

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 599 Publicly-Funded Defined Benefit Retirement Plans

SPONSOR(S): Appropriations Committee, Government Operations Subcommittee, Caldwell and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	8 Y, 3 N, As CS	Harrington	Williamson
2) Appropriations Committee	14 Y, 12 N, As CS	Delaney	Leznoff
3) State Affairs Committee	9 Y, 7 N	Harrington	Camechis

SUMMARY ANALYSIS

The Florida Protection of Public Employee Retirement Benefits Act requires the plan administrators for all publicly-funded pension plans to submit an actuarial report at least every three years. In addition to the triennial actuarial reporting requirements, local firefighter and police officer pension plans have actuarial reporting requirements in chapters 175 and 185, F.S.

The bill provides that the state is not liable for shortfalls in local government retirement systems or plans.

The bill increases the reporting requirements of all publicly-funded defined benefit retirement systems or plans, excluding the Florida Retirement System. Effective July 1, 2014, it requires each defined benefit system or plan to electronically report the following information to the Department of Management Services within 60 days after receipt of the certified actuarial report, and at least once every three years thereafter:

- Annual financial statements that are in compliance with the requirements of the Government Accounting Standard 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 that use an assumed rate of return on investments and an assumed discount rate that is equal to 200 basis points less than the plan's assumed rate of return;
- Information indicating the number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits; and
- Using the financial statements, the recommended contributions to the plan stated as an annual dollar value and a percentage of valuation payroll.

The defined benefit plan sponsor is required to publish the reported information, as well as the funded ratio of the plan as determined in the most recent actuarial valuation, on any website that contains budget or actuarial information relating to the plan. If the defined benefit retirement system or plan has a publicly available website, the plan must also publish certain information on that plan's website.

The bill provides that if the plan sponsor fails to submit the required information, the plan will be in noncompliance with the law and subject to withholding of funds payable to the plan sponsor.

The bill has a potential negative, but insignificant fiscal impact on the state and local governments. See Fiscal Analysis and Economic Impact Statement section for further discussion.

This bill may be a county or municipal mandate. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements

Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The Florida Protection of Public Employee Retirement Benefits Act

Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.¹ Responsibility for administration of the act has been assigned primarily to the Florida Department of Management Services (department), Division of Retirement (division).

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the division.² In addition, the statement is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Municipal Firefighters' Pension Trust Fund and Police Officers' Retirement Trust Fund

The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts³ declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. 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.⁴

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters' Pension Trust Fund Act. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive--access to premium tax revenues--to encourage the establishment of firefighter retirement plans by cities. Fourteen years later, the Legislature enacted chapter 185, F.S., the Marvin B. Clayton Police Officers' Pension Trust Fund Act, which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

The acts set forth the minimum benefits or minimum standards for pensions for municipal firefighters and police officers. The benefits provided in the acts may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

¹ Section 112.62, F.S.

² See s. 112.63, F.S.

³ See chapters 175 and 185, F.S.

⁴ See ss. 175.021(1) and 185.01(1), F.S.

Funding for these pension plans comes from four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city to fund the normal cost and any unfunded actuarial liabilities of the plan.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district.⁵ The Police Officers' Retirement Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums of casualty insurance policies covering property within the boundaries of the municipality.⁶ The excise tax is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.⁷

To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., or s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law.

If the division deems that a firefighter or police officer pension plan, created pursuant to these chapters, is not in compliance, the sponsoring municipality may be denied its insurance premium tax revenues until it comes into compliance.

Reporting Requirements for Publicly-Funded Retirement Plans

Triennial Report

To help ensure that each retirement system or plan maintains funding of retirement systems at an appropriate level, governmental entities are required to submit regularly scheduled actuarial reports to the division for its review and approval.⁸

Section 112.63, F.S., requires the plan administrators for all publicly-funded pension plans to submit an actuarial report at least every three years and requires the actuarial reports to consist of, but not be limited to, the following information:

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through an indefinite future;
- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., 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, in order to promote the comparability of actuarial data between local plans; and

⁵ Section 175.101, F.S.

⁶ Section 185.08, F.S.

⁷ In 2011, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$71.7 million, and premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$59.6 million. A copy of the 2011 Premium Tax Distribution report is available online at:

http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans.

⁸ Section 112.63(1), F.S., requires an enrolled actuary to certify the scheduled actuarial reports.

- A statement by the enrolled actuary that the report is complete and accurate and that, in his or her opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of the act.

Section 112.63(1), F.S., provides that the actuarial cost methods for determining the annual actuarial normal costs to support the promised benefits must only be those methods approved by the Employee Retirement Income Security Act of 1974, and as permitted under the regulations prescribed by the Secretary of the Treasury. In addition, s. 112.64, F.S., provides guidelines for the amortization of unfunded liabilities.

If the division determines that a governmental entity has not submitted a complete, accurate or reasonable actuarial valuation or required reports, the division shall notify the plan administrator of the deficiency and request an appropriate adjustment or the required information.⁹ If after a reasonable period of time, a satisfactory adjustment has not been made, or the required report has not been provided, the department may notify DOR and the Department of Financial Services of the noncompliance and those agencies shall withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report.¹⁰ The affected governmental entity may petition the department for a hearing.¹¹

Annual Report for Chapter 175 and Chapter 185 Plans

Chapters 175 and 185, F.S., require every chapter plan and local law plan to submit an annual report to the division, which must include either an independent audit by a certified public accountant or certified statement of accounting, showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year; statistical information about the members in the plan, including ineligible members, disabled members, and retired members; a statement of the amount contributed to the retirement fund; and information pertaining to whether any benefits are insured with a commercial insurance company.¹² This report is in addition to the reporting requirements in s. 112.63, F.S.

Department of Management Services Oversight of Local Plans

The department is required to gather, catalog, and maintain complete, computerized data information on all public employee retirement systems or plans in the state,¹³ based upon a review of audits, reports, and other data pertaining to the systems or plans.¹⁴ The department must receive and comment on the actuarial reviews maintained by units of local government, as well as cooperate with local retirement systems or plans on matters of mutual concern, and provide technical assistance to units of local government in the assessment and revision of retirement systems or plans.¹⁵ In addition, the department must provide a fact sheet for each participating local government defined benefit pension plan summarizing the plan's actuarial status. The fact sheet must include a brief explanation of each element in order to maximize the transparency of the local government plans.¹⁶

Effects of the Bill

The bill contains multiple whereas clauses. It appears that the clauses have been partially drawn from the department's 2012 annual report, *Florida Local Government Retirement Systems*, and from the Public Employee Pension Transparency Act, H.R. 567, 112th Congress (2011).

⁹ Section 112.63(4)(a), F.S.

¹⁰ Section 112.63(4)(b), F.S.

¹¹ Section 112.63(4)(c), F.S.

¹² Sections 175.261 and 185.221, F.S.

¹³ According to the department, there are currently 492 local government defined benefit pension plans with 111,267 active participants.

¹⁴ Section 112.665(1), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

The bill clarifies that the state is not liable for any obligation relating to any current or future shortfall in any local government retirement system or plan.¹⁷

The bill creates additional reporting standards for all defined benefit retirement plans or systems, excluding the Florida Retirement System (FRS). Each defined benefit retirement system or plan must electronically report the following information to the department:

- Annual financial statements that are in compliance with the requirements of the Government Accounting Standard Board's Statement No. 67,¹⁸ 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 those submitted above, but which use an assumed rate of return on investments and an assumed discount rate that is equal to 200 basis points less than the plan's assumed rate of return;
- Information indicating the number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits; and
- Using the financial statements above, the recommended contributions to the plan stated as an annual dollar value and a percentage of valuation payroll.

The information must be submitted to the department within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends on or after June 30, 2014. After the initial reporting period, each defined benefit retirement system or plan is required to submit the report in each year as required by s. 112.63(2), F.S.¹⁹

In addition to the previously discussed report, each defined benefit retirement system or plan, excluding the FRS, must provide the funded ratio of the system or plan as determined in the most recent actuarial valuation as well as the information in the report as part of the disclosures required under s. 166.241(3), F.S.,²⁰ and on any website that contains budget information relating to the plan sponsor or actuarial or performance information related to the plan. Each defined benefit system or plan, excluding the FRS, that has a publicly available website must also provide the plan's most recent financial statement and actuarial valuation, including a link to the division's fact sheet for the plan; for the previous 5 years, beginning with 2013, a side-by-side comparison of the plan's assumed rate of return compared to the actual rate of return, as well as the percentages of cash, equity, bond, and alternative investments in the plan portfolio; and any charts and graphs of the data provided in a standardized, user-friendly, and easily interpretable format as prescribed by department rule.

The bill provides that any plan that fails to submit the required information to the department within 60 days after the close of the plan year is in noncompliance. The department may notify DOR and the Department of Financial Services of the noncompliance, and DOR and the Department of Financial Services must withhold any funds not pledged for the satisfaction of bond debt service until the information is provided to the department. The bill requires the department to provide DOR, the Department of Financial Services, and the plan sponsor at least a 30 day notice before withholding can begin. The plan sponsor may petition the department for a hearing under ss. 120.569 and 120.57, F.S., within 21 days after receipt of the notice of the withholding.

The bill requires the department to include information from the new reporting requirements in the local government fact sheets reported by the department.

The bill deletes from the current reporting requirement in s. 112.63, F.S., the requirement to submit 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.

¹⁷ Sections 175.051 and 185.04, F.S., provide that the state is not liable for actuarial deficits arising under those chapters.

¹⁸ The Government 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. More information about GASB can be found online at www.gasb.org.

¹⁹ Section 112.63(2), F.S., refers to the triennial reporting requirements for all defined benefit retirement systems or plans.

²⁰ Section 166.241(3), F.S., requires municipalities to upload tentative budgets to the municipal website at least two days prior to any budget hearing.

The bill provides a statement of important state interest.

The bill provides that the act takes effect on July 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 112.63, F.S., deleting the requirement that required actuarial reports for retirement plans include a disclosure of the present value of the plan's benefits.

Section 2 amends s. 112.66, F.S., providing that the state is not liable for shortfalls in local government retirement systems or plans.

Section 3 creates s. 112.664, F.S., requiring a defined benefit system or plan to report certain information to the department by a certain date; requiring the plan sponsor to make certain information available on certain websites; providing consequences for failure to timely submit the required information; providing a method for a plan sponsor to request a hearing to contest such consequences.

Section 4 amends s. 112.665, F.S., requiring the department to provide a fact sheet specifying certain information.

Section 5 provides a declaration of important state interest.

Section 6 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the department, the bill will increase administrative costs to the division, including staff and actuarial work, to comply with the reporting requirements in the bill. According to the department's bill analysis, it estimates that one additional government analyst position will be required to implement and maintain the actuarial database associated with the additional reporting requirements.²¹ Despite the department's assertion, the additional workload may not justify an additional full time employee. In addition, the actuarial costs for the 17 chapter plans are paid for from the police and firefighter's trust fund.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Additional expenditures to comply with the reporting requirements pertaining to local defined benefit retirement plans may be required. According to the League of Cities, based on the reporting requirements as provided in HB 599 as initially filed, a very preliminary and broad estimate of the fiscal impact for each reporting cycle (which range from one to three years) may fall between

²¹ Department of Management Services, Bill Analysis 2013, HB 599, dated February 8, 2013 (on file with the Government Operations Subcommittee).

²² The division conducts the actuarial valuations of chapter plans. See ss. 175.032(2) and 185.02(3), F.S.

\$500,000 and \$2.5 million on a state-wide basis.²³ However, the costs associated with the revised reporting requirements in CS/CS/HB 599 are likely not as high as stated in the initial estimate due to plans having to comply with the Government Accounting Standard Board's Statement No. 67 accounting standards after June 2014.²⁴ The cost per public entity would likely be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The website posting requirements will have an indeterminate fiscal impact on local governments, as technical sophistication varies widely among public entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. If an exemption does not apply, an exception may still apply if the bill articulates a finding of serving an important state interest and final passage is approved by two-thirds of the membership of each house of the Legislature. An exception may also apply if the bill satisfies an important state interest and similarly situated persons are all required to comply. The bill articulates a finding of serving an important state interest, but it does not appear to apply to similarly situated persons. As such, the bill may require final passage by two-thirds of the membership of each house of the Legislature for an exception to apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The constitutional separation of powers doctrine prevents the Legislature from delegating its constitutional duties. Because legislative power involves the exercise of policy-related discretion over the content of law, any discretion given an agency to implement a law must be "pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."²⁵ The bill requires the department to implement certain provisions of the bill, and s. 112.665, F.S., grants rulemaking authority to the department for such implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Comments of the Department of Management Services

According to the department, the bill "creates a disclosure requirement that will provide a funded ratio different than what is determined for the plan's funding requirement, the GASB Statement 25 (which will be replaced by GASB Statement 67) requirement, or the disclosures determined under the standards for Moody's or Standard and Poors."²⁶ This may create confusion among users of the information.

²³ The estimated costs are based on approximately 500 plans with the cost of compliance ranging from \$1,000 to \$5,000 per plan report, per year.

²⁴ According to an email from a representative of the League of Cities received on April 16, 2013 (on file with the Government Operations Subcommittee).

²⁵ *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).

²⁶ *Supra* note 21, at 7.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Government Operations Subcommittee adopted a strike-all amendment and reported HB 599 favorably with committee substitute. The committee substitute:

- Corrects a drafting error in the title of the bill, changing the word “direct” to “defined”.
- Corrects inconsistencies in the bill regarding the initial reporting period by providing that the report is due within 180 days after the close of the first plan year that ends on or after June 30, 2013, rather than October 1, 2013, for certain plans.
- Provides that after the initial report, the report is due in the same intervals as the report that is due under s. 112.63, F.S., which requires a report to be submitted to the department at least once every three years, rather than every two years as provided in the bill.
- Corrects inconsistencies in the bill regarding computing the valuation of a defined benefit retirement plan by also excluding the liabilities of any deferred retirement option program from the calculation of the actuarial accrued liabilities. The bill only excluded the assets associated with the deferred retirement option program accounts.
- Clarifies that the Internet publishing requirements apply to both local plans and the Florida Retirement System, by requiring the Executive Office of the Governor to make the report and the funded ratio for the FRS available on the website described in s. 215.985, F.S.
- Creates a uniform penalty for violations of the reporting requirements, rather than providing separate penalties for plans regulated by chapters 175 and 185, F.S., as provided in the bill;
- Requires the department to include information from the new report in the defined benefit fact sheets that the department creates; and
- Includes a declaration of important state interest.

On April 10, 2013, the Appropriations Committee adopted a strike-all amendment and reported HB 599 favorably with a committee substitute. The committee substitute:

- Specifically excludes the Florida Retirement System from the requirements of the bill.
- Reduces the time period for reporting plan information from 180 days to 60 days after the receipt of the certified actuarial report.
- Changes the initial reporting date from July 1, 2013 to July 1, 2014.
- Requires reporting of information using assumed rate of return as well as an assumed discount rate 200 points less than that rate of return.
- Required a side-by-side comparison of the plan’s assumed rate of return compared to the actual rate of return for the previous 5 years, beginning with 2013.