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 Committee on Community Affairs

BILL:	CS/CS/SB 534
INTRODUCER:	Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senators Brandes and Bradley
SUBJECT:	Publicly-funded Defined Benefit Retirement Plans
DATE:	March 21, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.	Toman	Yeatman	CA	**Fav/CS**
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 534 explicitly provides that the state is not liable for any obligation relating to any financial shortfalls in any local government retirement plan. The bill also specifies additional reporting requirements for public pension plans - excluding the Florida Retirement System - and provides that local plans, which do not comply with the reporting requirements, may jeopardize their revenue sharing funds.

This bill substantially amends sections 112.63, 112.66 and 112.665 of the Florida Statutes, and creates section 112.664, Florida Statutes.

II. Present Situation:

Florida Local Retirement Systems and Plans

The Division of Retirement of the Department of Management Services (DMS) reports[1] that as of September 30, 2012, there are 492 defined benefit plans sponsored by 249 local governments in Florida. The vast majority of the plans, 486, are local government defined benefit systems that provide benefits to 77,331 retirees, with 102,636 active employees, and total plan assets of $23.8 billion.[2] The average annual pension in these local defined benefit plans is $25,109, and the average annual required contribution rate as a percentage of payroll is 29.62 percent. The total unfunded actuarial accrued liability for all the defined benefit plans as of September 30, 2012, was $10 billion.

Actuarial Reporting for Public Pension Plans

Section 112.63, F.S., requires that public pension plans funded in whole or part by public plans must have regularly scheduled actuarial reports prepared and certified by an enrolled actuary, at least every three years. The actuarial reports must include at least the following information:

- Adequacy of employer and employee contributions;
- A plan to amortize any unfunded liability, and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;
- A disclosure of the present value of the plan's accrued vested, nonvested, and total benefits, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return; and
- A statement by the enrolled actuary that the report is complete and accurate and that the techniques and assumptions used are reasonable and meet the requirements of state law.

The actuarial cost methods used to establish the annual normal costs of the plans must be those methods approved in the Employee Retirement Income Security Act of 1974.

The actuarial reports must be submitted to the Department of Management Services, which must review the reports to determine whether the actuarial valuation is complete, accurate, or based on reasonable assumptions.[3]

[1] Division of Management Services, *Florida Local Government Retirement Systems*, 2012 Annual Report, available online at: https://www.rol.frs.state.fl.us/forms/2012_Local_Report.pdf (last visited on March 10, 2013).
[2] The other 6 plans are school board early retirement programs that provide benefits to 1,644 retirees, with active plan membership of 8,631, and total plan assets of $63.7 million.
[3] Section 112.63(4)(a), F.S.

Firefighter and Police 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 plans.

Sections 175.051 and 185.04, F.S., state, in pertinent part, that actuarial deficits, if any, arising under plans under chapters 175 or 185, shall not be the obligation of the state.

Generally Accepted Accounting Principles

The Governmental Accounting Standards Board (GASB) is the independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. GASB was established in 1984 by agreement of the Financial Accounting Foundation and 10 national associations of state and local government officials. GASB is recognized by governments, the accounting industry, and the capital markets as the official source of generally accepted accounting principles for state and local governments.[4]

In June of 2012, GASB released Statement No. 67, *Financial Reporting for Pension Plans*, and Statement No. 68, *Accounting and Financial Reporting for Pensions*, which establish standards of financial reporting for separately issued financial reports and specify the required approach to measuring the pension liability of employers and nonemployer contributing entities for benefits provided through the pension plan (the net pension liability), about which information is required to be presented. The provisions in Statement 67 are effective for financial statements for periods beginning after June 15, 2013; for Statement No. 68 for periods beginning after June 15, 2014.[5] The new Statements relate to accounting and financial reporting issues only—how pension costs and obligations are measured and reported in audited external financial reports. The Statements do not address how governments approach pension plan funding—a government's policy regarding how much money it will contribute to its pension plan each year.[6]

Mortality Tables

Section 430 of the Internal Revenue Code (IRC) outlines minimum funding standards for single-employer defined benefit pension plans. Section 430(h)(3) of the IRC provides that the Secretary

[4] From "Facts About GASB," available at http://www.gasb.org/cs/BlobServer?blobkey=id&blobwhere=1175824305999&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs (last visited on March 20, 2013).
[5] Summary of Statement No. 67, available at http://www.gasb.org/cs/ContentServer?c=Pronouncement_C&pagename=GASB/Pronouncement_C/GASBSummaryPage&cid=1176160219444 . Summary of Statement No. 68, available at http://www.gasb.org/cs/ContentServer?site=GASB&c=Pronouncement_C&pagename=GASB%2FPronouncement_C%2FGASBSummaryPage&cid=1176160219492 (last visited on March 20, 2013).
[6] New GASB Pension Statements to Bring about Major Improvements in Financial Reporting, a June 2012 publication by GASB, available at http://www.gasb.org/cs/BlobServer?blobkey=id&blobwhere=1175824124337&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs (last visited on March 20, 2013).

of the Treasury must by regulation prescribe mortality tables to be used in determining any present value or making any computation under section 430 of the Code, implemented as the RP-2000 Mortality Tables.[7]

Actuarial Soundness and Minimum Funding Standards for Pensions

Article X, s. 14, Florida 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.[8]

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 taxpayers."[9]

III. Effect of Proposed Changes:

Section 1 amends s. 112.63, F.S., to eliminate a requirement for a retirement system or plan to report present value information, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System (FRS) assumed rate of return.

Section 2 amends s. 112.66, F.S., to specify that the state is not liable for any obligation relating to any current or future shortfall in any local government retirement system or plan.

Section 3 creates s. 112.664, F.S., requiring additional reporting requirements for all publicly funded defined benefit retirement plans other than the FRS. The following information must be provided to DMS yearly, within 180 days after the close of the first plan year that ends after June 30, 2013, and thereafter in each year in which an actuarial valuation of the plan is done:

- Annual financial statements in compliance with the requirements of the Government Accounting Standards Board's Statement No. 67, Financial Reporting for Pension Plans and Statement No. 68 Accounting and Financial Reporting for Pensions using RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.
- Annual financial statements similar to GASB, but which use an assumed rate of return and assumed discount rate 200 basis points less than a plan's assumed rate of return.

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[7] RP-2000 Mortality Tables are available at http://www.pensionsoft.com/references_mort_other.html (last visited on March 20, 2013).
[8] Art. X, s. 14, Florida Constitution.
[9] Section 112.61, F.S.

- The number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits.
- The recommended contributions to the plan based on financial statements stated as an annual dollar value and a percentage of valuation payroll.

Though it is a reporting requirement and not a funding requirement, utilizing an assumed discount rate of 200 basis points less than a plan's assumed rate of return may produce lower funded ratios for most plans, since in the actuarial reporting the plans are currently doing, the average assumed rate of return for local plans is approximately 7.7 percent.[10]

The information required by this bill must be provided by local government plan sponsors and the plans in the municipal budget disclosure required by s. 166.241(3), F.S., and on any websites that contain budget information, or actuarial or plan performance information. Each plan sponsor and plan that has a publicly available website must also provide the plan's most recent financial statement and actuarial valuation on the website.

Plans that fail to submit timely the required information within 60 days after receipt of the plan's actuarial report will be deemed to be in noncompliance. DMS may notify the Department of Revenue (DOR) and Department of Financial Services (DFS) of the noncompliance, and DOR and DFS must withhold funds payable to the plan sponsor, which are not pledged towards bond debt service. The bill gives plan sponsors administrative rights if these actions are taken.

Section 4 amends s. 112.665, F.S., to mandate that the DMS-produced local pension plan fact sheets must contain the additional reporting information required by this bill.

Section 5 is the legislative finding of an important state interest.

Section 6 provides that the bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of s. 18(a) of Art. VII, 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 (included in section 4 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;

[10] Using data from the July 1, 2010, actuarial valuation of the FRS, a study was done in March 2011, to estimate the impact of changing the FRS investment return assumptions. The actuarial liability of the FRS was $134.2 billion; the investment return rate assumption was (and still is) 7.75 percent. The study found that changing the investment return assumption from 7.75 percent to 6 percent would increase actuarial liabilities by $36 billion; changing it to 5 percent would increase actuarial liabilities by $62.9 billion. Study available at http://www.floridahasarighttoknow.com/docs/StatePensionActuaryLetter.pdf, (last visited on March 10, 2013).

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

Since the provisions of the bill apply to municipalities and special districts alike, estimated expenditures required by the bill (see Government Sector Impact) are required by all persons similarly situated. Given this relevant exception, it appears that the mandate restriction does not apply.

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:

The Revenue Estimating Conference has not met to discuss the impact of the bill. The bill does require additional reporting requirements for local plans, which may incur additional costs in producing the required reporting. The exact cost of compliance with this bill is indeterminate, though last year DMS estimated that the cost of compliance for a local pension financial rating plan proposal that involved some similar reporting requirements could range from $1,000 to $5,000 per plan, per year.[11]

According to the Department of Management Services (department), the original filed version of the bill would increase administrative costs to the Division of Retirement (division), including staff and actuarial work, to comply with the reporting requirements

[11] Financial Rating of Local Government Defined Benefit Plans, January 25, 2012, by the Department of Management Services, on file with the Senate Governmental Oversight and Accountability Committee.

in the bill. According to the department's bill analysis, it estimates that the fiscal impact would be as follows:[12]

The new disclosure requirements do not affect the actuarial contributions for funding purposes for the FRS; however, there will be an administrative cost associated with preparing the new disclosures. The consulting actuary estimates that the additional reporting requirement would cost about $20,000 in the first year and $10,000 in each subsequent year.

Expenditures	FY 2013-14 Amount/FTE	FY 2014-15 Amount/FTE	FY 2015-16 Amount/FTE
Recurring	$20,000	$10,000	$10,000
Non-recurring	-	-	-

In addition, one additional government analyst position would be required to insure that implementing and maintaining the actuarial database with these additional disclosure items does not negatively impact the timely accomplishment of current statutory responsibilities.

Expenditures	FY 2013-14 Amount/FTE	FY 2014-15 Amount/FTE	FY 2015-16 Amount/FTE
Recurring	$57,693	$57,693	$57,693
Non-recurring	$3,762	-	-

Additionally, the actuarial costs for the chapter plans under chapters 175 and 185, F.S., are paid for from the police and firefighter's trust fund.[13] The bill creates an additional annual expenditure requirement for reporting in order to qualify for premium tax distributions.

Expenditures	FY 2013-14 Amount/FTE	FY 2014-15 Amount/FTE	FY 2015-16 Amount/FTE
Recurring	$30,000	$20,000	$20,000
Non-recurring	-	-	-

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[12] Department of Management Services, Bill Analysis 2013, for SB 534/HB 599, dated February 8, 2013, on file with the Governmental Oversight and Accountability Committee.
[13] The division conducts the actuarial valuations of chapter plans. *See* ss. 175.032(2) and 185.02(3), F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS 534 by Community Affairs on March 20, 2013:
The proposed committee substitute makes the following changes to the bill:

- Eliminates a current requirement for defined benefit plans to report information using the FRS rate of return assumption.
- Specifically excludes the FRS from the reporting requirements of the bill.
- Requires defined benefit retirement plans to report certain data consistent with financial reporting standards adopted by GASB.
- Requires reporting of information similar to GASB which uses an assumed rate of return and assumed discount rate 200 basis points less than a plan's assumed rate of return.
- Extends the time period for reporting plan information to DFS from 30 days to 60 days after receipt of the certified actuarial plan year report.

CS/SB 534 by Governmental Oversight and Accountability on March 7, 2013:
The proposed committee substitute makes the following changes to the bill:

- Adds a finding of important state interest;
- Clarifies that the mortality tables must account for generational mortality improvements;
- Excludes Deferred Retirement Option Program (DROP) assets and liabilities from the calculations;
- Provides that all plans must report for the first plan year ending on or after June 30, 2013, and in each subsequent year in which an actuarial valuation is completed;
- Provides that plans that do not comply with the reporting requirements may have their revenue sharing withheld, and specifies administrative procedures; and
- Requires that the yearly local plan fact sheets produced by the DMS must include the additional reporting requirements.

B. Amendments:

None.