities, until the plan's actuarial accrued liability exceeds 80 percent. For a supplemental plan that exists in conjunction with a defined benefit plan, if the defined benefit is funded below 70 percent, certain premium tax revenues must be used to pay the plan's actuarial accrued liability, until the plan reaches 80 percent funding;
- A Task Force on Public Employee Disability Presumptions is created to study and make recommendations on disabilities incurred in the line of duty;
- The Department of Financial Services is required to make recommendations regarding how local pension plan financial data should be reported; and

- The Department of Financial Services is required to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department's website.

This bill substantially amends sections 112.66, 121.051, 175.032, 175.351, 185.02, and 185.35, F.S., and creates unnumbered sections of the Florida Statutes.

## II. Present Situation:

### Local Retirement Systems and Plans

The Department of Management Services' Division of Retirement reports<sup>1</sup> that as of September 30, 2010, there are 489 defined benefit plans sponsored by 239 local governments. The vast majority of the plans, 483, are local government defined benefit systems that provide benefits to 67,724 retirees, with 107,007 active employees, and total plan assets of \$23.1 billion.<sup>2</sup> The average annual pension in these local plans is \$23,854, and the average annual required contribution rate as a percentage of payroll is 26.04 percent.

### Collective Bargaining

Collective bargaining, pursuant to ch. 447, F.S., consists of a series of negotiations between a public employer's chief executive officer<sup>3</sup> and the selected bargaining agent<sup>4</sup> for an employee organization regarding the terms and conditions of employment.<sup>5</sup> The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.<sup>6</sup>

Employees have the right to collectively bargain under Article I, Section 6 of the Florida Constitution.<sup>7</sup> Statewide regulations for collective bargaining amongst public employees are addressed in part II of ch. 447, F.S.<sup>8</sup> Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

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<sup>1</sup> Division of Management Services, *Florida Local Government Retirement Systems*, 2010 Annual Report, available online at: [https://www.rol.frs.state.fl.us/forms/2010\\_Local\\_Report.pdf](https://www.rol.frs.state.fl.us/forms/2010_Local_Report.pdf) (last visited on February 13, 2011).

<sup>2</sup> The other 6 plans are school board early retirement programs that provide benefits to 1,570 retirees, with active plan membership of 9,157, and total plan assets of \$61.6 million.

<sup>3</sup> Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state, and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer."

<sup>4</sup> The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employers Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the PERC, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization, that is approved by the commission to be appropriate for the purposes of collective bargaining.

<sup>5</sup> Section 447.203(14), F.S.

<sup>6</sup> Section 447.201, F.S., *See also*, Public Employees Relations Commission, *A Practical Handbook on Florida's Public Employment Collective Bargaining Law*, 6 (2d ed. 2004).

<sup>7</sup> FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

<sup>8</sup> *See* s. 447.201, F.S. The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.<sup>9</sup>

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to the Public Employees Relations Commission.<sup>10</sup>

### **Actuarial Soundness and Minimum Funding Standards for Pensions**

Article X, s. 14, of the State Constitution requires public retirement benefits to be funded on a sound actuarial basis:

SECTION 14: State retirement systems benefit changes.- A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.<sup>11</sup>

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this act is to “prohibit the use of any procedure, methodology, or assumptions, the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current tax payers.”<sup>12</sup>

### **The “Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund” Acts**

The Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts, located in chapters 175 and 185, Florida Statutes, declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, in implementing the provisions of s. 14, Art. X of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., all municipal and special district firefighters, and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters’ and police officers’ pension trust funds.<sup>13</sup> The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers’ Retirement Trust Fund and the Firefighters’ Pension Trust Fund.<sup>14</sup>

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<sup>9</sup> Section 447.309(5), F.S. (“Any collective bargaining agreement shall not provide for a term of existence of more than 3 years ...”).

<sup>10</sup> The Public Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

<sup>11</sup> Art. X, section 14 of the Florida Constitution.

<sup>12</sup> Section 112.61, F.S.

<sup>13</sup> See ss. 175.021(1) and 185.01(1), F.S., (2006).

<sup>14</sup> See ss. 175.121 and 185.10, F.S.

**Firefighters Pension Trust Fund** - The Firefighters Pension Trust Fund is funded through an excise tax on property insurance policies that amounts up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the municipality boundary or the legally defined boundary of a special fire control district.<sup>15</sup> This excise tax is payable to the Department of Revenue on March 1 of each year, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.<sup>16</sup> In 2008, premium tax distributions to cities and special fire control districts from the Firefighters Pension Trust Fund amounted to \$70.5 million.<sup>17</sup> The 2009 Legislature clarified that the boundaries of a special fire control district for purposes of the 1.85 percent excise tax shall “include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), F.S., or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3), F.S.”<sup>18</sup>

**Municipal Police Officers Retirement Trust Fund** - The Police Officers Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amounts up to .85 percent of the gross receipts on premiums for policies issued within the municipality boundary.<sup>19</sup> This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2009, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to \$59.4 million.<sup>20</sup>

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, and fines for employees violating board rules and regulations, and other sources.<sup>21</sup>

### **Insurance Premium Tax**

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.<sup>22</sup> These taxes must be paid to the Department of Revenue on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies and a 1 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. Pursuant to s. 624.51055, F.S., the insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund firefighter and police pension trust funds.<sup>23</sup> Each time a municipality that is currently not imposing the tax

<sup>15</sup> Section 175.101(1), F.S.

<sup>16</sup> Section 175.101(3), F.S.

<sup>17</sup> Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Fire*, available online at: [https://www.rol.frs.state.fl.us/forms/Police\\_2009.pdf](https://www.rol.frs.state.fl.us/forms/Police_2009.pdf) (last visited on February 10, 2011).

<sup>18</sup> Chapter 2009-97, s. 6, Laws of Florida (L.O.F.).

<sup>19</sup> Section 185.08, F.S.

<sup>20</sup> Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: [https://www.rol.frs.state.fl.us/forms/Police\\_2009.pdf](https://www.rol.frs.state.fl.us/forms/Police_2009.pdf) (last visited on February 10, 2011).

<sup>21</sup> See ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

<sup>22</sup> Section 624.509(1), F.S.

<sup>23</sup> Section 624.51055, F.S., (“There is allowed a credit of 100 percent of ... However, such credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting such tax deductions for ... credits for taxes paid under ss. 175.101 and 185.08 ...”).

enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to the department for deposit into the General Revenue Fund.<sup>24</sup>

### **Board of Trustees**

Firefighters and Police Officers Retirement Trust Funds are administered by a local governing board of trustees that is created in participating cities and special fire control districts and subject to the regulatory oversight of the Division of Retirement.<sup>25</sup> The membership of the board consists of five members: two residents, two police officers or firefighters selected through the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma that are subject to two-year terms. The chair and secretary of the board are elected by a majority vote.<sup>26</sup>

The general powers and duties of the board of trustees are:

- To invest and reinvest pension trust fund assets in amounts sufficient to provide entitled benefits and initial and subsequent premiums;
- To invest and reinvest pension trust fund assets into:
  - Annuities and life insurance contracts;
  - Time or savings accounts of specified banks and financial institutions;
  - Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States;
  - Bonds issued by the State of Israel;
  - Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States Corporation; and
  - Foreign securities not to exceed 10 percent of plan assets;
- To issue drafts upon the pension trust fund;
- To convert fund securities into cash; and
- To keep record on all receipts and disbursements and the board's acts and proceedings.<sup>27</sup>

In addition to these duties, the board must hold quarterly meetings and retain a professional consultant at least once every three years to evaluate the performance of any existing money manager.<sup>28</sup>

### **Chapters 175 and 185 Plan Provisions**

Sections 175.041(3) and 185.03(2), F.S., each provide that the provisions of the respective chapters do not apply to any governmental entity whose firefighters and/or police officers are eligible to participate in the FRS. Exceptions are provided for those cities and special districts that opted out of the FRS and established a chapter plan for all police officers and firefighters hired after January 1, 1996, and for a city or special district subject to a transfer, consolidation,

<sup>24</sup> According to the Department of Management Services, the state premium tax distribution made during 2009, amount to approximately \$131,113,000.

<sup>25</sup> See ss. 175.061 and 185.05, F.S.

<sup>26</sup> The secretary of the board shall keep a record of all persons receiving retirement payments under ch. 175 and ch. 185. See ss. 175.071(4) and 185.06(3), F.S., respectively.

<sup>27</sup> See ss. 175.07(1)(a)-(e) and 185.06(1)-(f), F.S., (note s. 185.06(1)(d), F.S., provides that the board of trustees may also decide all claims to relief for municipal police pension plans).

<sup>28</sup> See ss. 175.061(3), 175.071(6)(a), 185.05(3), and 185.06(5), F.S.

or merger, and whose fire and law enforcement services are provided by the county in which the city or special districts are located.

Sections 175.411 and 185.60, F.S., provide that cities and special districts who opt out of a local or chapter plan but do not terminate the plan, are prohibited from receiving future insurance premium tax money used to fund the pension plans. Premium tax funds previously received must be used to fund existing benefits for vested firefighters or police officers, and the accrued benefits of such vested firefighters or police officers may not be reduced. Annual reports to the Municipal Police Officers' and Firefighters' Pension Office in the Division of Retirement at the Department of Management Services are required. Sections 175.361 and 185.37, F.S., provide requirements for distribution of plan assets when a city or a special district does terminate a chapter or local law pension plan.

Sections 175.371 and 185.38, F.S., provide that when every active firefighter or police officer in a chapter or local law pension plan elects to transfer to another state retirement system, the pension plan must be terminated and the assets must be distributed in accordance with ss. 175.361 and 185.37, F.S. If some participants elect to transfer to another state retirement system and others elect to remain in the chapter or local law plan, the chapter or local law plan will continue to receive insurance premium taxes until the plan is fully funded meaning that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis.

### **Disability Presumptions**

**General Provisions** - Section 112.18(1)(a), F.S., provides that any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death will be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. The presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

The presumption for workers' compensation claims is different. For any workers' compensation claim filed under this section and chapter 440 occurring on or after July 1, 2010, a law enforcement officer, correctional officer, or correctional probation officer suffering from tuberculosis, heart disease, or hypertension is presumed not to have incurred disease in the line of duty as provided in this section if the law enforcement officer, correctional officer, or correctional probation officer:

- Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; or

- Was previously compensated pursuant to this section and chapter 440 for tuberculosis, heart disease, or hypertension and thereafter sustains and reports a new compensable workers' compensation claim under this section and chapter 440, and the law enforcement officer, correctional officer, or correctional probation officer has departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment.

***Disability of Firefighters Suffered in Line of Duty*** – Pursuant to s. 175.231, F.S., for any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this ch. 175, F.S., any condition or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence, provided that such firefighter shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section is applicable to all firefighters only with reference to pension and retirement benefits under ch. 175, F.S.

***Disability of Police Officers Suffered in Line of Duty*** - Pursuant to s. 185.34, F.S., for any municipality, chapter plan, local law municipality, or local law plan adopted pursuant to ch. 185, F.S., any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. This section is applicable to all police officers only with reference to pension and retirement benefits under ch. 185, F.S.

### **Financial Reporting Requirements for Local Governments**

Section 218.39, F.S., specifies the requirements for annual financial audit reports for local governments. If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 12 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of \$250,000;

- Any special district with revenues or the total of expenditures and expenses in excess of \$100,000;
- Each district school board;
- Each charter school;
- Each charter technical center;
- Each municipality with revenues or the total of expenditures and expenses between \$100,000 and \$250,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years; and
- Each special district with revenues or the total of expenditures and expenses between \$50,000 and \$100,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

All audits conducted in accordance with this section must be conducted in accordance with the rules of the Auditor General. All audit reports and the officer's written statement of explanation or rebuttal must be submitted to the Auditor General within 45 days after delivery of the audit report to the entity's governing body, but no later than 12 months after the end of the fiscal year.

Section 218.32, F.S., provides that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district must submit to the Department of Financial Services (DFS) a copy of its annual financial report for the previous fiscal year in a format prescribed by DFS. Each local governmental entity that is required to provide for an audit in accordance with s. 218.39(1), F.S., must submit the annual financial report with the audit report. A copy of the audit report and annual financial report must be submitted to the department within 45 days after the completion of the audit report but no later than 12 months after the end of the fiscal year. Each local governmental entity that is not required to provide for an audit report in accordance with s. 218.39, F.S., must submit the annual financial report to DFS no later than April 30 of each year. DFS must consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. DFS must forward the financial information contained within these entities' annual financial reports to the Auditor General in electronic form.

### **Financial Reporting Requirements for Local Pension Plans**

Sections 175.261 and 185.221, F.S., specify the financial reporting requirements for firefighter and municipal police pensions, respectively, which generally require an annual independent audit, and an actuarial valuation every three years. The reports must be submitted to DMS' Division of Retirement, which issues an annual report to the Legislature based upon the reporting from the local plans.

## **III. Effect of Proposed Changes:**

### **Local Plans**

**Section 1** amends s. 112.66, F.S., to:

- Prohibit inclusion of accrued unused sick or annual leave in calculating retirement benefits, and cap inclusion of overtime at 300 hours per year, starting July 1, 2011;
- Prohibit a cash or actuarial surplus in a local plan from being used outside the plan; and



- Prohibit reducing contributions required to fund normal costs.

### **Florida Retirement System**

**Section 2** amends s. 121.051(2), F.S., by adding a new paragraph providing that local retirement systems or plans, including firefighters' or police officers' pension or retirement plans established in chapters 175 or 185, F.S., are eligible for membership in the FRS only if the plans have no unfunded actuarial liabilities.

### **Retirement Calculation - Firefighter and Municipal Police Pensions**

**Sections 3 and 5** amend ss. 175.032 and 185.02, F.S., respectively, to provide that payments for accrued unused sick or annual leave may not be included in a member's compensation or salary for purposes of calculating retirement benefits. Overtime compensation may be included in the calculation, but must be capped at 300 hours. This provision applies to:

- non-collectively bargained service earned on or after July 1, 2011; and
- service earned under collective bargaining agreements entered into on or after July 1, 2011.

### **Premium Tax Income - Firefighter and Municipal Police Pensions**

**Sections 4 and 6** amend ss. 175.351 and 185.35, F.S., respectively, to specify that, as of March 1, 2011:

- If a plan's actuarial accrued liability is funded below 80 percent, then 50 percent of the premium tax revenues in excess of the adjusted base amount and accumulated excess premium tax revenues held in reserve must be used to pay unfunded plan liabilities until the plan's actuarial accrued liability exceeds 80 percent;
- For a supplemental plan that exists in conjunction with a defined benefit plan, if the defined benefit plan's actuarial accrued liability is funded below 70 percent, the premium tax revenues in excess of the adjusted base amount of the defined benefit plan must be used to pay the plan's actuarial accrued liability, until the plan reaches 80 percent funding.

The bill adds subsection (3) to s. 185.35, F.S., providing that in a closed plan where police services have been transferred or merged with another governmental agency and the plan has fewer than five active members, the municipality may advance payment for purchasing an annuity contract applicable to the accrued liabilities of the plan. In such case, the board of trustees, as approved by the members, may authorize repayment from the future receipt of premium taxes; however, the plan may not be deemed fully funded until the full cost of the advanced payment has been returned to the municipality by the plan. This subsection does not preclude the continued receipt of premium tax to provide extra benefits for active or retired police officers.

### **Financial Rating of Local Plans**

**Section 7** requires the Department of Financial Services to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department's website. The ratings must include the following factors:

- Current and future unfunded liabilities;

- The net asset value, managed returns, and funded ratio;
- Metrics related to the sustainability of the plan, including, but not limited to the percentage that the annual contribution is of the participating employee payroll;
- Municipal bond ratings for the local government, if applicable;
- Whether the local government has reduced contribution rates to the plan when the plan has an actuarial surplus; and
- Whether the local government uses any actuarial surplus in the plan for obligations outside the plan.

The department may obtain the data needed to formulate the ratings from all relevant sources, which must cooperate in furnishing the data.

### **Task Force on Public Employee Disability Presumptions**

**Section 8** creates the Task Force on Public Employee Disability Presumptions for the purpose of developing findings and issuing recommendations on the disability presumptions applicable to firefighters and police officers employed by the state and local governments.<sup>29</sup> The task force consists of nine members to be appointed by July 15, 2011, as follows:

- An attorney in private practice appointed by the President of the Senate;
- A representative of organized labor who is a member of a Ch. 175 pension plan, appointed by the President of the Senate;
- A representative from the Florida League of Cities appointed by the President of the Senate;
- An attorney in private practice appointed by the Speaker of the House;
- A representative of organized labor who is a member of a Ch. 185 pension plan, appointed by the Speaker of the House;
- A representative from the Florida League of Cities appointed by the Speaker of the House;
- A representative from the Auditor General;
- A representative from DMS' Division of Retirement; and
- A representative from the Department of Financial Services.

The task force must address, at a minimum, the following issues:

- Data related to the operation of the statutory disability presumptions;
- How disability presumptions are handled in other states; and
- Proposals for changes to the existing disability presumptions.

By January 1, 2012, the task force must submit, a report to the Legislature and the Governor on recommendations for legislative action to be taken.

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<sup>29</sup> Sections 112.18, 185.34, and 175.231, Florida Statutes.

## **Local Government Pension Plan Transparency**

**Section 9** requires the Department of Financial Services, in consultation with the Legislature's Office of Economic and Demographic Research, to consider issues related to the transparency of the financial condition of local government pension plans, including:

- Whether and what kinds of local pension plan data should be included in the financial audit reports required under s. 218.39, F.S;
- Whether the reporting requirements related to local police and firefighter pension plans should be supplemented with other types of financial data in order to give a more complete and transparent picture of a local government's financial solvency;
- Proposals for a uniform format for providing pension data, including standard terminology and the specific types of data which should be provided, including funding ratios, and whether contributions are sufficient to fund actuarial liabilities;
- Whether to require local governments to provide pension financial data on local public websites;
- Other related issues, including insurance benefits, health care benefits, postemployment plan benefits; and
- Proposals related to the composition of local pension plan boards.

The department must report its recommendations to the Legislature and Governor by December 1, 2011.

## **Important State Interest**

**Section 10** provides that the Legislature determines that the bill fulfills an important state interest as related to public pension plans.

## **Effective Date**

**Section 11** provides that the bill takes effect July 1, 2011.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

To the extent this bill would require a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (done in section 10 of the bill) and one of the following relevant exceptions must apply:

- a. funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- b. Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;

- c. the expenditure is required to comply with a law that applies to all persons similarly situated; or
- d. the law must be approved by two-thirds of the membership of each house of the Legislature.

It is unclear whether this constitutional provision applies, given that some of the provisions in the bill should reduce long term costs to local governments, and that premium tax income pays for at least some of the retirement benefits in plans created pursuant to Chapters 175 and 185, F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Some of the provisions of the bill may help reduce local plans' long term unfunded liabilities. The overall costs or savings associated with the bill are indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on March 17, 2011:**

The committee substitute:

- Removes a provision that would have prohibited local governments from offering defined benefit plans;
- Removes a provision that would have required local plans to use a minimum of 5 years to determine average final compensation;
- Provides that actuarial or cash surpluses in a local plan may not be used outside the plan;
- Provides that local plans may not reduce contributions required to fund normal cost;
- Removes a requirement that local plans provide a death benefit to members;
- Clarifies that no local plan with unfunded actuarial liabilities is eligible for membership in the FRS;
- Clarifies that payments for accrued unused sick or annual leave may not be used in retirement benefits calculation; caps use of overtime compensation in calculation at 300 hours;
- Provides that if a plan's actuarial liability is funded below 80 percent, then 50 percent of certain premium tax revenues must be used to pay unfunded plan liabilities, until the plan's actuarial accrued liability exceeds 80 percent. For a supplemental plan that exists in conjunction with a defined benefit plan, if the defined benefit is funded below 70 percent, certain premium tax revenues must be used to pay the plan's actuarial accrued liability, until the plan reaches 80 percent funding; and
- Allows closed "Chapter 185" plans with less than 5 members to purchase an annuity with premium tax income.

- B. **Amendments:**

None.